



EMPLOYMENT TRIBUNALS

Claimant: Mr F. Khal

Respondent: STS Aviation Services Limited

Heard at: Manchester

On: 5 – 8 January 2026

Before: Employment Judge Leach, Mr S. Carter; Ms C. Nield

REPRESENTATION:

Claimant: In person

Respondent: Mr Mensah, Counsel

JUDGMENT

JUDGMENT having been sent to the parties on 24 February 2026 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The claimant complains that the respondent discriminated against him because of race and/or harassed him (relevant protected characteristic also being race). The claimant also complains that his suspension from employment on 1 February 2024 and dismissal on 8 February 2024 were detriments that were done to him on the grounds that he had raised a grievance complaining of discrimination.

Issues

2. The issues were set out in an Appendix to the case management orders made in September 2024 and they are set out in the annex attached .

This hearing

3. We first heard the claimant's evidence.
4. The respondent called the following witnesses:
 - a. Steven Roper, Aircraft Check Manager
 - b. Christopher Vaughan, Lead mechanic
 - c. Graeme Robertson, senior vice president, operations.
 - d. Ian Radford, Vice president, programme management.
5. The respondent also provided a statement for Malcolm Fitzsimmon. He did not attend to give evidence. He left the respondent's employment in June 2025. We had some (but limited) regard to the evidence in that statement.
6. We were provided with a bundle of documents with 474 pages. References to page numbers are to this bundle.
7. The claimant also provided with a bundle containing documents that demonstrate his experience and his education. We refer to these documents below.

Findings of Fact

8. We set out our findings of fact that we have made on the evidence that has been before us.
9. The claimant was employed by the respondent between August 2023 and 8 February 2024. His role was Sheet Metal Worker.
10. The respondent is a business that repairs and maintains aeroplanes. It is based at Manchester and Birmingham Airports, and its customers include large passenger carrier companies. Understandably, this is a heavily regulated sector. Only the most precise work is acceptable.
11. The respondent is regulated by the Civil Aviation Authority (CAA). Where exacting standards are not met there is the potential for criminal sanctions against the respondent, its officers and employees.
12. At the time of the claimant's recruitment there was a shortage of directly employed sheet metal workers. The respondent had been relying on external contractors. It wanted to be much less reliant on those contractors and was actively recruiting but finding appropriate candidates was difficult.
13. The claimant had been employed on aircraft maintenance in South Wales. When he was successfully recruited, he and his family relocated to the North West.

Errors

14. During the claimant's short period of employment with the respondent his abilities as a Sheet Metal Worker were questioned on a number of occasions. According to the claimant he made one error in the first few weeks of his employment when he drilled the section of a plane and made a hole too big. There is no dispute that this necessitated a report to the airline manufacturer and costly remedial repairs.
15. The respondent's position however (that we accept because it is supported particularly by the probation form at page 106) is that it was not the only error. Other errors described as minor errors also occurred and the probation period was extended.

Claimant's previous experience

16. At the start of the hearing the claimant provided additional documents which we included in a supplementary bundle. The claimant asked for these documents to be considered to show that he did indeed have relevant sheet metal work experience.
17. Having read through these at the end of day one and heard the claimant's responses to various questions put to him, we did not find that the claimant had significant sheet metal work experience.
18. The claimant has experience in general aircraft maintenance and carried out a wide range of maintenance tasks including some sheet metal working tasks.
19. Most of the experience documented involved the claimant undertaking jobs to the inside of an aircraft, sometimes jobs that appear to us to be highly complex, including ventilation and plumbing related tasks.
20. Our estimate having regard to the claimant's characterisation that he explained to us is that the claimant demonstrated in this paperwork that he carried out some sheet metal work or related work on nineteen or twenty days in the period between November 2018 and September 2022.
21. The claimant also provided evidence (that we accept) that he completed and passed a two-year NVQ qualification in engineering operations. This qualification involves different types of engineering type activities. Sheet metal work was one component (but overall, a minor component) of the course that was carried out.
22. The claimant has also referred in his evidence to another engineering qualification at a higher level, a theory qualification as well as experience in the Territorial Army.
23. Having considered all of this evidence we find that the claimant had some but limited experience in specialist sheet metal working skills. Even so the respondent employed the claimant in a sheet metal working position and although his probationary period was extended the respondent decided that the claimant ultimately passed that probationary period.

