



EMPLOYMENT TRIBUNALS

Claimant: Mr D Calder

Respondent: Metroline Travel Limited

Heard at: Watford Employment Tribunal (In Public; In Person)

On: 22 to 26 June 2026

Before: Employment Judge Quill; Ms L Thompson; Mr T Poil

Appearances

For the Claimant: Litigant in person, assisted by his daughter

For the respondent: Mr J Boyd, counsel

The panel gave judgment and oral summary reasons on 26 June 2026. Written summary reasons were provided and there has been a request for full written reasons. These are those reasons.

WRITTEN FULL REASONS

The Hearing and the Evidence

1. There were 4 written witness statements for the Respondent. All attended and gave oral evidence. They were:

1.1 James Harvey (who complied with an order to attend, which had been granted based on the Respondent's application). **Note:** If we refer below simply to "Mr Harvey", we mean James Harvey. Bill Harvey also features in the evidence, and so we will refer to Bill Harvey by using his full name.

1.2 Adrian Jones

1.3 Rodolfo Brusa

1.4 Dan Harris

2. There was one written statement on the Claimant's side, namely the Claimant. He gave oral evidence. In addition, Saleem Baig complied with a witness order granted on the Claimant's application.
3. We had a respondent bundle of 966 pages and a claimant bundle of 468 pages, and we received some additional documents (including 44 page "employee's handbook") during the hearing. We also had chronology, cast list and reading list.
4. Below, [Bundle XXX] refers to page XXX in the Respondent's bundle. When we are referring to the Claimant's bundle, we will say so. The numbering in the Claimant's bundle was not consecutive. (We do not criticise the Claimant for that; it appears that he created a document which was consecutively numbered, and then the parties attempted to remove items which duplicated pages in the Respondent's bundle). So the pdf page number (the electronic page number) did not match the page number that was handwritten in the top right corner of the page.
5. The Claimant was litigant in person, though he was assisted by his daughter. During his oral evidence, his daughter sat beside him at the witness table and helped the Claimant to find the correct page in the relevant bundle. The oral evidence started on Day 1 and finished at about 11.05am on Day 4.
6. We had written closing statements and heard oral closing arguments from each party.

The Claims and The Issues

7. EJ Maxwell conducted a preliminary hearing on 20 July 2023, and his summary and orders document contained a list of issues.
8. There was a later preliminary hearing before EJ Manley which allowed some, and refused some, amendment applications. It also decided, as a preliminary issue, that the Equality Act 2010 ("EQA") complaints were in time.
9. The updated and revised list of issues was [Bundle 649]. It was:

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 20 August 2022 may not have been brought in time.

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

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

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

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

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

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

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

2. Unfair dismissal

2.1 What was the reason or principal reason for dismissal? The Respondent says the reason was conduct. The Tribunal will need to decide whether the Respondent genuinely believed the Claimant had committed misconduct.

2.2 If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

2.2.1 there were reasonable grounds for that belief;

2.2.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;

2.2.3 the Respondent otherwise acted in a procedurally fair manner;

2.2.4 dismissal was within the range of reasonable responses.

3. Harassment related to race (Equality Act 2010 section 26)

3.1 Did the respondent do the following things as mentioned in paragraphs 11 and 12 of the particulars of claim of case number 3311222/23:

3.1.1 Dan Harris unfairly suspending the claimant on 12 October 2021;

3.1.2 Dan Harris falsely accusing him of sending rude texts;

3.1.3 Deducting the claimant's pay around that time;

3.1.4 Starting disciplinary proceedings against the claimant around that time;

3.1.5 Dan Harris speaking to the claimant in a derogatory and disrespectful manner on 1/02/22;

3.1.6 Dan Harris shouting at the claimant to sit down on 1/02/22;

3.1.7 Dan Harris suspending the claimant on 1/02/22

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race?

3.4 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?

3.5 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.

4. Victimisation (Equality Act 2010 section 27)

4.1 Did the claimant do a protected act as follows:

4.1.1 A complaint sent on or around 6 October 2021;

4.1.2 Complaints made on or around 24 January 2022;

4.1.3 A complaint made on or around 16 February 2022

4.2 Did the respondent do the following things (from paragraph of case number 3311222/23):

4.2.1 The claimant's holiday request form for 2021 going missing;

4.2.2 Dan Harris refusing the claimant's holiday (date to be confirmed)

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

4.4 If so, was it because the claimant did a protected act?

4.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

5. Remedy for harassment or victimisation

5.1 What financial losses has the discrimination caused the claimant?

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

6. Should interest be awarded? How much?

7. Wrongful dismissal

7.1 What was the Claimant's notice period?

7.2 Was the Claimant paid for that notice period?

7.3 If not, was the Claimant guilty of gross misconduct (doing something so serious that the Respondent was entitled to dismiss without notice)?

8. Holiday Pay (Working Time Regulations 1998)

8.1 Did the Respondent fail to pay the Claimant for annual leave the Claimant had accrued but not taken when their employment ended?

9. Unauthorised deductions

9.1 Did the Respondent make unauthorised deductions from the Claimant's wages and if so how much was deducted?

10. Employment Particulars

10.1 When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

10.2 If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

10.3 Would it be just and equitable to award four weeks' pay?

The Findings of Fact

10. We make the following findings of fact on the balance of probabilities having considered all of the evidence presented during the hearing.
11. The Respondent is a bus company, with a number of garages and routes around London and the Home Counties.
12. The Claimant's employment began in 2016. He was employed as a mechanical engineer.
13. He originally worked in the Willesden garage. As shown by page 1032 in the Claimant's bundle (electronic page 429), by letter dated 21 December 2016, the Respondent confirmed a transfer from Willesden to Edgware.
14. In due course, the Claimant began working at night on a regular basis.
15. Dan Harris joined the Edgware depot in around August or September 2020. He had commenced working for the Respondent in 2010 but had not had dealings with the Claimant's prior to joining the Edgware depot.
16. By summer of 2021, Dan Harris was engineering manager. He tended to work days, finishing around 4pm or so. The people for whom Mr Harris had line management responsibility included the Claimant.
17. By 2021, the Claimant was working night shifts from 10:00pm to 6:00am. So it was 8 hours between the start time and the finish time. There was a 30 minute lunch break so the actual working time was 7.5 hours per shift.
18. Generally speaking, Mr Harris was not on shift at the same time as the engineers on the night shift.
 - 18.1 He did not communicate with them by email.
 - 18.2 Some of his instructions were communicated by paper message, including by being put on the physical notice board.

- 18.3 Some instructions were passed on by word of mouth from one colleague to another.
- 18.4 Sometimes there was communication by text message.
- 19. At all times, the Respondent had at least one engineer doing what was called the running shift. This particular engineer was responsible for attending to reported defects on vehicles and seeking to repair those defects. If there was only one engineer on duty at a given time then that engineer would do the running shift.
- 20. Generally speaking there was usually more than one engineer on duty per shift.
- 21. Each day there were three shifts: AM shift; PM shift; night shift.
- 22. In around summer 2021, there were typically three engineers on duty during the night shift.
 - 22.1 One of these was Salim Baig and he tended to do the running shift whenever he was working.
 - 22.2 Another one of the three was the Claimant. So long as Salim Baig was working the Claimant did not do the running shift but rather he worked in “the pit”.
 - 22.3 Dan Harris did not insist on who would be on the “running shift” and who would be on “the pit”. The engineers on the shift were free to decide between themselves.
- 23. On the Claimant’s account, being allocated to “the pit” entailed, for one shift, inspecting one bus and - if there were some defects that he could take care of then taking care of those defects - and then once that work was done, if there was still some time left on the shift then he would assist with the reported defects. In other words, help out with the work that was being done by the person on the running shift.
- 24. The buses that were to be inspected by the person “in the pit” were not buses that had been reported as having defects, but rather there was a set of inspection checks to be completed. If the Claimant identified any defects that he could not deal with during the night shift, then that work would be performed by others on a later shift.
- 25. It is common ground that at least some defects that the Claimant spotted could not plausibly be done by the Claimant during the shift. It is more or less common ground that some could be. There is a difference of opinion between the Claimant and Mr Harris about which defects the Respondent could reasonably

expect to have repaired by the person doing the inspection, and which had to be left to a later shift.

26. To the extent that there is a dispute over it, our finding is that the employer chose which buses were supposed to be inspected during a particular shift. The number of buses that the Respondent decided should be inspected during a particular shift depended on how many engineers were on the shift.
27. We accept, based on the evidence of the Claimant and Mr Baig that prior to Dan Harris joining Edgware the expectation had only been for each engineer who would working in the pit to do one bus per night. So the total number of buses to be inspected per night shift was [(Engineers on Shift) minus 1]. The “minus 1” was because one engineer was on the running shift, and had different duties and responsibilities; they were not expected to do any routine inspections.
28. Mr Harris's expectation was that the person in the pit should be able to do two inspections per night and that - time permitting - they should also be able to do at least some of the necessary work on those two buses and potentially have some time to assist with other work as well.
29. There was no specific written announcement confirming to the night shift that - other than the person doing the running shift – each engineer would be expected to inspect two buses per night.
30. However, the employees (including the Claimant and Mr Baig) did become aware that that was Dan Harris’s expectation. This was clear from the number of buses which he allocated to be inspected during the night shift.
31. We only have one version of a rota sheet in the bundle. It is the one at [Bundle 98]. We note the oral evidence about it. It says “UPDATED VERSION 21/01/22” and there are handwritten annotations that were clearly made later than that date.
32. The box in the top right hand corner includes:

NIGHTS TO INSPECT 2
VEHICLES + CLEAR
ANY WORK WITH
LEFTOVER TIME
33. In themselves, those words would not necessarily make clear whether it was “2 vehicles” for the entire shift or whether that was per person. However, the rest of the document makes clear that while there were two buses identified for inspection on most nights, there were 4 identified for Monday.
34. The Claimant’s evidence was that he did not frequently look at the rota sheet and rather he relied on other people to pass him the paperwork for the buses that he

was to inspect. However he accepts that he was aware that he had received messages from Mr Harris that said that he was supposed to be inspecting two buses per night when he was working on the pit

35. On the evidence as a whole, we are satisfied that – regardless of whether the Claimant and his colleagues agreed or disagreed – they knew that the employer, through Mr Harris, was telling them they needed to inspect two buses per engineer on the night shift (other than the engineer on the running shift).
36. At [Bundle 604], there is an email that was not copied to the Claimant dated 18 January 2022. That was from Dan Harris to Adrian Jones.
 - 36.1 It said that Mr Harris was putting two inspections down for the Claimant per night and the Claimant was only completing one. This statement was true in the sense that two inspections were expected from the Claimant per shift (and the Claimant knew this). On the Claimant's case, while he sometimes did more than one inspection, it was true that he usually did one inspection (his position being that that had always been the practice prior to Mr Harris' arrival at Edgware).
 - 36.2 In the email to Mr Jones, Mr Harris referred to grievances (plural) that the Claimant had brought against Mr Harris in the past. He said this was in his opinion placing him in a compromising position. Our finding is that Mr Harris meant - and that Mr Jones knew that he meant - that if he sought to tackle performance formally, then the existence of earlier grievances might be raised as an issue by the Claimant in response to such formal action.
 - 36.3 In the email, Mr Harris also claimed that the Claimant's conduct was having an effect on the rest of the engineers. We accept that Mr Harris had received reports from other engineers that they believed that too much work was being left for subsequent shifts by the Claimant.
37. In July 2021 (so six months prior to this email), the Claimant and Mr Harris had had a meeting. Mr Harris's file note from the meeting is at [Bundle 271].
38. Subsequent to that, Mr Harris wrote the letter dated 18 August 2021 which appears at [Bundle 276 and 277] which told the Claimant that he was invited to attend an investigation meeting. The letter was accompanied by several other documents, including the notes from the meeting on 19 July.
39. To the extent the Claimant says that either this letter, or anything written or said to him at the time, amounted to a suspension, our finding of fact is that that is not correct. Rather the Claimant was not required to work his night shift, commencing at 10:00pm on 31 August and finishing 6:00am on 1 September 2021; instead of that, he was required to attend a meeting at 11:00am on 1 September.

