



EMPLOYMENT TRIBUNALS

Claimant: Mr Karim Askar

Respondent: Playdale Playgrounds Limited

Heard at: Manchester **On:** 22 June 2026
and 3 July 2026 In chambers

Before: Employment Judge Mellor
Miss Howarth
Mr Moules

Representation

Claimant: In Person

Respondent: Ms Nowell, counsel.

UPON APPLICATION made by letter dated 20 April 2026 to reconsider the judgment under rule 70 Employment Tribunal Procedure Rules 2024 dated 13 February 2026 (sent to the parties on 7 April 2026).

JUDGMENT ON RECONSIDERATION

1. The judgment is confirmed.

REASONS

2. By Rule 69 of the Employment Tribunal Procedure Rules 2024 an Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a Judgment where it is necessary in the interests of justice to do so. On reconsideration, the Judgment may be confirmed, varied or revoked under Rule 68.

3. On 20 April 2026 the Respondent applied for reconsideration in writing which was within 14 days of the date upon which the written record was sent to the parties.

4. The application arises from a factual error in the judgment. The Tribunal referred to David Lewis as White British. The Respondent contends that Mr Lewis is Black British and that, had the correct fact been known, the Tribunal would not have drawn the same inferences when considering whether the burden of proof shifted under section 136 Equality Act 2010.

5. In support of their application the Respondent provided a witness statement from Paul Mallinson confirming that David Lewis is black British.

6. We considered that the application identified a genuine factual error in the judgment and that it was therefore appropriate, in the interests of justice, to reconsider the judgment at a hearing. Therefore, the hearing which had been listed to determine remedy was converted into a reconsideration hearing. We were provided with a bundle of documents consisting of 111 pages, both parties had prepared written submissions and provided oral submissions on the day page references in this decision are to page references in that 111 page PDF bundle.

The Issues

7. The issues for determination on reconsideration were:
- Whether the Respondent should be permitted to rely upon new evidence concerning Mr Lewis's race;
 - Whether we should find on the balance of probabilities that Mr Lewis is Black British;
 - If so, whether that fact undermines the conclusions contained within the original decision; and
 - Whether the judgment should be confirmed, varied or revoked.

Should the New Evidence be Admitted?

8. The principal evidence relied upon by the Respondent was the witness statement of Mr Mallinson confirming that Mr Lewis is Black British. At the reconsideration hearing the Respondent also produced a copy of Mr Lewis's passport.
9. It is common ground that neither party adduced evidence regarding Mr Lewis's race at the original hearing. The Claimant was cross examined regarding Mr Lewis and in response he explained "*there was a difference in treatment between me and [Mr Lewis] because he did something that amounted to gross misconduct but was given a warning, whereas I was dismissed for something that was misconduct*". Mr Boyle did not put the race of Mr Lewis to the Claimant, nor was it identified in closing submissions.
10. The proper starting point is the guidance in **Ladd v Marshall [1954] 3 All ER 745**. The principles remain relevant when considering whether fresh evidence should be admitted on reconsideration. We also bear in mind the observation in **Outsight VB Ltd v Brown** that the overriding question remains whether admission of the evidence is required in the interests of justice.
11. We accept that the evidence concerning Mr Lewis's race could, with reasonable diligence, have been obtained for use at the original hearing. The first limb of Ladd v Marshall is therefore not satisfied.
12. However, we do not regard that as determinative. This application identifies a factual error contained within the judgment itself. The Respondent did not appreciate during the hearing that the Tribunal would proceed on the

basis that Mr Lewis was White British. In those circumstances we considered that the interests of justice required us to consider evidence capable of correcting that factual error.

13. We were satisfied that the evidence was relevant because the Tribunal referred to Mr Lewis's race when explaining its reasoning and the Respondent contends that the error materially affected the outcome.

14. We therefore concluded that the evidence should be admitted for the purpose of reconsideration.

Findings Regarding Mr Lewis

15. The Claimant submitted that neither the passport nor Mr Mallinson's witness statement established how Mr Lewis would describe his own racial identity. We accept the force of that submission.

16. A passport is not, of itself, evidence of race beyond nationality. It does not record how the individual might identify their colour or national origin. Equally, Mr Mallinson was not present to be cross-examined regarding the basis upon which he described Mr Lewis as Black British and it was confirmed on behalf of the Respondent that there was no onboarding evidence in which Mr Lewis might himself have recorded it.