Findings relevant to complaint of harassment - comments made by Mr Roper to the claimant on 11 August 2023 (3a in the List of Issues)

24. Mr Roper is an experienced Aircraft Technician and has worked in the airline service and repair sector for some forty years. He is a time served sheet metal worker although has worked as an Aircraft Check Manager for the past fifteen or so years. By time served, we mean that at the start of his career, Mr Roper worked for 5 or so years as an apprentice sheet metal worker. He then worked for many years as a qualified sheet metal worker before taking on his current role. His current role includes supervision and checking a range of repair and maintenance tasks including the sheet metal work that has been carried out on an aircraft. Given his considerable experience, he is well placed to do this.
25. In his role Mr Roper was also responsible for signing off an aircraft when he decided that maintenance or repair work had finished and been carried out satisfactorily. There was an important (vital) quality check element to his role.
26. Mr Roper did not have line management responsibilities for the claimant, but he did need to oversee the claimant's work whenever the claimant worked on aircraft that Mr Roper had responsibility for. Mr Roper needed to have confidence in people working on those aircraft for which he had responsibility because he needed to sign off their work as satisfactory.
27. There is no dispute that Mr Roper and the claimant had a discussion in August 2023 in the first week or two of the claimant's employment. Understandably, neither the claimant nor Mr Roper can remember exactly what was said but it is not in dispute that in this short conversation Mr Roper said to the claimant something along the lines of "*you are not a tinner*" or "*you are not a sheetie*". The terms tinner and sheetie are commonly used in engineering workplaces to refer to sheet metal workers.
28. We find that Mr Roper formed the view that the claimant was not a tinner or sheetie, following a short discussion about sheet metal work. By the end of that short discussion Mr Roper had formed that the claimant was not an experienced sheet metal worker. Mr Roper had no qualms sharing that view with the claimant.
29. In his evidence to us, Mr Roper could remember sharing with the claimant his assessment of the skills but could not remember anything else about the discussion, he could not for example remember the questions and answers or the comments or terminology used by the claimant that led him to his view. That is understandable. This was a shop floor discussion that took place in August 2023, and the claimant did not raise any concerns about this until February 2024, some six months later. What Mr Roper does recall is the claimant querying the term "tinner" or "sheetie" as if he had not heard that term before. The recollection that Mr Roper took along with him over that six-month period is that confirmed to him that the claimant was not an experienced sheet metal worker.
30. Some might regard this behaviour by Mr Roper as an unwelcome unfriendly way to greet a new colleague; some might regard it as arrogance on Mr Roper's part that he was confident enough to form a view in such a short time. But it is

not for us to opine on workplace etiquette other than deciding whether the claimant's race (his colour) was a cause even if not the main cause of Mr Roper's comments.

31. There is evidence that Mr Roper sometimes adopts a brusque approach to colleagues. The claimant himself gave evidence during his grievance hearing, and we note a reference at page 341 *"I am not the only one who has been subject to Steve's bullying and harassment. Other SMWs have too. They have said verbally to Mike Pilbrow, that Steve is out of line. He is rude. Unprofessional. Mike Pilbrow took into account and said that "I'll do my best – I'll see what I can do if he's upsetting you."*
32. The claimant told us that there were other employees who had expressed concerns or made employees having complaints about Mr Roper's approach. On his own evidence it appears he was not singled out.
33. During this hearing The claimant questioned Mr Roper at length about Mr Roper's approach to another employee, an employee called Debs and complaints that he had been rude to her, further evidence that Mr Roper may be someone who is known to make rude or brusque comments seemingly with little regard for the feelings of the recipient. We understand that the respondent may have investigated allegations that that Mr Roper said upsetting things to this other employee. It is important that we note it is not for us to make findings about this other incident; also noting the evidence before us showing that no action was taken against Mr Roper following investigation.
34. During the claimant's short period of employment with the respondent other evidence emerged that meant that experienced engineers (other than Mr Roper) doubted the claimant's competence at relevant sheet metal tasks. Whilst Mr Roper may have been quick to judgment; ultimately, he was not an outlier in his assessment of the claimant's relevant skills.