40. So the decision imposed by the Respondent was not a suspension, but was effectively a change in shift for one day. That is, instead of being at work at night, he was supposed to be at work during the day, and instead of doing engineering work, he was supposed to attend a meeting.
41. To the extent that the Claimant did not attend work around that time, that was not because of a decision imposed by the Respondent, but was because the Claimant took sick leave (for which he submitted a Fit Note).
42. Within the file note of the 19 July meeting (which was sent to the Claimant, as mentioned in the previous paragraph]), Mr Harris recorded that - between 16 and 19 July 2021 - he had received various texts from the Claimant some of which he stated were unpleasant or rude.
 - 42.1 On the balance of probabilities, Mr Harris expressed that opinion to the Claimant during the meeting. In any event, the file note was sent to the Claimant on 18 August 2021 letter and so the Claimant was aware at the time of Mr Harris' opinion about the messages.
 - 42.2 We have not seen the messages ourselves and so we make no finding one way or the other as to whether we as a tribunal would have classified those particular messages as unpleasant or rude.
 - 42.3 However, we have a large volume of written correspondence from the Claimant, both in the Respondent's bundle and in the Claimant's own bundle.
 - 42.4 In Mr Harris's statement he says he cannot remember the details of the messages specifically, but he stands by his opinion stated at the time.
 - 42.5 On the evidence as a whole, we are satisfied that the actual conscious reason that Mr Harris wrote this in the file note, and said it to the Claimant in the meeting, is that it was his genuine opinion. He genuinely considered the text messages to be unpleasant or rude at the time
43. The 1 September 2021 meeting went ahead. Although Mr Harris does not recall the outcome, from the totality of the evidence - including the Claimant's recollection - we are satisfied that the outcome was that the Respondent decided that there would be no disciplinary hearing. The matter was concluded as far as the Respondent was concerned and the Claimant agreed to come back to work prior to the end of the period covered by his fit note.
44. The Claimant's handwritten note at [Bundle 72] comments on matters from his point of view as of 6 September 2021. The note says it is sent to Dan (so Mr Harris) and copied to the person who conducted the meeting (Bill Harvey). For the avoidance of doubt nothing in that note constituted a complaint or a grievance or a protected act.

45. [Bundle 76] is a document which the Claimant believes he sent to Mr Harris and Bill Harvey on the 6 September 2021. He thinks it was probably by post.
- 45.1 The Respondent accepts that it received this document and that it amounts to a protected act.
- 45.2 Within the document the Claimant suggests that Dan Harris has negative feelings towards him and treats him differently from others and that Mr Harris was reluctant to communicate directly with the Claimant.
- 45.3 Although the Claimant's witness statement alleges that Dan Harris had commenced at Edgware in 2019, we accept that he actually started in August or September 2020. Therefore, the Claimant's assertion that the first time he got a text message from Dan Harris was 27 August 2020 means that it was very close to the time that Mr Harris started working at Edgware.
- 45.4 The document refers to the meeting of 19 July 2021. The Claimant makes criticisms of Mr Harris for the way the matter was handled. The comments effectively amount to a strong disagreement that the Claimant had done anything wrong. The letter does not directly or indirectly refer to race.
46. On 6 October 2021, Human Resources forwarded the item to Adrian Jones confirming it had been received in the post. They mentioned that Mr Harris was an engineering manager and asked Mr Jones to deal with the grievance.
47. Mr Jones replied stating he would appoint somebody else to deal with the grievance and also stating the Claimant had made some complaints in the past. He referred to the move to Edgware and he also referred to the Claimant having made, in the past, an allegation of race discrimination, which was not about Mr Harris.
48. The Claimant also submitted a later complaint which included alleged incidents later than 6 September 2021. Mr Jones confirms receipt of the item, which is [Bundle 93] and page 186 (electronic page 216) of the Claimant's bundle. As per his witness statement (paragraph 127), the Claimant believes it was sent around 27 September 2021.
- 48.1 This item complained about - amongst other things - a shortfall in pay, but did not include any allegations of race discrimination
- 48.2 It is factually accurate that Mr Harris had asked for the Claimant to be put onto SSP. There was therefore a shortfall in the Claimant's pay for September. The shortfall was reimbursed in full in the October pay.
49. Mr Harris became aware of one or both of these complaint letters as he accepts and as is confirmed by his email to Mr Jones on 17 November 2021 [Bundle 603].

50. The Respondent's leave year runs from 1 January to 31 December. In early November 2021, Mr Harris noted that some staff still had a significant number of days of holiday to use up before the end of the leave year and he asked them about their intentions.
- 50.1 Salim Baig and Ayrton Hall submitted annual leave requests.
- 50.2 We have no reason to doubt the Claimant's account that he also submitted a leave request. He did so on around 16 November 2021 and photographed the form.
- 50.3 The process for requesting annual leave was to complete a paper request form and leave it in the office where it would, all being well, come to the attention of Mr Harris in due course.
- 50.4 We accept Mr Harris's evidence on oath that he did not receive this form.
- 50.5 It was Mr Harris' genuine opinion at the time that he had had no request from the Claimant to use his annual leave on specific dates. Therefore he, Mr Harris, chose dates for the Claimant to take as annual leave in order to use up his entitlement for the year 2021.
51. We note the trail of correspondence on this issue as a whole. We accept that Mr Harris expressed his genuine opinions in that correspondence to the Claimant, while matters were fresh in his mind.
- 51.1 In particular, although he had not received the paper version of the 16 November form (and the first time he saw it was when the Claimant sent an electronic message with a photo of the form) Mr Harris, having seen the dates requested by the Claimant (as shown on the photograph), was willing to investigate whether those dates were all available.
- 51.2 Having looked into the matter, he ascertained, and told the Claimant, that the dates were not all available because he had already approved some leave for some of the Claimant's colleagues for some of those dates.
52. We accept that Mr Harris was not pretending that he did not receive the paper form. He actually did not receive it. Regardless of the exact reason for that, at the time Mr Harris approved the colleagues' annual leave requests, Mr Harris had not received any request from the Claimant to book those same days.
53. In his oral evidence, the Claimant said he was not sure whether it was Mr Harris who is responsible for the loss of his request form or somebody else. However, we are not satisfied that anybody deliberately destroyed or hid the Claimant's request form. The Claimant does have a photograph of it and we do not think that he has forged this document at a later date. We do accept that he genuinely

believes that submitted it, and, on the balance of probabilities, it is likely that he did so (that is, he did not forget to submit it, after photographing it). The form did not reach Mr Harris, and, on the balance of probabilities, that was simply an administrative error of some sort rather than a deliberate act.

54. As mentioned above, Mr Harris had written to Mr Jones in the middle of January 2022. The correspondence continued (for example, [Bundle 94]). Ultimately, having had some discussions with Mr Jones about the appropriate way to move forward in relation to Mr Harris' dissatisfaction with the number of inspections the Claimant was carrying out, Mr Harris decided that he would go into work early one day while the Claimant was on shift.
55. He chose to do this on 1 February 2022. Because of the harassment allegations and the breach of contract allegations, we need to make some findings of fact about what happened that day¹.
56. The Claimant agrees that when Mr Harris arrived on the morning of 1 February 2022, the Claimant was not actually performing work at that instant. They both agree that the Claimant was in his own personal vehicle. The Claimant's account was that he needed to charge his phone because he needed to make an important phone call to his sister.
57. The Claimant accepts that he had completed one bus inspection rather than two during that shift. He received a message to go and speak to Mr Harris and he did so.
58. After some discussion about the fact that Mr Harris' stance was that the Claimant was required to do two inspections per night and that the Claimant did not agree, the Claimant said that he wished Mr Baig to be present and Mr Harris agreed to that.
59. The Claimant waited outside the office until Mr Baig arrived and then all three were present for a further discussion between Mr Harris and the Claimant, which Mr Baig witnessed.
 - 59.1 The Claimant accepts that he spoke loudly and demonstratively including gesturing with his arms. We find that he did so
 - 59.2 The Claimant accepts that he was upset during the conversation and that he disagreed with what Mr Harris was telling him. Our finding is that the Claimant

¹ For the avoidance of doubt, when we come to analyse the unfair dismissal complaint, we do not base our decision on our findings of fact about what actually happened, but rather we form an opinion as whether the dismissing officer Mr James Harvey had reasonable grounds for his conclusions. We will therefore comment on the evidence before Mr Harvey separately

was angry and that it was apparent to the other two people in the room that the Claimant was angry

59.3 It is common ground that, for part of the conversation, the Claimant was standing up and that Mr Harris asked him to sit down. Our finding is that this was not said angrily.

59.4 The Claimant declined to sit down.

60. There are several differences between the Claimant's account and Mr Harris'.

60.1 In cross examination, the Claimant was taken through the transcript of the meeting he had (while matters were fresh in his memory) on 2 February. He was also taken through Mr Harris' account of the incident, written on 1 February (so while matters were fresh in Mr Harris' memory).

60.2 Mr Baig was not interviewed as a witness at the time. He had been asked by Mr Harris to prepare a written statement but declined. The Claimant, in a text exchange, also asked him to supply a version of events but Mr Baig told the Claimant that he did not wish to become involved.

60.3 Our finding of fact is that nobody within the Respondent's management team put any pressure on Mr Baig to refuse to give his version of events.

60.4 We have also noted the transcript of the covert recording which the Claimant made of a conversation with Mr Baig which was more than 10 months after the incident (the recording date being no earlier than around December 2022 or January 2023).

61. We make the following findings:

61.1 We are not satisfied that the Claimant leant over Mr Harris's desk placing his hands on the desk while putting his face close to Mr Harris'.

61.2 We are satisfied that the Claimant repeatedly stated that he would not be willing to do two buses per night in the future. After the Claimant, asked what would happen if he refused, Mr Harris told him that he would be suspended.

61.3 After that, the Claimant made clear that he was still not willing to agree to do two buses per shift in the future and Mr Harris told him that he was suspended.

61.4 After leaving the office (having been told he was suspended), the Claimant went to get changed from his work overalls to his normal clothes.

61.5 The garage manager, Leroy Webley, who is more senior than Mr Harris, arrived at the depot at about 5:30am. Mr Webley's account of what he

remembers is at [Bundle 352]. Although he has not been a witness in the proceedings, we have taken into account what he has written in that document. We have no reason to doubt that Mr Webley was intending to give an accurate summary of events, in the knowledge that his employer would be relying on the document to make important decisions.

- 61.6 The Claimant - having got changed - resumed the conversation with Mr Harris. We accept the evidence of Mr Harris (and in Mr Webley's written account) that the Claimant was shouting.
- 61.7 We also accept that the Claimant's words and demeanour caused Mr Harris to back away from him.
- 61.8 Mr Webley reminded the Claimant that he had been told to leave. At that point, the Claimant did go away but then came back again. He was told a second time by Mr Webley (so the third time overall) to leave.
- 62. In Mr Harris' contemporaneous account [Bundle 106], he said that he told the Claimant that he felt threatened and that if it continued he would have to call 999. In the Claimant's investigation meeting on 2 February 2022 [Bundle 361], this account was put to the Claimant and he accepted it was accurate. (The Claimant was not admitting that Mr Harris actually did feel threatened, but he did accept, at the time, that the context of Mr Harris saying that he would call 999 was that Mr Harris had said he felt threatened.)
- 63. The Claimant's genuine recollection - as of this week's hearing some four years later - was that - while it is true that Mr Harris told the Claimant that he would call 999 - Mr Harris meant that he would call 999 if the Claimant continued to refuse to leave the premises (rather than specifically because Mr Harris felt threatened). On the balance of probabilities, the written records from February 2022 are a more accurate indication of what Mr Harris said on 1 February 2022. At that time, the Claimant remembered that Mr Harris had said that he felt threatened and that that was (at least part of) the reason that he might call 999. We find that that is what Mr Harris actually did say.
- 64. The Claimant was supplied with the letter at [Bundle 111] dated 1 February 2022 requiring him to attend an investigation meeting and that included various documents including Mr Harris's and Mr Webley's reports of the alleged incident.
- 65. The Claimant attended the investigation meeting as instructed. It was with Mr Ditchman. As mentioned already, the notes of that meeting are in the bundle.
- 65.1 At the end of the meeting [Bundle 122], Mr Ditchman confirmed that the suspension with pay was to continue and it would continue until a disciplinary hearing.

- 65.2 By telephone, on 3 February 2022, Mr Ditchman told the Claimant of the planned date for the hearing.
66. Mr Ditchman wrote to the Claimant on 3 February 2022 [Bundle 124], inviting the Claimant to attend a disciplinary hearing.
- 66.1 It stated that James Harvey, Engineering Manager, would conduct the hearing
- 66.2 The allegation in the letter was
- Conduct — Failure to follow a reasonable instruction from a manager on 01/02/2022 leading to abusive and threatening behaviour toward a manager on 01/02/2022.
- 66.3 The Claimant was warned that it might amount to gross misconduct and that dismissal with or without notice was a possibility. The letter said the decision would not be made until the Claimant had had the full opportunity to put forward his version of events.
- 66.4 The letter told the Claimant that he could ask for witnesses to attend the hearing and it was his responsibility to indicate if he did require the attendance of any witnesses. There was a place for him to sign and return a form to say so.
- 66.5 He was also given contact details for Mr Ditchman and told that he could contact Mr Ditchman by email at least 48 hours before the hearing if he had any requests for any further information
67. At [Bundle 126], the Claimant signed and dated the pro forma to acknowledge receipt of the letter. He did not say that he wished to be accompanied to the meeting or that he requested any witnesses to attend the hearing.
68. Although he did not nominate any witnesses he signed underneath the declaration to say that he understood that while the hearing manager may request the attendance of witnesses named by the Claimant if those people refused to attend they could not be forced to do so.
69. The meeting location was Cricklewood garage and the start time was midday. The Claimant had not previously met James Harvey. On the day of the meeting (16 February 2022), the Claimant's arrived at Cricklewood earlier than the start time. He attempted to have a discussion with Mr Harvey by entering Mr Harvey's office although he was not sure which of the people he saw there was Mr Harvey. Mr Harvey told him that he was in a meeting.

70. Although the Claimant does not recollect it, we accept Mr Harvey's account that he told the Claimant to go and wait in the canteen until the start time for the meeting and then he would then be brought in.
71. The Claimant had brought a letter with him. He intended the letter to be for Mr Harvey. He handed it to one of Mr Harvey's colleagues who did hand it to Mr Harvey. The letter is in both bundles and is the same in each. In the Respondent's bundle it starts at [Bundle 128].
- 71.1 Within the letter the Claimant touches on several topics.
- 71.2 Some different parts of the letter are written as if the Claimant is directly addressing Mr Harris or Mr Webley.
72. The Claimant's position in this Employment Tribunal hearing is that he intended what he wrote in this document to be his response to the disciplinary allegations and he intended it to be taken into account by Mr Harvey before Mr Harvey made the decisions about the disciplinary matters which were the subject of the 16 February hearing.
73. We accept that is accurate. That was the Claimant's actual intention at the time.
- 73.1 Although the letter touches on several matters, within it he does respond to some extent to the allegation that he was refusing to comply with a reasonable instruction.
- 73.2 In essence, he did not agree that it would be reasonable to expect him to do two buses per shift for every shift (although he accepted that that might sometimes be possible).
- 73.3 Furthermore, he asserted that he had wanted to have a discussion with Dan Harris about Dan Harris's requirements. He asserted he had wanted to have the opportunity to tell Dan Harris about his own personal circumstances, but he claimed that he had been denied that opportunity.
- 73.4 One point he made in the letter was that it was unfair that Mr Baig always did the running shift and that the Claimant was always in the pit whenever Mr Baig was on the same shift as the Claimant. The Claimant accepted in this Employment Tribunal hearing that he had never asked - prior to this letter - to be able to do the running shift and to have Mr Baig allocated to doing the work in the pit when they were both on shift
- 73.5 Most notably, in the final two paragraphs of the letter the Claimant, said:
- I am in a situation where I cannot stay back to hear the sentence that you want to impose on to me in this disciplinary meeting. I have got my two elderly parents who are critically unwell. My dad is [age stated] and he is

deteriorating and dying from [illness stated]. My mum is [age stated] and also have her ailments of sickness. I have to be there to look after them. This is what I do every morning after leaving from work.

Please respond to all contents of this letter, along with your decision in writing,

- 73.6 We accept that the Claimant was intending to convey that since that he usually looked after his parents during the day (which was not a time that he was scheduled to be at work) he could not be there for the whole of the hearing that was scheduled to start at 12 noon.
- 73.7 The letter makes clear that the Claimant was expecting the hearing to go ahead without him and that the decision on the disciplinary would be sent to him.
74. The Claimant did not get a written decision in writing shortly after the meeting. Entirely reasonably, he contacted the Respondent to ask about this. He spoke to Mr Harvey by phone around 4 March 2022 and Mr Harvey acknowledged receipt of the 16 February letter. He said that the Claimant would get something in writing shortly.
75. In fact, the Claimant got nothing more from Mr Harvey until 11 October.
76. As shown on [Bundle 136], by 11:00am on 16 February, Mr Harvey had already received the letter and forwarded it to Mr Jones. In other words the Claimant had arrived at Cricklewood quite a long time before the scheduled 12 noon start and left quite a long time before that start time.
77. Mr Jones forwarded the letter to Darren Hill of HR seeking advice and copied in Mr Harvey. The information given to HR by Mr Jones was that the Claimant “failed to turn up”. We will discuss this in the analysis
78. Our finding is that the subsequent letters sent to the Claimant about the situation were unclear. We accept Mr Harvey's testimony that he was told by HR to put a hold on the disciplinary and to await the outcome of a grievance process.
79. At [Bundle 383], there is a letter dated 17 March 2022 which was headed “invitation to grievance appeal hearing”.
- 79.1 The Respondent's representative at this Employment Tribunal hearing suggests that the inclusion of the word “appeal” was a mistake. However, we note that Mr Jones’ contemporaneous correspondence implied that he believed that Bill Harvey had dealt with a grievance brought by the Claimant.
- 79.2 The introduction says that that there had been a grievance hearing with Bill Harvey and the Claimant was being invited to a meeting on Wednesday 30 March to discuss matters.

- 79.3 It said that Mr Jones - the author of the letter - would conduct a hearing with a colleague Brian Russell.
 - 79.4 It said that the hearing was not to discuss the Claimant's "current situation" but there could be certain matters that crossed over and those would be taken into consideration.
 - 79.5 The letter made no express mention that the Claimant's 16 February letter would be discussed.
 - 79.6 It did not tell the Claimant that the disciplinary process was on hold.
 - 79.7 It did not tell the Claimant that the Respondent had decided to cease his pay with effect from the end of February 2022
80. Although the notes on [Bundle 146] refer to the meeting having taken place on 31 March 2022, other evidence suggests it did go ahead on 30 March and that is our finding (although the exact date is not crucial).
- 80.1 Not surprisingly, given it is more than four years later, there are some differences of recollection between the Claimant and Mr Jones. However our finding is that the Claimant had by this time discovered that his pay had been stopped and that he wanted an explanation for that and that he saw that as a priority over discussing other matters.
 - 80.2 Mr Jones told the Claimant that his wages were stopped because he had been suspended and had not responded to Mr Harvey's invite to a disciplinary meeting. The Claimant disputed that he had not responded.
 - 80.3 The Claimant accurately stated that he had submitted a letter explaining his situation, meaning the 16 February 2022 letter. Mr Jones asked him for a copy of the letter and the Claimant said that he had not brought a copy with him. Mr Jones asked him how the contents of that letter could be addressed if the Claimant had not brought a copy with him
 - 80.4 The meeting continued and the Claimant and Mr Jones disagreed with each other and each implied that the other was shouting or behaving inappropriately
 - 80.5 Mr Jones repeated that, as per the invitation letter, his intention was to discuss (what he regarded as) the earlier grievance that had resulted in a meeting between the Claimant and Bill Harvey. Mr Jones said that the Claimant had expressed dissatisfaction with Bill Harvey's outcome and the Claimant did not necessarily agree with that suggestion.

- 80.6 At [Bundle 149], the Claimant referred to having been upset about having been sent for a disciplinary. At this point, the Claimant was referring to the events of the previous August 2021 which had led to him meeting Mr Bill Harvey on 1 September 2021 (the outcome of which, as discussed above, was that there would be no further disciplinary action).
- 80.7 Mr Jones said that the Claimant had been suspended for being aggressive and that that matter had not progressed further because the Claimant had not gone to see Mr James Harvey. (So Mr Jones did not understand that the Claimant had been talking about a different issue.)
- 80.8 Upon the Claimant clarifying that he had been referring to the meeting with Bill Harvey rather than James Harvey, Mr Jones expressed the opinion that the former had been a grievance meeting rather than a disciplinary meeting.
- 80.9 The Claimant reiterated that while he had sent correspondence to HR and was asking for a response to that he had also written to James Harvey and was expecting an answer to that.
- 80.10 Mr Jones replied by saying that he was not dealing with the Claimant's absence from work. When the Claimant queried why not, Mr Jones repeated that he was dealing with a grievance. Mr Jones said the grievance and the disciplinary were two different matters.
81. There was a consistent failure to understand each other during this meeting. It was caused:
- 81.1 partly by the fact that there are two "Mr Harveys" and
- 81.2 partly by the fact that the Claimant regarded the outcome with Bill Harvey as a disciplinary outcome (accurately, it seems, subject to the fact that the outcome was "no further action" rather than any sanction, and that we do not agree with the Claimant's opinion that he had been suspended prior to that meeting) and
- 81.3 partly by the fact that Mr Jones was treating that interaction between the Claimant and Bill Harvey as a grievance, for which Mr Jones was to decide an appeal, and
- 81.4 partly by the fact that the Claimant did not believe that he had appealed about the outcome of the meeting with Bill Harvey and
- 81.5 partly by the fact that the Claimant was still waiting for Mr James Harvey's outcome (and had been told by Mr Harvey that he was going to get a letter) and was aware that he had submitted a detailed letter on 16 February which he expected his employer to take into account and