Events of 16 January 2024 (relevant to 3b in the List of Issues)

35. It is not disputed that the claimant was asked to carry out a task and that complexities arose with that task. The respondent's witnesses say that the claimant was at fault over his performance of the task - of removing a damaged part from the outside of an aircraft and that was another demonstration that he did not have the required sheet metal work competencies.
36. The claimant denies that he was at fault and says the issue arose because he was not provided with a task card which would have set out clear instructions about how to attend to the task, he was asked to do and was also a regulatory requirement. The claimant's evidence is that his wish to comply with regulatory requirements by insisting on the presence of the relevant task card was something that made him unpopular with engineering colleagues at the respondent.
37. The concerns raised about the claimant were about his handling of tasks he was given to do.

38. The claimant was instructed to attend to a remedial task of removing a damaged part from the outside of an aircraft. It was that task that led to Chris Vaughan (lead mechanic) raising a concern – see below.
39. The remedial task was necessary in order for the task that had been assigned to the respondent to be completed.
40. Mr Vaughan reported this to the respondent's manager by email the following day. That email is at page 126:

During the AOG aircraft yesterday - we required a Sheetmetal worker (FAR) to perform a simple task. He struggled with the task in-hand; Myself, The B1 & CM had to intervene at different stages to correct, explain & show how to perform such task efficiently to too the urgency of the Aircraft AOG Status.

The tooling he had was not appropriate for the task on hand - ex. A lump hammer better used for knocking brickwork...

This occasion highlighted he has little Knowledge & Hand skills to perform with the Hired position requirements.

There have been other issues this today with the standard of work & ability on other lines of maintenance, which you may be aware of or not

41. HR received another complaint about the claimant on the same day. It is noted in a confirmatory email from an employee called Laura Sherlock (HR) to Malcolm Fitzsimmons the respondent's maintenance manager (page 127). It says as follows:-

"Mike Walsh has been to see me, and he has had Far drilling a hole on his plane today a very simple task Mike believes for the level of SMM he should be and he has made a mess of it. Mike has had to pull him off his plane.

Mike W says you all have a meeting this afternoon so he will bring the evidence he has with him so you can include this in your conversation with him."

42. Given the concerns raised, Mr Fitzsimmons and Mr Pilbury, the Workshop Manager decided to put together an assessment or test that covered sheet metal work and composite repair.

The assessment

43. The claimant took part in a theory and practical assessment in the days following. Following the assessment the respondent continued to have concerns about the claimant's abilities.

44. We summarise the relevant aspects of this assessment as follows.
45. Theory
- a. The claimant scored low on sheet metal related questions
 - b. The claimant refused to answer questions relating to composite materials on the grounds that working on such materials was outside of his job role.
 - c. There is no evidence before us that the sheet metal work questions were not appropriate
 - d. There is no evidence disputing the low score achieved.
46. Practical
- a. The claimant was asked to cut, shape and bend pieces of metal.
 - b. Two of the pieces required the claimant to cut out a circle
 - c. Uniform bends had to be put into other pieces.
 - d. We heard evidence from Mr Robertson (himself a time served and experienced sheet metal worker), who was questioned about and gave evidence as to why the work as shown in the photographs that we have in the bundle was of a poor standard.
 - e. WE accept Mr Robertsons evidence about the standard of the work. We also accept his evidence that the tasks given for the claimant o complete were not of an exceptional nature for a competent sheet metal worker. In other words, we accept that the respondent had set tasks that were a genuine and reasonable test; they were not trying to make things too difficult for the claimant.
 - f. At this hearing, the claimant did not dispute that the work that he carried out in the practical test, was of a poor standard. He blamed this on the shortage of time and additional tasks being given to him on day three of the test - of being required to rivet pieces together.
 - g. We accept Mr Robertson's evidence that ample time was provided to the claimant including for the additional task of riveting pieces together.