- 81.6 partly by the fact that – despite the fact that Mr Jones had received a copy of the 16 February letter on the day, and sought advice about it, and despite the fact that HR told Mr James Harvey that Mr Jones was going to deal with the 16 February letter as a grievance before the disciplinary process continued – Mr Jones failed to understand the Claimant's reference to the 16 February letter.
82. During the meeting [Bundle 152], Mr Jones expressed the opinion that he had never come across somebody as rude as the Claimant. He said that for the grievance to be progressed it was necessary for him to ask questions and by implication for the Claimant to answer them. The Claimant left and the meeting finished at about 2:00pm.
83. As per [Bundle 157], Mr Jones invited the Claimant to a meeting on the 12 April at 11:30am. The Claimant submitted a fit note for the period 31 March 2022 to 31 May 2022 inclusive.
84. On 7 April, Mr Jones sought advice from Darren Hill of HR. Mr Jones was aware that the Claimant was not getting paid. He believed that this was because the Claimant was being treated as absent from work due to not coming to the disciplinary hearing (on 16 February).
85. Following further exchanges, after the Claimant's fit note expired, on 8 June 2022 [Bundle 160], Mr Jones asked the Claimant if there was any other information the Claimant would like to submit to Mr Jones, the Claimant having reiterated that he was not willing to attend a further hearing or meeting.
86. After the Claimant replied on 9 June [Bundle 162], Mr Jones said that he would issue the outcome and said that he would also forward it to the manager dealing with the Claimant's suspension from work to allow him (meaning James Harvey) to continue with the case of suspension of work due to conduct.
87. The outcome letter was 25 July 2022 [Bundle 164].
- 87.1 The title refers to it as a grievance appeal hearing outcome.
- 87.2 It notes that the Claimant believed that he should only carry out one vehicle inspection per night shift. It expressed the view that Mr Jones had looked into this and had formed the opinion that there was an agreement with the union that one inspection should take 2.5 hours. It was Mr Jones' conclusion that it was therefore reasonable to expect engineers to do two inspections per shift and do some follow up work as well.
- 87.3 Mr Jones reported that Mr Harris had said that two inspections per shift was for everybody not just the Claimant. Our finding of fact is that this is accurate

and that it was not just the Claimant who has been asked to do two per shift, but all of the engineers (not counting whoever was doing the running shift).

- 87.4 The letter stated that Mr Jones noted that the Claimant had complained about Dan Harris and Lee Webley, but Mr Jones did not feel any able to comment on those claims because the Claimant had failed to meet to discuss them.
- 87.5 In the final paragraph, the letter said that the reason it had taken a long time to conclude the grievance was because the Claimant had not been available and because he had been unwilling to attend any hearing.
- 87.6 The letter said the grievance was rejected. It did not repeat the comment made in the 9 June email (that the outcome would be copied to the disciplinary hearing manager, in other words to Mr James Harvey).
88. There is no confirmation in the bundle to demonstrate when Mr Harvey was notified that the grievance had now been resolved and that he was free to resume the disciplinary process.
89. On 7 August [Bundle 167], the Claimant wrote to Darren Hill of HR. He reiterated that (as far as he was concerned) he was on suspension and still awaiting the next stage of the disciplinary process. He repeated once more that he had submitted a written response to Mr James Harvey on 16 February.
90. James Harvey wrote to the Claimant on 11 October, inviting the Claimant to a meeting on 17 October. He wrote on 2 December inviting the Claimant to a meeting on 9 December. The Claimant responded to each of those, and we note his comments in the responses.
91. The Claimant did not attend the meeting on 9 December 2022. We accept that the file note [Bundle 177] accurately records the information which Mr Harvey had in front of him at the hearing and which he took into account.
- 91.1 Mr Ditchman had played CCTV footage to the Claimant on 2 February and given him the chance to comment on it. Mr Harvey reviewed that CCTV footage on 9 December.
- 91.2 He reviewed the Claimant's disciplinary record and there were no live warnings.
- 91.3 The note at [Bundle 178] is accurate. It records Mr Harvey's contemporaneous thoughts on the matters. He examined the evidence carefully and found that the Claimant had admitted being irate and agitated.

- 91.4 He comments, inaccurately, that the shift was 8.5 hours (rather than the correct duration of 7.5 hours). We do not find that error to be significant to any of the matters which we have to decide.
- 91.5 His finding was that the Claimant had refused to leave the site when suspended and had continued to shout at Mr Harris and to follow Mr Harris.
- 91.6 It was Mr Harvey's finding that Mr Harris felt threatened and that this had contributed to his comment that he would call 999
- 91.7 Mr Harvey accurately noted that – according to the minutes - the Claimant had told Mr Ditchman that he agreed his conduct was not acceptable.
- 92. Mr Harvey decided that the definition of gross misconduct was met. Mr Harvey made the decision to dismiss the Claimant. Our finding is that this was Mr Harvey's own decision and that nobody else told him that this was the decision that he needed to reach and nor did he take into account anything other than the documents that are referred to in the disciplinary meeting notes and in the correspondence he sent to the Claimant.
- 93. In relation to the 16 February letter, we accept that Mr Harvey did - as he stated - read that letter. Following HR advice, he believed that the content of that letter was something that the Respondent had dealt with by Mr Jones' interactions with the Claimant.
- 94. The disciplinary outcome letter [Bundle 179] is dated 19 December 2023. It refers to a disciplinary hearing on 9 December 2023. Both of those dates are incorrect. Our finding is that the month and day are correct in each case but the year should be 2022, rather than 2023.
- 95. The communication of the dismissal decision was not sent by the Respondent until Monday 19 December 2022. The Claimant's submission is that he thinks the letter was received by post rather than any other method. The claim is in time in any event. We make no specific decision at this hearing about the exact termination date other than to say it was no earlier than 19 December 2022. The ET1 states 19 December 2022.
- 96. The Claimant submitted the first of his two claim forms on 27 January 2023. Around 20 February 2023, he (or someone on his behalf) submitted an appeal against dismissal, so about two months after the dismissal, and about three weeks after the claim was presented.
- 97. The appeal letter had made clear that any appeal had to be submitted within seven days. The Claimant very frankly confirmed during the employment tribunal hearing that he had not been particularly interested in the appeal.

98. The Respondent did not reply promptly to the appeal either to tell him that it would not be dealt with because it was out of time or at all.
99. In due course two people were appointed to consider it, one of whom was Mr Rodolfo Brusa. He was Garage Manager at Cricklewood at the time. He wrote to the Claimant in July 2023, so about five months after the appeal letter.
100. The Claimant's responses made it fairly clear to Mr Brusa that the Claimant was not planning to attend an appeal hearing and in fact he did not do so, despite being given the opportunity. We note the contents of the appeal notes and the outcome letter was dated 10 August 2023. We accept it contains the genuine opinions of Mr Brusa and Ms Carter. The appeal against dismissal was rejected.
101. The same letter also rejected the Claimant's argument that he should be entitled to notice pay. The same letter also rejected the Claimant's argument that he should receive arrears of pay or holiday pay.

The Law

Equality Act 2010 ("EQA")

102. The burden of proof provisions are codified in s136 EQA and s136 is applicable to all of the contraventions of the Equality Act which are alleged in these proceedings.

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

103. It is a two stage approach.

- 103.1 At the first stage, the Tribunal considers whether the Tribunal has found facts - having assessed the totality of the evidence presented by either side and drawn any appropriate factual inferences from that evidence - from which the Tribunal could potentially conclude - in the absence of an adequate explanation - that a contravention has occurred.

At this first stage it is not sufficient for the claimant to simply prove that the alleged treatment did occur. There has to be some evidential basis from which the Tribunal could reasonably infer that there was a contravention of the act. The Tribunal can and should look at all the relevant facts and circumstances when considering this part of the burden of proof test.

- 103.2 If the claimant succeeds at the first stage then that means the burden of proof is shifted to the respondent and the claim is to be upheld unless the respondent proves the contravention did not occur.
104. In Efobi v Royal Mail [2021] UKSC 33, the Supreme Court made clear that the changes to the wording of the burden of proof provision in EQA compared to the wording in earlier legislation do not represent a change in the law. Thus when assessing the evidence in a case and considering the burden of proof provisions, the Tribunal can have regard to the guidance given by the Court of Appeal in, for example, Igen v Wong [2005] EWCA Civ 142 and Madarassy v Nomura International [2007] EWCA Civ 33.
105. As per paragraph 57 of Madarassy, “could decide” in section 136(2) EQA is equivalent to: a reasonable tribunal could properly decide from all the evidence before it.
106. The burden of proof does not shift simply because, for example, the claimant proves that there was a difference in treatment (in comparison to someone whose relevant protected characteristics were different) and/or that there was unwanted conduct and/or that there was a protected act. Those things only indicate the possibility of discrimination or harassment or victimisation. They are not sufficient in themselves to shift the burden of proof; something more is needed.
107. It does not necessarily have to be a great deal more: Denman v Commission for Equality and Human Rights 2010 EWCA Civ 1279. For example - depending on the facts of the case - an evasive or untruthful answer from a respondent or an important witness, could be the “something more” that is required. In some circumstances, it may simply be the context of the act itself. In SRA v Mitchell EAT 0497/12, the EAT upheld a tribunal’s decision that the burden of proof shifted based on a finding that the employer had given a false explanation for the less favourable treatment. That being said, it is important for us to remind ourselves that the mere fact alone that a Tribunal rejects the employer’s explanation for some particular act or omission does not mean that the burden of proof necessarily shifts, see for example Raj v Capita Business Services EAT 0074/19.
108. Recent EAT cases have re-emphasised the importance of actually adhering to the two stage approach set out in section 136. We have taken note of the comments in Field v Steve Pye and Co (KL) Limited and ors [2022] EAT 68 and of the fact that several subsequent EAT decisions have cited those comments with approval.

109. As per Essex County Council v Jarrett [2015] UKEAT 0045/15/0411, where there are multiple allegations, the Tribunal has to consider each allegation separately when determining whether the burden of proof has shifted in relation to each one.
- 109.1 That does not mean that we must ignore the rest of the evidence when considering one particular allegation.
- 109.2 The opposite is true. When there are multiple allegations, and/or a lot of facts found as part of the background information, a Tribunal has to stand back and consider all of the evidence in the round to consider whether any inference of discrimination/victimisation should be drawn: see Qureshi v Victoria University of Manchester. There must be no failure to consider ‘the bigger picture’, as it was described in Humby v Barts Health NHS Trust [2024] EAT 17.
- 109.3 We assess separately, for each allegation, whether the burden of proof shifts or not, taking into account all of the facts which we have found.

Time Limits for EQA complaints

110. In EQA, time limits are covered in s123, which states (in part):
- (1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—
 - (a) the period of 3 months starting with the date of the act to which the complaint relates, or
 - (b) such other period as the employment tribunal thinks just and equitable.
 - (3) For the purposes of this section—
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
 - (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
 - (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it
111. In applying Section 123(3)(a) of EA 2010, the tribunal must have regard to the guidance in Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530); Lyfar v Brighton and Hove University Hospitals Trust [2006] EWCA Civ 1548. Applying that guidance, the Court of Appeal has noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents: Aziz v FDA 2010 EWCA Civ

304. The tribunal must consider all relevant circumstances and decide whether there was an act extending over a period or else there was a succession of unconnected or isolated specific acts. If it is the latter, time runs from the date when each specific act was committed.

112. A crucial distinction is between – on the one hand – an invariable rule which will inevitably result in a discriminatory outcome each time and – on the other hand – a discretionary decision made under a policy, in which the discretionary decision may sometimes result in an employee getting the desired outcome, and sometimes not. In the latter case, the discretionary decision causes the time to run (for a complaint based on that decision), regardless of arguments about whether the policy itself is discriminatory.
113. In considering whether it is just and equitable to extend time the Tribunal should have regard to the fact that the time limits are relatively short. That being said, time limits are there for a reason and the default position is to enforce them unless there is a good reason to extend. That does not mean that the lack of a good reason for presenting the claim in time is fatal. On the contrary, the lack of a good reason for presenting the claim in time is just one of the factors which a tribunal can take into account, and it might possibly be outweighed by other factors.
114. The Tribunal has a broad discretion to extend time when there is a good reason for so doing. Parliament has chosen to give the Employment Tribunal the widest possible discretion. Unlike, say, the Limitation Act 1980, s 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it is wrong to interpret it as if it contains such a list. A tribunal can consider the list of factors specified in s 33(3) of the Limitation Act 1980, but if it does so, should only treat those as a guide, and not as something which restricts its discretion.
115. The factors that may helpfully be considered include, but are not limited to:
 - 115.1 the length of, and the reasons for, the delay on the part of the claimant;
 - 115.2 the extent to which, because of the delay, the evidence is likely to be less cogent than if the action had been brought within the time limit specified in Section 123;
 - 115.3 the conduct of the respondent after the cause of action arose, including the extent (if any) to which it responded to requests for information or documents
116. In particular, it will usually be important for the Tribunal to pay attention to (and, where necessary, make specific findings about) “whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from

investigating the claim while matters were fresh)": Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640.

Harassment – section 26 EQA

117. Harassment is defined in s.26 of the Act.

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

118. It needs to be established on the balance of probabilities that the claimant has been subjected to unwanted conduct which had the prohibited purpose or effect. However, to succeed in a claim of harassment, it is not sufficient for a claimant to prove that the conduct was unwanted or that it had the purpose or effect described in s.26(1)(b). The conduct also has to be related to the particular characteristic.

119. Section 136 EQA applies and so the claimant does not necessarily need to prove on the balance of probabilities that the conduct was related to the protected characteristic. If the tribunal finds facts from which it could conclude that the conduct was related to the protected characteristic then the burden of proof shifts.

120. The use of the word “or” in s26(1)(b) (twice) is important.

121. “*Violating ... dignity*” could potentially refer to a one off event, regardless of whether an “environment” was created by it. Whereas the word “environment” refers to a state of affairs. Such an environment may be created by a one-off incident, but only if the effects of the incident last long enough to come within that part of the definition. Where the unwanted conduct occurs on different occasions, then “*an intimidating, hostile, degrading, humiliating or offensive environment*” might have been created even if no single incident violated the claimant’s dignity.

122. “Purpose” and “effect” are two different things, and must be considered separately. Where it was the wrongdoer’s “purpose” to do the things listed in s26(1)(b), then the complaint can succeed even if the conduct did not successfully have that effect. Correspondingly, where the conduct does have the effect described in s26(1)(b), then the complaint can succeed even if the Respondent (or the person whose conduct it was) did not have the intention of causing that effect.

123. In Land Registry v Grant [2011] EWCA Civ 769, the Court of Appeal said that when considering the effect of the unwanted conduct, and when analysing s.26(4), it is important not to cheapen the words used in s.26(1).

Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset ... but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the Tribunal did as subjecting the claimant to a “humiliating environment” when he heard of it some months later is a distortion of language which brings discrimination law into disrepute.

124. When dealing with a series of alleged incidents of harassment (and the same principle applies to victimisation as well), it is important not to carve up the allegations and only consider them one by one. Considering the allegations one by one on their own merits is an important part of the analysis but it is important to also stand back and have regard to the entirety of the conduct which is found to have occurred (see Qureshi v Victoria University of Manchester EAT/484/95). This is particularly important when considering the purpose of the conduct, and whether it would be reasonable to regard the conduct as having the prohibited effect, as well as when analysing whether there are facts from which we could decide that the conduct was related to the protected characteristic.

Victimisation

125. Section 27 EQA reads in part:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

126. There is an infringement if (i) a claimant has been subjected to a detriment and (ii) they were subjected to that detriment because of a protected act. The alleged victimiser's improper motivations might be unconscious or conscious.
127. A person is subjected to a detriment if they are placed at a disadvantage. There is no need to prove that their treatment was less favourable than another's.
128. In terms of what constitutes a protected act, a broad interpretation should be applied to "any other thing for the purposes of or in connection with this Act" as per 27(2)(c). It is not a requirement that the alleged protected act involves an assertion that there has been a breach of the Equality Act, since that is covered by s 27(2)(d).
129. As per section 27(2)(d), an act may be a protected act where the allegation is either express or implied. There is no requirement for the claimant to have specifically mentioned the phrase "Equality Act" or to have used specific words such as "discrimination" etc. However, to be a protected act in accordance with 27(2)(d) the allegation relied on must assert facts which, if true, could amount to a breach of Equality Act 2010. Where an employee makes an allegation of wrongdoing by the employer, but without asserting (either expressly or by implication) that the wrongdoing was a breach of the Act (eg that it was less favourable treatment because of a protected characteristic, or harassment related to a protected characteristic, etc) then the allegation does not fall within section 27(2)(d).
130. To succeed in a claim of victimisation the claimant must show that they were subjected to the detriment because they did a protected act (or because the employer believed they had done or might do a protected act). Where there has been a detriment and a protected act then that is not sufficient, in itself, for the complaints of victimisation to succeed. The tribunal must consider the reason for the claimant's treatment and decide what (consciously and/or subconsciously) motivated the employer to subject the claimant to the detriment. This will require identification of the decision-maker(s) and consideration of the mental processes of the decision-makers. If the necessary link between the detriment suffered and the protected act is established, the complaint of victimisation succeeds. The Claimant does not succeed simply by establishing that "but for" the protected act, she would not have been dismissed (or subjected to another detriment).
131. The Claimant does not have to persuade us that the protected act was the only reason for the dismissal or other detriment. If the employer has more than one reason for the dismissal (or other detriment), the Claimant does not have to establish that the protected act was the principal reason. The victimisation complaint can succeed provided the protected acts have a "significant influence" on the decision making. For an influence to be "significant" it does not have to

be of great importance. A significant influence is rather “an influence which is more than trivial”. See Igen v Wong 2005 ICR 931 and Villalba v Merrill Lynch and Co Inc 2007 ICR 469.

132. A victimisation claim might fail where the reason for the dismissal (or other detriment) was not the protected act itself but some feature of it which could properly be treated as separable, such as the manner in which the protected act was carried out. See Martin v Devonshires Solicitors 2011 ICR 352.
133. Section 136 applies to victimisation complaints. Therefore, the initial burden is on the claimant to show that there are proven facts from which the tribunal could decide, in the absence of any other explanation, that the respondent has contravened section 27. If the Claimant does that, the burden then passes to the respondent to prove that victimisation did not occur. If the respondent is unable to do so, the tribunal is obliged to uphold the claim.

Dismissal / Unfair Dismissal / Conduct Dismissal

134. Section 98 of the Employment Rights Act 1996 (“ERA”) deals with fairness.

98.— General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

- (a) the reason (or, if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
- (b) relates to the conduct of the employee,
- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

...

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

135. The respondent has the burden of proving, on the balance of probabilities, that the claimant was dismissed for the reason relied upon. The reason in this sense is the set of facts known to the person taking the decision on behalf of the employer (or the set of beliefs held by that person) which cause the employer to dismiss the employee. See the court of appeal decision in Abernethy v Mott [1974] I.C.R. 323 and the discussion in paragraph 30 of Croydon Health Services NHS Trust v Beatt [2017] ICR 124. This is the “factual reason” for the dismissal.
136. Furthermore, the employer must also satisfy the Tribunal that this factual reason falls within one of the definitions in either section 98(2) or section 98(1)(b). Those are the categories of reasons that are “potentially fair”.
137. In this case, the Respondent alleges that the reason was “conduct” as defined by section 98(2)(b) ERA.
138. If the Respondent fails to establish the factual reason for dismissal, the complaint will succeed. If the Respondent does not establish that the factual reason for dismissal was potentially fair, the complaint will succeed.
139. Provided the respondent does persuade the Tribunal of (i) the factual reason for the dismissal and (ii) that this was a potentially fair reason, then the dismissal is potentially fair. That means it is then necessary to consider section 98(4) ERA. In doing so, the Tribunal takes into account the respondent’s size and administrative resources and the Tribunal decides whether the respondent acted reasonably or unreasonably in treating the factual reason as a sufficient reason for dismissal.
140. In considering the question of reasonableness, the Employment Tribunal must analyse whether the respondent had a reasonable basis to believe that the claimant did do the acts that the Respondent’s decision maker has found them to have done.
141. The Tribunal must also consider whether or not the respondent carried out a reasonable process prior to making its decisions.
142. In terms of sanction of dismissal itself the Tribunal must consider whether this particular respondent’s decision to dismiss this particular claimant fell within the band of reasonable responses in all the circumstances. See Iceland Frozen Foods Ltd v Jones 1983 ICR 17, in the EAT and Post Office v Foley; HSBC Bank plc v Madden 2000 ICR 1283, in the court of appeal

143. The band of reasonable responses test applies not only to the review of the decision to dismiss but also to analysis of the procedure by which that decision was reached. J Sainsbury plc v Hitt 2003 ICR 111.
144. The band of reasonable responses is wide, but it is not infinite.
145. In Hewston v Office for Standards in Education, Children's Services and Skills [2025] EWCA Civ 250, the Court of Appeal again confirmed the relevance of the "band of reasonable responses" assessment, and also, again re-stated the importance of making sure not to lose sight of the fact that the actual test of fairness is the one set out in section 98 ERA. In particular, the comments at paragraph 15 noted that the "the range [or band] of reasonable responses" approach does NOT mean that a tribunal can only find unfairness where the employer's decision has been "perverse".
146. Gross misconduct is a jargon term which has no statutory definition. However, it is often used, including by employers producing disciplinary rules or contracts of employment, as shorthand for the type of conduct that merits dismissal without notice.
147. It does not automatically follow that dismissal for conduct which the Respondent deems gross misconduct is automatically within the band of reasonable responses, and it would be an error of law for the Tribunal to think that it did. See Brito-Babapulle v Ealing Hospital NHS Trust 2013 IRLR 854. Even in the event of an employer's decision that the conduct was gross misconduct, there should be analysis by the employer of whether mitigating factors meant that the decision should be something other than dismissal. Such factors might include the employee's long service, the consequences of dismissal for the employee and any previous unblemished record. The Tribunal should look to consider whether the Respondent took such factors into account and, if not, why not.
148. The decision of the EAT in Brito-Babapulle was commented on in East of England Ambulance Service NHS Trust v Sanders UKEAT/0319/15/DA:

54. ... that decision is not authority for the proposition that it is for the ET to look at the mitigating features that have not been identified by the Respondent and then to say that a dismissal is unfair. What the EAT is saying instead is that the ET must not jump from a finding that a dismissal has been for gross misconduct as a matter of logic to a finding that the dismissal is therefore fair. In many cases that will be the outcome, but there are cases, albeit a small number of cases, where if there is actual mitigation that could lead to the dismissal being unfair.