Postponed Capability Meeting

47. Mr Pilbury, the Workshop Manager reported his findings by email of 25 January. Having received that Mr Fitzsimmons decided that he needed to hold a formal capability meeting with the claimant.
48. The claimant was told this by email dated 31 January and timed at 08:29. He was told a potential outcome of that meeting was his dismissal. The meeting was scheduled for the following day 1 February. The claimant was told to go home for the rest of 31 January and then to attend the meeting on 1 February.

49. The claimant accepted that he had been suspended on 31 January. On being told to leave the workplace pending the disciplinary hearing he asked for confirmation of that decision in writing.
50. The hearing did not happen on 1 February. The night before - at 12:45 am on 1 February - the claimant wrote to Laura Sherlock and asked for the performance capability meeting to be moved so that a representative could attend with him.
51. By email dated 1 February Laura Sherlock wrote to the claimant to agree to this and to ask whether his representative could attend on Monday 5 February at 3pm. That is the date and time that the performance capability meeting was moved to. By email of 2 February those new meeting arrangements were confirmed and then by separate letter, also of 2 February the claimant's suspension was confirmed pending the outcome of the process. This accorded with the claimant's request made on 31 January 2024 for the suspension to be confirmed in writing.

Claimant's grievance.

52. The claimant's grievance was sent to the respondent by letter dated 1 February 2024.
53. In this grievance, the claimant complained of harassment by Mr Roper. He identified two events when he says he was subjected to harassment, being 11 August 2023 and 15 January 2024 (two incidents raised in this claim). As well as using the term harassment the claimant stated in his grievance letter that Equality Act 2010 provided *"that I am protected against unlawful discrimination by you as a service provider because of my race"*.
54. The claimant also described the reason he had been harassed as follows *"the reason this harassment and bullying has persisted for so long in my opinion is because of my pigment of skin, despite knowing that other employees are White and of a different ethnicity he still chooses to regularly make fun of me on a regular basis"*. The respondent does not dispute that that grievance letter was a protected act for the purpose of Section 27 of the Equality Act 2010. There is no dispute that the complaint was raised because of race (colour being within the definition of race under section 9 Equality Act 2010)
55. The information provided about the discussion in August 2023 is as follows

"One employee who engages in bullying at work is Mr Steve Roper, the Line Check Manager. The impact he has had on my emotional wellbeing on my third day of taking on the post he has harassed, bullied and spoken to me in an extremely patronising manner. Event One Conversation Mr Steve Roper "you are not really a sheetie are you"

Within 30 seconds of meeting me he looked down on me and belittled me. Whilst the claimant states one employee who engages in bullying at work is Mr Roper, he does not raise complaints in this letter against other employee, nor does he raise complaints in this claim against any other employee.

56. The claimant also raised a grievance of about 15 January. It is recorded in the grievance letter as 16 January whereas the incident in fact took place on 15 January

"I was tasked with using a Pneumatic Drill to replace the anchor nut on an AOG aircraft, Mr Steve Roper "ahh god please tell me you are not using the drill again", he attempted to make me feel embarrassed by saying it was just a joke once more however I think he is attempting to provoke me.

57. They were the relevant aspects of the claimant's grievance. We refer to the grievance investigation below but in the next section we will deal with the claimant's dismissal.

Rearranged Capability Hearing.

58. The re-arranged capability hearing took place on 5 February 2024. It resulted in the claimant's dismissal. We find as follows:-

- a. Mr Fitzsimmons made the decision to dismiss the claimant. We did not hear from Mr Fitzsimmons. He is no longer employed by the respondent. He provided a statement before his employment ended. We read the statement. .
- b. There was no evidence that Mr Fitzsimmons knew about the claimant's grievance when he made that decision.
- c. We are satisfied from consideration of the totality of the evidence and with some regard to the evidence in Mr Fitzsimmon's statement that the fact that the claimant had raised a grievance was not the reason Mr Fitzsimmons dismissed the claimant.
- d. We are also satisfied that it did not influence that decision. Given that we did not hear from Mr Fitzsimmons and his evidence was unable to be tested on cross examination, we considered what evidence may have been consistent or inconsistent with the crucial evidence as to why he decided to dismiss the claimant. We note particularly:-
 - i. The evidence that demonstrated the claimant had limited sheet metal worker skills
 - ii. That multiple employees had by then raised concerns about the claimant's workmanship. We were particularly impressed by the evidence of Mr Robertson who was able to take us through a series of photographs and explain why the claimant's work carried out in the practical test was not good enough. It was during Mr Robertson's evidence that the claimant told us that he accepted the work carried out by him was poor. (There is no evidence that he accepted that before then, either at the capability hearing or in his witness statement for this Tribunal hearing).
 - iii. The nature of the industry and the importance of employing people who were technically capable.

- e. The evidence that is inconsistent with Mr Fitzsimmons evidence is the fact that the respondent recruited the claimant and then passed his probationary period. However, we also note and accept the evidence that (1) there was a shortage of directly employed sheet metal workers and recruitment was proving difficult; (2) that the claimant's probationary period as extended.

Appeal

59. The claimant appealed the decision. The appeal was considered by Mr Robertson. Mr Robertson is no longer employed by the respondent. When he heard the appeal he had the role of Senior Vice President – Operations. He has worked in aircraft maintenance for around 40 years and is an experienced (and time served) Sheet metal worker.
60. Mr Robertson upheld the decision to dismiss for the same reasons that Mr Fitzsimmons reportedly dismissed the claimant.
61. Having reviewed all evidence concerning the claimant's competency, Mr Robertson decided that the respondent could not ask the claimant to work on the aircraft due to safety concerns, and we find that that was the reason for the dismissal.
62. In his evidence Mr Robertson referred to the regulations governing aircraft maintenance which are within Part 145 of the relevant regulations. An extract of this is in the bundle – pages 142 – 144. We note particularly the passage that Mr Robertson has referred to. It requires that the competency of staff who are involved in the maintenance of aircraft is assessed on a continuous basis.

Attempted resignation

63. On being told that he was being dismissed the claimant provided the respondent with a resignation letter (page 306 to 308) In large part this repeats the grievance.
64. There is no dispute that the claimant's employment came to an end by reason of dismissal rather than resignation.

Grievance Investigation

65. Ian Radford was assigned with investigating the claimant's grievance. Mr Radford is (and was at the time) another of the respondent's vice presidents, based in Birmingham.
66. Mr Radford met with the claimant on 13 February 2024. The notes of that meeting are at 323 to 331. The notes are signed by both the claimant and Mr Radford as an agreed summary. During the meeting Mr Radford asked the claimant specifically about the comment that the claimant made in his grievance about his skin colour. The notes record the following response from the claimant. Mr Radford is IR and the claimant is FK.

"IR In your complaint you make a comment about your skin, can you talk me through.

FK *The perception out there in my view is that people of colour are not intellectual, it is my view. There are some people who put you in the box, they test the water, with Steve, that is Mr Roper when the anchor nut situation happened Steve said a comment to me about "you people" when talking about the way we did something being wrong. He said that sometimes we don't need to take the top off. I took this as a racial slur.*

IR Who else was there at the time

FK Tiny, Chris Vaughan and Brian."