55. In this context, it seems to me that it is significant that when quoting from the dismissal letter the ET did not quote the whole of the passage in the dismissal letter that dealt with sanction. It is apparent from that letter that the Respondent carefully considered whether the gross misconduct that it had found in this case meant that dismissal was the appropriate sanction and had thought carefully about

whether or not it would be appropriate to give the Claimant a final warning. What had tipped the balance and what the ET did not deal with was the Respondent's conclusion that the Claimant had been dishonest and that this had destroyed the relationship of trust and confidence between the Respondent and the Claimant.

149. The Employment Tribunal should take an overview of the process from investigation, through the disciplinary hearing up to the determination of any appeal.

149.1 If the Tribunal does decide that there has been any unfairness at the original stage at which the dismissal decision was made, then the Tribunal might potentially decide that that had been cured as a result of what had happened during the appeal process. That depends on all the circumstances of the case; it depends upon the nature of the unfairness of the first stage and it depends on the nature of what happens at the second stage, at the appeal stage and it depends on the equity and substantial merits of the case. The Tribunal has taken into account the guidance in Taylor v OCS Group [2006] IRLR 61.

149.2 In some cases, rather than the appeal stage "cure" an earlier defect, it could be that the appeal stage itself is so defective as to render the dismissal unfair. The Tribunal has taken into account the guidance in Milrine v DHL Services Ltd [2026] EAT 31, including the commentary on West Midlands Co-Operative Society v Tipton [1986] ICR 192 and the other cases referred to in the judgment.

150. It is not the role of the tribunal to assess the evidence and to decide whether the claimant should or should not have been dismissed. It is not our role to substitute our decisions for the decisions made by the respondent.

151. The ACAS Code of Practice on Disciplinary and Grievance Procedures must be taken into account by the Employment Tribunal if it is relevant to a question arising during the proceedings (see section 207(2) of the Trade Union and Labour Relations (Consolidation) Act 1992).

Holiday Entitlement

152. The Working Time Regulations 1998 ("WTR") provide employees (and other workers) with a minimum statutory entitlement to paid time off.

153. Regulation 15 sets out a mechanism by which the worker can inform the employer of the intention to take a period of leave (and also the employer's opportunity to say "no" to that). It also provides a mechanism by which the employer can instruct the employee that they must use their entitlement to paid time off on specified dates.

154. Regulation 14 sets out the formula for calculating how much leave an employee has in the last leave year and what payment in lieu is to be made on termination.
155. The combined effect of Regulations 13(1) and 13A is that an employee is entitled to 5.6 weeks per year as paid time off (that includes any such paid time off on public holidays). This is subject to an overall maximum of 28 days per year.
156. As per Regulation 17, while WTR sets out minimum entitlements, if an employee's contract provides a right which is more beneficial to the employee, then the employee may enforce that right instead.
157. In the employment tribunal, a claim alleging breach of contract can only be presented after the effective date of termination of the employment contract. [Article 3(5) of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the 1994 Order")]. The time limit for such a claim is 3 months from the end of employment (plus any applicable extension to take account of early conciliation). [Articles 7 and 8B of the 1994 Order].
158. If claiming rights to holiday (and paid time off for holiday) based on WTR, rather than based on contract, then a claim for a failure to pay the correct amount for holiday actually taken, can potentially be brought as a claim for unauthorised deduction from wages under Part II of the Employment Rights Act. HMRC v Stringer [2009] UKHL 31.
159. If it is brought in that manner then the time limits which apply are those set out in sections 23(2), 23(3) and 23(4) of the Employment Rights and the restriction on how far back the claim can go in 23(4)(A) also applies.
160. However, if based specifically on of the Working Time Regulations 1998, the time limits are set out in Regulation 30 and subject to any early conciliation extension, the claim must be presented within 3 months of
- 160.1 the date on which the exercise of the right should have been permitted or, as the case may be,
- 160.2 the date on which the payment should have been made (either for the holiday which was taken, or for the entitlement to payment in lieu on termination of employment).
161. For each type of claim, the time limit may only be extended if the Tribunal is satisfied that it was not reasonably practicable to submit the claim in time.
162. If the tribunal finds that a complaint under WTR is well founded, it will make a declaration to that effect. It can also make an award of compensation.

163. Where the worker's complaint is brought under Regulation 30(1)(b) (failure to pay holiday pay or a payment in lieu of holiday on termination of employment), the tribunal must order the employer to pay the worker the amount which it finds to be due [Regulation 30(5)]

Breach of Contract and Notice Pay

164. In terms of breach of contract and the Claimant's notice pay argument, the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 gives the Employment Tribunal jurisdiction to consider certain complaints of breach of contract.
165. In accordance with the ordinary principles for breach of contract claims, this jurisdiction allows the Tribunal to interpret the relevant contractual provisions and assess what the employee's contractual entitlement was to notice pay (as well as, where applicable, for example, contractual holiday entitlement).
166. When a Tribunal is considering a wrongful dismissal claim (in other words a claim that the dismissal itself was in breach of contract) then the analysis is entirely different and separate to the analysis of whether the same dismissal was fair or unfair.
167. Where the employer terminates the contract without good cause, or without providing the employee with sufficient notice, the Claimant might have grounds to succeed in a claim for wrongful dismissal.
168. The amount of notice to which an employee is entitled is determined by the contract but subject to the statutory minimum. If the contract allows the employee more notice than the statutory minimum then the employee is entitled to bring a claim for that period of notice, but the contract cannot insist that the employee has less notice than the statute would allow, generally one week for every year up to a maximum of 12 years.
169. It is for the employer to prove that there has been conduct by the employee which entitled it to dismiss without notice. The conduct must be such that it must so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in employment (see Neary v Dean of Westminster [1999] IRLR 288). The jargon phrases "gross misconduct" and "gross negligence" are sometimes used. There is no clear dividing line between them and, in any event, the decision is whether the contract has been breached and whether the employee has acted in such a way that they are deemed to be ignoring their contractual obligations, and/or showing that they do not acknowledge that they are bound by them. Gross misconduct is often used to refer to things which an employee has done deliberately. Gross negligence, however, also includes serious failure to

carry out their contractual duties even if that is because of an inability to comply with the contractual obligations.

170. In defending itself against a claim that it is required to pay damages for failure to give notice to an employee which it dismissed, the employer is entitled to rely upon facts not known at the time. In other words, the employer is not only entitled to rely on the reasons that caused it to dismiss the employee; it is entitled to rely on any other repudiatory breach that it later discovers. (That is another difference compared to unfair dismissal.)

Analysis and conclusions

171. We take into account all of our findings of for all of our conclusions.
172. In particular, in dealing with the harassment allegations we have not simply analysed each alleged incident one by one, but we have also stood back and attempted to look at the bigger picture when deciding whether the burden of proof should shift for each separate complaint. Likewise, we have done that for the victimisation allegations as well.
173. When considering harassment we have also taken into account the cumulative effect of the alleged incidents when assessing the effect on the Claimant and whether it was reasonable to have a particular effect on the Claimant.
174. Thus the sequence in which we set out our decisions is simply the choice we have made for ease of exposition.

Pay and Holiday Entitlement: Sections 9 and 8 of list of issues

175. We deal first with the fact that the Claimant's pay was stopped from approximately the end of February 2022 and his holiday entitlement was calculated based only on what he had accrued up to the end of March.
176. In each case, on the Respondent's case it was justified because of what the Respondent alleges was a failure to attend the disciplinary hearing on 16 February 2022.
177. Within the Disciplinary Policy & Procedure, paragraph 4.4 specifies [Bundle 41 and 42] that during suspension, the employee will normally receive "rostered pay". It says that this is except in circumstances when an individual refuses to work normally or where the employee is deemed to have reported sick as a hindrance to the disciplinary process or as a result of being advised by an official of an impending report to their line manager. In those circumstances the suspension would be without pay.

178. The Respondent made clear it is not seeking to rely on the second of those alternatives (sickness). They rely on the assertion that the circumstances are such that the Claimant had refused to work normally.
179. The Respondent relies on The Leeds Dental Team Ltd v Mrs D Rose, UKEAT/0016/13.
- 179.1 In that case, the EAT was prepared to accept - without requiring authority - that an employer is entitled to tell an employee that if the employee fails to attend a disciplinary hearing then the employer would be entitled to cease to pay them (or, at least, not pay them for that particular day) just in the same way as if the employee was not suspended and had failed to attend work.
- 179.2 Our decision is that case is of limited assistance to what we have to decide.
- 179.3 Neither the first instance tribunal nor the Employment Appeal Tribunal held that it would have been a breach of contract for the employer to withhold pay in the circumstances of the employee's failure to attend the disciplinary hearing.
- 179.4 However, this was an assumption that was made about something that was hypothetical in the circumstances of that case.
- 179.5 It was a constructive dismissal case in which the employee was successful overall in establishing constructive dismissal.
- 179.6 The EAT rejected the employer's arguments that it had been perverse for the employment tribunal to decide that the particular comments made by the employer, threatening to withhold pay in the future in certain hypothetical future circumstances, were inappropriate on the specific facts of that case.
180. The circumstances are very different here.
181. We do not have to decide whether a particular warning that pay would be stopped in particular circumstances was reasonable or unreasonable. No such warning was issued at all.
182. What we have to decide is what were the wages that were properly payable to the Claimant and were there any deductions.
183. In this case, the particular circumstances were that the Claimant was required to attend a meeting which was not between 10:00pm and 6:00am. So it was not during a time at which he would normally be at work.
184. In order to participate in the meeting, the Claimant would have had to be present at the correct location at midday (unless a change of time was agreed).

185. The Claimant did attend to the meeting venue before the start time but left before the actual start time. As per the findings of fact, he seems to have left more than an hour before the actual start time (because it was at 11am that Mr Harvey sent an email to Mr Jones with a copy of the letter, which the Claimant had handed in that morning). His letter was already written and stated that he was not going to be there for the decision. Although he attempted to speak to Mr Harvey, he was not seeking to bring the meeting time forward, just to hand him the letter.
186. The Claimant handed in a letter and effectively asked for that letter to be his written submissions for the hearing, and expressed willingness for the hearing to take place in his absence. He was not, for example, asking for postponement and nor was he asserting that the hearing could not take place until the Respondent took some further steps.
187. Regardless of whether the Respondent procedures specifically allowed written submissions in these circumstances (and we comment that the policy does refer to allowing written submissions in some circumstances, but not necessarily these particular circumstances), the policy did allow decisions to be made in the employee's absence.
188. The Claimant's letter made it sufficiently clear that he was expecting decisions to be made on 16 February and communicated to him afterwards even though he did not actually attend the hearing itself.
189. On these facts, this is not a case of the individual refusing to work normally. The reason he was not working normally on the night shift was that he was on suspension.
190. The Respondent's policies say that the Respondent has the unfettered discretion to decide what to do when a grievance is presented during a disciplinary process. Each of the disciplinary procedures and the grievance procedures contain similar paragraphs on that point.
191. Both the 16 February 2022 letter itself, and what the Claimant said about it later - including on 30 March 2022 to Mr Jones - make clear that, as far as the Claimant was concerned, he had not refused to attend the disciplinary hearing but rather he had asserted the right to make a written submission instead and to have the disciplinary decision sent to him in writing after the meeting. Our decision is that the Respondent failed to engage with that specific stance, and instead treated the 16 February letter as something different to the Claimant's intentions.
192. One option the Respondent could hypothetically have taken, on receipt of the 16 February letter, was to inform the Claimant that they were not willing to allow him to make written submissions only and they were purporting to issue a reasonable

management instruction requiring him to attend the disciplinary hearing. However they did not do that.