67. Mr Radford also interviewed Mr Roper. He asked him about the comment "*you people*" noting that the claimant had referred to that comment in the grievance hearing and had called it a racial slur.
68. Mr Roper's evidence in the grievance investigation was that he did not recall making that comment. Another employee (Mike Walsh) who accompanied Mr Roper to the investigation meeting noted that he had heard Mr Roper address a group of people with the term "you lot" but not an individual and not as a reference to a group of people with the same race or ethnicity.
69. In his evidence to the Tribunal Mr Roper said that he did not recall ever using the phrase "you people." He acknowledged that his colleague and companion did recall him saying "you lot" when addressing groups of people, for example at a toolbox meeting. This is what he then says in his witness statement (para 20): "*I accept that potentially I could have said the comment 'you people' when discussing the damage to the aircraft but I must emphasise this would never have been related to race it is just how I would refer to a group of people in other words sheet metal workers*".
70. We have taken these comments by Mr Roper to be effectively neutral in the sense that he neither admits nor denies making the comment at the time alleged. He has no recollection of saying it but then goes on to explain if it was said why it was said. We decided that we needed to consider and decide whether those words were said at all in an exchange between the claimant and Mr Roper on 15 January 2024. On balance having considered all the evidence we find that the comment was not made.
71. These are our reasons.
- a. Firstly, the claimant does not refer to this in his grievance letter of 1 February.
 - b. Secondly, the claimant does not refer to the comment in his attempted resignation letter.
 - c. Thirdly, the claimant does refer to the comment when he is asked by Mr Radford to specify what he means by reference to the harassment being related to the colour of his skin. He has to be prompted into describing a comment that he says is a reference to his skin colour.

- d. Having then disclosed that comment and described it as a racial slur is in contrast with the terms of his written grievance where he describes bullying by Mr Roper and offers an opinion only that the bullying may be related to colour.
- e. We do not accept that the grievance would be put in the terms of an opinion being that race was behind the bullying if such a potentially obvious example of discrimination had been available to the claimant; had Mr Roper addressed the claimant specifically with the term “*you people*.”
- f. the claimant does not refer to the comment in his claim form although subsequently we note that at the Preliminary Hearing in September 2024 the claimant did raise the comment “*you people*” and was allowed to amend his claim to include that.
- g. the detail of this exchange was provided by the claimant a month after the exchange itself without any prior record being taken of the exchange. We are concerned about the accuracy of memory. We note for example an absence of evidence about context, when and with what other words or comments this offending comment was supposed to have been made.

Relevant Law.

Harassment – section 26 Equality Act 2010 (“EQA”)

72. Section 26 (1) states:

“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*

73. The EAT decision in **Richmond Pharmacology Limited v. Dhaliwal [2009] IRLR 336** emphasised the need for Employment Tribunals when deciding allegations of harassment to look at three steps, namely: -

- a. Whether the respondent had engaged in unwanted conduct
- b. Whether the conduct had the purpose or effect of violating the claimant’s dignity or creating an adverse environment
- c. Whether the conduct was on the grounds of (related to) the applicable protected characteristic?

74. Unwanted means unwanted by the claimant, a term that should be largely assessed subjectively (**Sanderson Blinds Ltd v. English EAT 0316/10**)
75. We also considered case law which provides guidance to Tribunals when a single act is alleged to constitute harassment, notably **Insitu Cleaning Co v Heads 1995 IRLR 4** and **Quality Solicitors v. Tunstall [2014] WLUK 975**.
76. To satisfy the definition of harassment, the alleged conduct must be “*related to*” the relevant protected characteristic (in this case, race). This is wider than the wording “because of” that appeared in equalities legislation predating the Equality Act 2010. We considered the judgment in the recent EAT decision in **Carozzi v. University of Hertfordshire [2024] EAT 169**, particularly paragraphs 13-17.
77. As to whether the conduct in question has the effect set out in section 26(1)(b), regard must be had to section 26(4)

“In deciding whether conduct has the effect referred to in subsection 1b, 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?

Direct Discrimination – section 13 Equality Act 2010 (“EqA”)

78. Section 13 states:

“A person (A) discriminates against another if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

79. An important question for us is whether the claimant’s race was an effective cause of the respondent’s treatment of the claimant. As was made clear in the case of **O’Neill v. St Thomas More Roman Catholic School [1996] IRLR 372** the relevant protected characteristic need not be the only cause of the treatment in question.
80. We also note the following:-
- a. the House of Lords in **Nagarajan v London Regional Transport [1999] ICR 877, HL**, held “*discrimination may be on racial grounds even if it is not the sole ground for the decision.....If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out.*” (judgment of Lord Nicholls)
 - b. Paragraph 3.11 of the EHRC Employment Code which states that *‘the characteristic needs to be a cause of the less favourable treatment but does not need to be the only or even the main cause.’*
81. Section 13 provides that direct discrimination occurs where an individual is treated “*less favourably*” than another. It is generally necessary therefore to identify a comparator who does not share the claimant’s protected

characteristic, although claimants can rely on a hypothetical comparator (the term “or would treat others” within the wording of section 13 makes this clear).

82. Section 23(1) EqA requires that there is “*no material difference*” between the claimant’s position and his/her comparator’s position. Case law makes clear that the comparator’s circumstances do not have to be the same in all respects; rather they have to be the same (or nearly the same) in those circumstances which are relevant to the claimant’s claim. (see for example the decisions of the House of Lords in **Shamoon v. Chief Constable of the Royal Ulster Constabulary 2003 ICR 337** and **MacDonald v. MOD; Peace v. Mayfield School 2003 ICR 937**).

Victimisation

83. Section 27 Equality Act 2010 is relevant here. It prohibits a person (the claimant) from being subjected to a detriment by another person (the respondent) because the claimant had done a “*Protected Act*.”

84. A protected act is defined at section 27(2) which provides as follows.

“Each of the following is a protected act:

- a. bringing proceedings under this Act.*
- b. giving evidence or information in connection with proceedings under this Act.*
- c. doing any other thing for the purposes of or in connection with this Act.*
- d. Making an allegation (whether or not express) that A or another person has contravened this Act.*

85. The EHRC Employment Practices Code provides guidance on what is meant by a detriment.

‘Detriment’ in the context of victimisation is not defined by the Act and could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance-related awards.

A detriment might also include a threat made to the complainant which they take seriously, and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.

86. Where a claimant has shown that they have been subjected to a detriment, the Tribunal has to consider whether that detrimental treatment was because of the protected act rather than whether the treatment would not have happened “but

for” the protected act. On this point, we note the Court of Appeal’s comments in **Greater Manchester Police v Bailey [2017] EWCA Civ 425** particularly at paragraph 36.

87. The protected act need not have been the only reason for the detrimental treatment, but it must have been a significant influence (**Villalba v. Merrill Lynch and Co UKEAT/0223/05**).

Burden of Proof – EQA Claims

88. We are required to apply the burden of proof provisions under section 136 EA when considering complaints raised under the EQA.

89. Section 136 states:

- (1) This section applies to any proceedings relating to a contravention of this Act.*
- (2) If there are any facts from which a court could decide in the absence of any other explanation, that a person (A) has 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. We have also considered the guidance contained in the Court of Appeal’s decision in **Wong v. Igen Limited [2005] EWCA 142**. This case concerned the test as set out in discrimination legislation that pre-dated the EqA, but the guidance provided in there remains relevant. The annex to the judgment sets out guidance.

91. We are also clear that the wording of the statute itself, s136 EqA is the key reference in relation to burden of proof when reaching decisions about whether there has been a contravention of the EqA.

92. Finally, on the issue of burden of proof, we are mindful of guidance from case law indicating that something more than less favourable treatment may be required in order to establish a prima facie case of discrimination; see for example **Madarassey v. Nomura International [2007 ICR 867]** where the following was noted in the judgment:

“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.”

Conclusions

Harassment

93. Complaint 3a. On 11 August 2023, did Mr Roper say to the Claimant “you’re not really a sheety are you”?

- a. This complaint fails on the time limit issue alone. The complaint arises from a shop floor discussion that took place some 6 months before the claimant raised an issue about it. Understandably Mr Roper's recollection of the details of the discussion is poor. IT would not be just and equitable to extend time.
- b. But we would have dismissed the complaint on the merits had we allowed an extension of time.
 - i. The term used (whether it was sheetie or tinner) was not a derogatory term, both terms are used in workshop environments to describe sheet metal workers
 - ii. the reason why the comment was made about not being a sheetie was not related to the claimant's race. The comment was made because of the opinion that Mr Roper had formed about the claimant's knowledge and experience. He formed that view quickly based on his discussion with the claimant. The claimant's race was irrelevant.

94. Complaint 3b. On 16 January 2024, did Mr Roper criticise the Claimant's use of a drill to replace an anchor nut? Did Mr Roper say, "you people" and that he would show the Claimant how to complete the task properly?