193. Although it is less than clear from the contemporaneous records, we have accepted (as we said in the findings of fact) that the Respondent had exercised its discretion to put the disciplinary process on hold and to deal with the 16 February letter as a grievance prior to resuming the disciplinary process.
194. Those circumstances present no proper basis to withhold the Claimant's pay. As a matter of logic, if the Respondent was putting the disciplinary on hold until after the "grievance" (which, according to the Respondent, was how it treated the 16 February letter), then the Claimant was not refusing to attend a disciplinary hearing. On the Respondent's logic, the reason that no outcome was issued after 16 February was that there had been no disciplinary hearing because the process was on hold. Furthermore, according to the Respondent, the reason that the Claimant received no further communication until October 2022 from Mr Harvey about a disciplinary hearing was that the proceedings were on hold.
195. The Claimant was not told in writing that the Respondent's position was that his pay was stopped because – according to the Respondent – he had, or was, refusing to attend a disciplinary hearing. The Claimant asked Mr Jones orally for an explanation for why his pay had stopped and he wrote to Mr Hill about it. He told Mr Jones that he had not refused to attend the disciplinary hearing.
196. Our decision is the correct analysis of the situation is that the Claimant was suspended on full pay on 1 February by Mr Harris, a decision which was confirmed by Mr Ditchman shortly afterwards.
197. The Respondent was not necessarily obliged to put the disciplinary process on hold as a result of the Claimant's 16 February letter or at all but it chose to do so.
198. It does not seem to us to be the case that the Claimant's sickness absence between 31 March and 31 May delayed the disciplinary directly. To some extent it might have delayed it indirectly, if it resulted in a delay in the grievance outcome. However, that being said even after the end of the sickness absence and after the Claimant chased Mr Jones for a decision in early June there was still a further delay until 25 July 2022.
199. In any event, the Respondent has not argued to us that they seek to rely on the part of the written policy/procedure that says that a suspension will be without pay if the employee is deemed to have reported sick as a hindrance to the disciplinary process. We are satisfied that the Respondent was correct not to make that argument on these facts.
 - 199.1 Firstly the decision to stop his pay had already been made before the sickness absence started.

- 199.2 Secondly the decision to put the disciplinary process on hold to investigate the grievance had already been made prior to the sickness absence starting.
- 199.3 Thirdly, as far as the Claimant was concerned, on 16 February he had made his submissions in response to the disciplinary allegations and he was simply awaiting the outcome. He was not seeking to delay that process by the submission of the Fit Note covering the period commencing 31 March 2022.
200. Thus, our analysis is that the Claimant remained entitled to “rostered pay” (according to the meaning of that phrase within the disciplinary procedure) for the entirety of the suspension. That was true both before and after 16 February, and until the termination of his contract.
201. Thus there have been unauthorised deductions from wages after February 2022 and until the end of employment.
202. That being said given the two-month sickness absence, there could be an argument that the period 31 March to 31 May should be treated differently. If contractual sick pay was less than rostered pay for that period, and if the Respondent seeks to argue that the wages “properly payable” for 31 March to 31 May are sick pay rather than “rostered pay” then we can deal with that at the remedy hearing when quantifying the deductions.

Holiday entitlement

203. In terms of the Working Time Regulations 1998 (“WTR”), even if there was a provision within the regulations that holiday would cease to accrue if an employee refused to attend work, the Respondent's argument that the Claimant ceased to accrue annual leave after March 2022 would fail for similar reasons to those just stated in relation to unauthorised deduction from wages.
204. For completeness, our decision is that WTR do not permit employers to decide that annual leave has ceased to accrue in such circumstances.
205. On termination of employment, the Claimant was paid less than he was entitled to in lieu of accrued holiday entitlement.

Harassment: Section 3.1.1 to 3.1.4 of list of issues

206. We deal next with the harassment allegations.
207. In submissions, the Claimant has argued that he is not seeking to suggest that Dan Harris himself was motivated in relation to any of these 7 allegations by race (though we also take his daughter's comments into account as well). Rather his argument is that his disagreements with the company overall - going back to

2016 - were related to race and that Dan Harris' conduct was related to that past course of dealing between the Claimant and the company.

208. We reject that assertion. We are satisfied that it did come to Dan Harris's attention in due course that the Claimant had moved from Willesden to Edgware as a result of disagreements between the Claimant and managers at Willesden. However that did not motivate Dan Harris to treat the Claimant badly or to do any of the seven things alleged in paragraph 3.1 of the list of issues.
209. Rather, after Mr Harris had come to the conclusion that the Claimant was failing to comply with his Mr Harris's instructions, he began to wonder whether the Claimant had previously exhibited a similar pattern of behaviour towards managers.
210. However we are satisfied on the facts that Mr Harris's motivations were to seek to have the bus inspections carried out efficiently and to have a fair distribution of work between colleagues in 2021 and 2022.

3.1.1 Dan Harris unfairly suspending the claimant on 12 October 2021

211. There was no suspension on 12 October 2021. Even assuming that this is intended to be a reference to the fact that the Claimant was required to attend a meeting on 1 September 2021 and for that reason was told not to carry out his shift the previous night, that was not a suspension.
212. Thus the allegation fails on the facts.
213. Furthermore and in any event the burden of proof does not shift. There are no facts from which we could properly conclude - taking the evidence as a whole - that Dan Harris' 18 August 2021 letter was related to race.

3.1.2 Dan Harris falsely accusing him of sending rude texts

214. To the extent that we are invited to decide that it is not objectively true that the Claimant sent rude texts, we do not have those texts to look at.
215. However, as we said in the findings of fact, we are satisfied that in the 19 July file note and conversation, Mr Harris was expressing his genuine contemporaneous opinion that the Claimant had sent rude texts.
- 215.1 Many of the documents in the bundle which are correspondence sent by the Claimant to the employer are confrontational and accusatory.
- 215.2 We accept it is the Claimant's genuine opinion that the comments he has made have been justified and appropriate. However, there is an important difference between arguments (i) that a message was not rude and (ii) that the rudeness in the message was justified.

- 215.3 On the Claimant's case, his messages were not rude. However, there is an important difference between the propositions: (i) if someone had the honest opinion that the message was rude, then their opinion was wrong and (ii) the message was such that no-one could have formed an honest opinion that it was rude.
216. We are not suspicious about the fact that Mr Harris suggested that he had received rude texts in middle of July 2021. We accept that his conscious opinion was that they were rude. The burden of proof does not shift as to whether Mr Harris comments were related to race and/or whether, unconsciously, his opinion was related to race.

3.1.3 Deducting the claimant's pay around that time

217. The deduction from the Claimant's pay in around September 2021 was consistent with the Respondent's policy. The Claimant had been invited to an investigation meeting and had commenced a period of sickness absence shortly afterwards.
218. For this allegation, it is not necessary or appropriate for the employment tribunal to decide whether the Claimant's sickness absence was an attempt to hinder the disciplinary investigation.
219. However in all the circumstances taking account the evidence as a whole and everything said and done by Mr Harris and everything the Claimant has accused him of doing, the burden of proof does not shift. There are no facts from which we could reasonably conclude that this decision to instruct that the Claimant would be paid SSP only was related to race.

3.1.4 Starting disciplinary proceedings against the claimant around that time

220. The Claimant was invited to an investigation meeting.
221. Nothing really turns on whether calling somebody to an investigation meeting (and our finding is clear that it was an investigation meeting, not a disciplinary hearing) matches the exact words in the list of issues. We can assess the matter on the merits.
222. The Claimant does not so much dispute the fact that Mr Harris had received complaints about him from a colleague but rather the Claimant disputes the way in which Mr Harris dealt with that.
223. To a large extent the Claimant's position is that it was his colleague who was unreasonable and that he, the Claimant, had not done anything wrong.
224. Mr Harris collated what he believed to be the relevant evidence sent it to the Claimant with the invitation letter.

225. As we have said in the findings of fact, ultimately Mr Bill Harvey appears to have decided that there need be no further action.
226. The mere fact alone that an investigation meeting decides that there is no reason to go to a disciplinary hearing does not in itself imply that it was improper to arrange the investigation meeting.
227. On the contrary, if an employer is following its procedures properly and in good faith, it would be expected that at least some of the time there would be no further action after an investigation meeting. If that was not the case then the only logical conclusion would be that the employer only arranged investigation meetings in cases where it had already decided that there would be a disciplinary hearing.
228. Taking the evidence as a whole there are no facts from which we could conclude that Mr Harris's actions in July and August 2021 to organise the investigation meeting were related to race. The burden of proof does not shift.
229. In summary then all of these first four harassment allegations fail.
230. Because it is next chronologically, we will now deal with the victimisation.

Victimisation. Section 4 of list of issues

231. It is common ground that paragraph 4.1.1 in the list of issues is intended to refer to the particular document at [Bundle 76]. The Respondent has accepted that particular document was a protected act.
232. We accept that Mr Harris had seen that document (or at least become aware of its contents) prior to November 2021.
233. Likewise he was aware of a document apparently sent 27 September 2021 which referred to copies of a colleague's overtime claims.
234. Since the decisions about the annual leave were in late November 2021, we do not need to make decisions about whether the items referred to in 4.1.2 or 4.1.3 did amount to protected acts.
235. Clearly and in any event, the letter dated 16 February 2022, which we have discussed at length, was not submitted until the date of the disciplinary hearing and that was - of course - after the Claimant had already been suspended by Mr Harris
236. As per paragraph 4.5 of the list of issues, we do not only take into account the actual protected act that did happen as identified in paragraph 4.1.1 but we also take into account whether any of the alleged detriments were because the Respondent believed that the Claimant might do a future protected act or had already done any protected act.

4.2 Did the respondent do the following things

4.2.1 The claimant's holiday request form for 2021 going missing;

4.2.2 Dan Harris refusing the claimant's holiday (date to be confirmed)

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

237. On the facts, we were satisfied that Mr Harris did not actually receive the Claimant's leave request form (which, as per the Claimant's copy is dated 16 November 2021).
238. It was the fact that he did not receive that form that caused him to tell the Claimant that he did not have it.
239. It was the fact that he had already approved leave for other people by the time the Claimant sent him a photograph of the form that caused him to say he could not approve the particular dates the Claimant had asked for.
240. We accepted that it was factually accurate that those other people were indeed off on the particular dates that the Claimant was seeking.
241. There are no facts from which we could conclude that that the refusal of that the Claimant's annual leave request was because the protected act identified in list of issues, or because Mr Harris believed that the Claimant had done a protected act, or because he believed that the Claimant would do a protected act in the future.

1 February 2022

242. We will now deal with the events of 1 February 2022.
243. We will make decisions about that for the harassment allegations and the breach of contract allegations. When we deal with unfair dismissal, we are not actually basing the analysis on what we find actually happened on 1 February 2022 and so we will at address unfair dismissal separately.

3.1.5 Dan Harris speaking to the claimant in a derogatory and disrespectful manner on 1/02/22;

3.1.6 Dan Harris shouting at the claimant to sit down on 1/02/22;

244. We have not been persuaded on the facts that Mr Harris spoke to the Claimant in a derogatory and disrespectful manner. Mr Baig's evidence does not support that allegation.
245. It is true that Mr Harris told the Claimant to sit down. Mr Baig's recollection is that Mr Harris said it softly. We accept that it was not shouted and was not said in a derogatory and disrespectful manner.

246. From what we have heard about the discussion and the fact that the Claimant was standing for part of it and speaking loudly it is at least plausible that Mr Harris also raised his voice, even though neither Mr Baig nor Mr Harris regard it as “shouting”.
247. However, there are no facts from which we could conclude that this conduct was related to race. There is nothing suspicious about a manager asking an employee to be seated in the type of discussion that Mr Harris and the Claimant were having. On the facts, there is nothing suspicious about Mr Harris wanting to discuss the number of bus inspections being done; that would be true in any event, but the fact that the Claimant was not working when Mr Harris arrived, and was located in his own car, is also relevant.
248. The Claimant had asked for and been granted the opportunity to have Mr Baig present as a witness. It was clear to all concerned that there was a serious topic under discussion not just a brief passing encounter which could have taken place quite easily and quickly while people were standing

3.1.7 Dan Harris suspending the claimant on 1/02/22

249. We are satisfied that Mr Harris’ conscious reason for suspending the Claimant is the one that he gave him at the time.
250. It is the one that he has been consistent about since then, including in his notes about the incident written on the same day, and in his evidence to this tribunal.
251. He had previously formed the view that the Claimant was refusing to carry out two inspections per shift and he had decided to attend the premises on 1 February to look into that matter.
252. On arrival, what he observed reinforced his opinion that the Claimant was only doing one inspection. A discussion took place in which the Claimant made it clear that it was true he was only doing one inspection. Furthermore, the Claimant also made clear that he was not going to do two inspections in the future either (not all of the time, at least).
253. The refusal to do two inspections per shift was part of the reason for the suspension.
254. However, because of the way the discussion unfolded, part of the reason for the suspension was that Mr Harris decided that the Claimant’s behaviour was inappropriate during the discussion itself. Mr Harris formed the opinion that that would also be a matter that would potentially be investigated as possible disciplinary misconduct

255. We have taken the facts as a whole and there are no facts (even when looking at the bigger picture) from which we could conclude that Mr Harris' decision to suspend the Claimant was related to race.
- 255.1 Amongst other things, we do not regard it as inherently suspicious that an employee that might be suspended and told that they would face disciplinary action in circumstances similar to these.
- 255.2 There is some disagreement between the Claimant's version of events and Mr Harris' about how aggressive the Claimant actually was. Further, some of the conduct that eventually led to the dismissal occurred after the Claimant had been suspended, and so – therefore – was not part of the reason for the suspension.
- 255.3 However, we are satisfied that - at the time - Mr Harris did feel that the Claimant's replies during the discussion about the number of inspections were inappropriate and amounted to an unwillingness to carry out the tasks allocated to him by his employer (it being Mr Harris' opinion that the instructions were reasonable, and consistent with the number of inspections per shift that were required of other staff, both at Edgware and at other depots).

Wrongful dismissal: Section 7 of list of issues

256. In terms of breach of contract, the Claimant accepted to Mr Ditchman that his conduct had been inappropriate. He said this when the matter was fresh in his mind, and during a meeting at which the CCTV footage was viewed.
257. The Claimant does not agree with everything he has been accused of doing on 1 February, but he does agree that he repeatedly said he would not be doing two shifts and that he was angry.
258. The Respondent has proven to us that the Claimant repudiated the contract. He refused to acknowledge that the Respondent had the right to tell him how many inspections were expected. The Claimant did not say that he would try to do two, but would leave the second one only partially completed if he ran out of time. During this Employment Tribunal hearing, the Claimant has maintained that he was within his rights to only do one inspection and to move towards assisting with the work allocated to the running shift after that. Further, he having been told that he was suspended and he needed to leave the premises, he stayed for a significant period of time, continuing to argue, and causing Mr Harris to believe that the police might have to be called.
259. The Claimant's actions caused Mr Harris to feel threatened and we are satisfied that at least part of the reason he told the Claimant that he would call 999 is that he felt threatened. This is not to say that the Claimant specifically made any

threats orally of physical violence, or that he made any motions as if he was on the point of doing anything physically to Mr Harris. However it was Mr Harris's perception that the situation was escalating, and he said so. The Claimant had been specifically told by Mr Harris (the first time) and Mr Webley (the second time and third time) to leave the premises, but continued to seek to confront Mr Harris until eventually leaving the premises.

Unfair dismissal: Section 2 of list of issues

260. Our assessment is that there were significant defects in the procedure. One of the things that we have to decide is whether the defects were so significant as to render the procedure one which no reasonable employer would have adopted.
261. In terms of timing, the Claimant was suspended on 1 February 2022, and – based on our decisions – that suspension lasted until 19 December 2022 (or the date of dismissal, if that was later).
262. The Claimant was left without any written response from Mr Harvey between 16 February and 11 October 2022. This is despite the Claimant making a phone call to Mr Harvey at the start of March in which the Claimant was told that a letter was being prepared and would be sent shortly. We have accepted – based on Mr Harvey's oral evidence – that he made the comment in good faith, and based on HR advice, and the letter that he had had in mind was Mr Jones contact with the Claimant to invite him to a hearing under the grievance procedure. However, that does not change the fact that the Claimant was not told clearly at the time that the disciplinary process was on hold pending a decision, under the grievance procedure, by Mr Jones. The confusion was compounded by the fact that Mr Jones was of the opinion that he was dealing an appeal against an earlier grievance outcome, whereas Mr James Harvey believed that Mr Jones was treating (parts of) the 16 February letter as a grievance.
263. The Claimant was not being paid from around February 2022 onwards. We have already said that this was a series of unauthorised deductions from wages. However, we also have to assess its relevance to the unfair dismissal analysis.
264. In terms of the dismissal reason, as per the findings of fact, Mr Harvey did genuinely decide that (as stated in the dismissal letter):
- You failed to follow a reasonable instruction from a manager leading to abusive and threatening behaviour towards a manager on the 01/02/2022,
265. He did genuinely believe in the conclusions stated on [Bundle 177 to 178] and in his witness statement. He did genuinely believe that the conduct which he found to have occurred merited dismissal without notice, and that was the reason that he made the decision to dismiss (and do so without notice).

266. Our assessment is that Mr Harvey did have reasonable grounds for his conclusions about the Claimant's conduct. As per our findings of fact, the evidence before him included Mr Harris' account, Mr Webley's account and the transcript of the Claimant's interview with Mr Ditchman. We have seen those items and they provide a reasonable basis on which a fair-minded person could decide that the Claimant had acted as per Mr Harvey's conclusions. Mr Harvey and Mr Ditchman also had CCTV footage which this Employment Tribunal panel has not seen.
267. In terms of process, the fact that neither Mr Ditchman nor Mr Harvey approached Mr Baig is not a defect (or, at the very least, not a significant defect) in the process. Apart from the fact that Mr Harris had asked him to prepare a written account, and he had declined to do so, the Claimant had also been told that he could nominate witnesses, and had not nominated Mr Baig. We are not assessing a set of circumstances in which the Claimant asked for Mr Baig to be interviewed, and the Respondent refused to do that.
268. The fact that the eventual decision was made in the Claimant's absence on 9 December 2022 is not a defect in the process. The 2 December 2022 letter made it plain that the hearing would proceed in the Claimant's absence if he did not attend the hearing.
- 268.1 For one thing, the Claimant had previously been invited to attend disciplinary hearings arranged for 16 February and also 17 October, and so the Respondent was offering a third chance to present his case in person to Mr Harvey.
- 268.2 For another thing, as per our decisions above, the Claimant had made clear as early as 16 February 2022 that he was content for the decision to be made in his absence.
- 268.3 Thirdly, the Claimant's responses to the 11 October invitation letter and the 2 December invitation letter reinforced the information that he was not going to attend the disciplinary hearing. He had also declined to attend grievance procedure meetings with Mr Jones (having attended on 30 March, but ended the meeting before Mr Jones believed that the meeting was complete).
269. Paragraphs 2.14 and 2.15 of the Respondent's Disciplinary procedure [Bundle 36 and 37] discuss misconduct / gross misconduct. It was not unreasonable for Mr Harvey to decide that the Claimant's conduct met the Respondent's definition of gross misconduct. The Claimant had the opportunity to put forward arguments to the contrary.
270. Mr Harvey read the Claimant's 16 February 2022 letter, albeit he says that the contents were not relevant to his decision. It was not unreasonable for him to

decide that the contents were not relevant, especially given that his understanding was that Mr Jones had looked into the Claimant's assertions about the way that he had been treated. The Claimant had the opportunity to come to the disciplinary hearing and make his own comments directly to Mr Harvey if he wished to clarify the relevance of any assertion made in the letter.

271. In all the circumstances, taking into account the number of opportunities given to the Claimant to respond to the allegations against him, the procedure as a whole was not so unreasonable that it fell outside the band of reasonable responses.

271.1 The delay was very significant. However, this is not a case in which – at a disciplinary hearing – anyone was disadvantaged by the delay.

271.2 The evidence was all gathered between 1 February (the initial statements) and 16 February (the Claimant's letter). That was while matters were fresh in people's minds. The Respondent did not purport to produce fresh evidence after the first hearing invitation, and the Claimant did not purport to produce fresh evidence after 16 February.

271.3 Further, while there was a striking lack of information from Mr Harvey (or from HR, based on the documents we have seen), the Claimant was told by Mr Jones in June that the outcome of the grievance process (which Mr Jones was referring to as a grievance "appeal", but that does not matter to the point at hand) would be communicated to the person dealing with the disciplinary, and the disciplinary process would – by implication – potentially resume under Mr Harvey. There was a further delay between the July 2022 outcome letter from Mr Jones, and Mr Harvey's 11 October letter, but the process did – as foreshadowed by Mr Jones – resume in due course.

271.4 Based on our analysis of the 16 February 2022 letter, there was no requirement for the Respondent to put the disciplinary hearing on hold. However, it was not inherently unreasonable to do so. So the lack of good communication, and the delay, are defects which we have considered. But the mere fact alone that someone other than the disciplinary hearing manager was asked to look into certain comments made by the Claimant is not, in itself, a defect.

272. The sanction of dismissal was not outside the band of reasonable responses which a reasonable employer could adopt, based on Mr Harvey's decisions about what the Claimant had done.

273. In terms of the appeal, the circumstances neither bolster the Claimant's arguments for unfairness nor bolster the employer's arguments against unfairness. The Claimant delayed a long time before submitting the appeal, and the Respondent delayed a long time before dealing with it. The Claimant has

been commendably frank about the fact that he was not really interested in pursuing an appeal and it was only submitted because his lawyer told him that it was necessary. It probably would not have been unreasonable for the Respondent to promptly reply to the purported appeal by saying that it was out of time. They did not do so. However, we are entirely satisfied that, even if the Respondent had responded to the appeal straight away by offering the Claimant a hearing, he would not have attended. In any event, Mr Brusa and his colleague gave an honest decision based on the information available to them.

274. The unfair dismissal complaint is not well-founded.

Outcome and next steps

275. The date for a remedy hearing was fixed and case management orders to prepare for that hearing were made.

Approved by:

Employment Judge Quill

on date: 23 August 2026

FULL REASONS SENT TO THE PARTIES ON

24 August 2026

FOR EMPLOYMENT TRIBUNALS