- a. As noted above, our finding is that the comment was not said at all.
- b. We make the following conclusions in the alternative in case this finding of fact is wrong.
 - i. if it was said (having regard to the opinion expressed by Mr Marsh in the grievance investigation meeting, it was not a comment directed at the claimant but was directed at a group of people who were standing over a problem that Mr Roper considered should have been resolved.

Direct race discrimination.

- 95. Complaints of direct discrimination arise from the same 2 alleged incidents 3a and 3b. Mr Mensah invited us to consider and reach decisions about the complaints of direct discrimination by reference to the "reason why" test. We note reliance on hypothetical comparators which is some indication that applying this test would be appropriate.
- 96. 3a. The reason why Mr Roper made a comment about the claimant not being a sheetie or a tinner was because he formed the view that the claimant was not an experienced sheet metal worker.
- 97. The claimant's race had no material influence over the making of the comments
- 98. 3b. The comment was not said.

Victimisation

99. There is no dispute that the claimant's grievance included a protected act
100. The acts of suspending and of dismissing the claimant were both detrimental to the claimant. .
101. The claimant was not suspended because he had raised his grievance, he was suspended, because of concerns that experienced managers had about his workmanship and the decision to move to a capability hearing to consider whether the claimant should be dismissed. The grievance was irrelevant to the decision to suspend the claimant. It had no influence whatsoever over the decision.
102. The claimant was not dismissed because he had raised a grievance. The claimant was dismissed because the respondent honestly and reasonably believed that the claimant's standard of work fell far below the standards that a sheet metal worker had to be able to meet in this highly regulated industry.
103. For the reasons stated above, all complaints fail and the claim is dismissed.

Employment Judge Leach

15 May 2026

REASONS SENT TO THE PARTIES ON

17 June 2026

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the 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.

**Annex
Complaints and Issues**

Time limits

1. Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 6 November 2023 may not have been brought in time.
2. Were the complaints concerning discrimination made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - a. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?
 - b. If not, was there conduct extending over a period?
 - c. If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?
 - d. If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:
 - i. Why were the complaints not made to the Tribunal in time?
 - ii. In any event, is it just and equitable in all the circumstances to extend time?

Harassment related to race (Equality Act 2010, section 26)

3. Did the Respondent do the following alleged things:
 - a. On 11 August 2023, did Mr Roper say to the Claimant “you’re not really a sheety are you”?
 - b. On 16 January 2024, did Mr Roper criticise the Claimant’s use of a drill to replace an anchor nut? Did Mr Roper say, “you people” and that he would show the Claimant how to complete the task properly?

4. If so, was that unwanted conduct?
5. Was it related to race?
6. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
7. If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Direct race discrimination (Equality Act 2010, section 13)

8. What are the facts in relation to the allegations set out in 3(a) and 3(b) above?
9. Did the Claimant reasonably see the treatment as a detriment?
10. If so, has the Claimant proven facts from which the Tribunal could conclude that in any of those respects the Claimant was treated less favourably than someone in the same material circumstances of a different race was or would have been treated?
11. The Claimant relies on a hypothetical comparison.
12. If so, has the Claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race?
13. If so, has the Respondent shown that there was no less favourable treatment because of race?

Victimisation (Equality Act 2010, section 27)

14. Did the Claimant do a protected act by raising a grievance on 1 February 2024?
15. Did the Respondent do the following things:

a. Suspend the Claimant from the workplace on 31 January 2024.

b. Dismiss the Claimant on 8 February 2024.

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

17. If so, has the Claimant proven facts from which the Tribunal could conclude that it was because the Claimant did a protected act or because the Respondent believed the Claimant had done, or might do, a protected act?

18. If so, has the Respondent shown that there was no contravention of section 27?

Remedy for discrimination or victimisation

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

20. What financial losses has the discrimination caused the Claimant?

21. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

22. If not, for what period of loss should the Claimant be compensated?

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

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

25. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

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

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

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

29. By what proportion, up to 25%?

30. Should interest be awarded? How much?