17. Nevertheless, we considered it significant that the Claimant did not originally dispute the assertion that Mr Lewis is Black British. The challenge to the evidence arose only at the reconsideration hearing.

18. Taking all the circumstances into account, we are satisfied on the balance of probabilities that Mr Lewis is Black British. We therefore proceed on that basis.

Impact of that Finding

19. The central question is whether that factual correction undermines the reasoning contained in the original judgment.

20. The Respondents submission is that it does and has expressed that as follows: Mr Lewis *'having the same protected characteristic as the claimant, namely both being black'* and *'in essence if Mr Lewis is black British, it appears that he shares the same protected characteristic as the Claimant'* (see page [51/52] or alternatively *'having a significant characteristic in common with the claimant'* (see paragraph 15 written submissions) and *'sharing the Claimant's characteristics'* (see paragraph 16 of the written submissions). Thus, the Respondent in essence argues that because Mr Lewis and the Claimant are both black the Tribunal's reasoning concerning less favourable treatment and the burden of proof can no longer stand.

21. We do not accept that submission.

22. Section 9 Equality Act provides that race includes (a) colour, (b) nationality (c) ethnic or national origins.

23. Mr Askar defined himself as black Egyptian. His protected characteristic

therefore includes his Egyptian Nationality. Even accepting that Mr Lewis is black British the Claimant and Mr Lewis do not belong to the same racial group for the purposes of section 9. They do not share the same nationality.

24. We therefore reject the Respondent's submission that Mr Lewis and the Claimant necessarily shared the same protected characteristic or that they were materially indistinguishable for the purposes of the race discrimination claim.

25. More importantly, the original decision was not based principally upon a distinction between black and white employees. Whilst we carefully considered Ms Nowell's submission that colour must be relevant because otherwise we would not have recorded 'white British' when identifying Mr Lewis and Mr Robinson our findings were overwhelmingly concerned with the Claimant's Egyptian nationality and the treatment he received in that context.

26. We have looked again at our decision and reasons and in particular note:

- a. Paragraph 11 the Claimant was identified as Egyptian and Muslim
- b. Paragraph 28 the Claimant raised issues about the British workforce/Egyptian (see also paragraph 35).
- c. Paragraph 29 the Claimant complained about being treated unfairly because he is a foreigner.
- d. Paragraph 36 relating to Egyptian women.
- e. Paragraph 37 "the claimant is clearly upset about what he perceives is poor treatment due to his foreign nationality".
- f. Paragraph 88 at the disciplinary hearing the claimant responded to the three 'situations' identified by Mr Mallinson by alleging he was the recipient of racist jokes about me being Egyptian/Muslim
- g. Paragraph 187 we considered whether the claimant has proven facts from which we could conclude that in any of those respects he was treated less favourably than someone who was not Egyptian/Muslim.
- h. Paragraph 190 when we considered the failures relating to the disciplinary process and the campaign escalating that process, we considered evidentially others who were not Egyptian were given more information and more opportunity to improve.

27. Our findings therefore overwhelmingly reflect the Claimant's race as being his nationality, rather than colour and accordingly correcting the factual error concerning Mr Lewis does not undermine the principal basis upon which the Tribunal reached its conclusions.

Burden of Proof

28. We also considered the submission made at paragraph 15 of the Respondent's written submissions that the tribunal used a blanket approach to all 7 allegations when determining whether to reverse the burden of proof. Ms Nowell submitted that if the Tribunal was not minded to revoke the whole decision and dismiss the whole claim as an alternative those which overtly relate to the claimant's nationality may survive because the burden of proof more readily shifts where the

language used is inherently connected to race. However, in applying a blanket approach the Tribunal wrongly concluded the Claimant had met the prima facie burden of proof.

29. **Essex County Council v Jarett (2015) UKEAT/0045/15** is supportive of the submission that a tribunal should not use a blanket approach. However, it is not authority for the proposition that in every case where there are a number of allegations it will be an error if section 136 EqA is not considered separately for each allegation. It must be seen in the context of the case (see **Commissioner of Police for the Metropolis v Maxwell [2013] EqLR 680** and **Leicester City Council v Parmar [2024] IRLR 721**).

30. Even if we were wrong to place weight upon Mr Lewis in the manner suggested by the Respondent we are satisfied there remained ample facts from which the burden of proof properly shifted. The context of this case is such that the allegations are linked and substantiated by one another; and the same facts would be relevant whether we considered the reversal individually or separately. Although there are different individuals involved the matters are all linked:

- a. Comments made about Egyptian Women and the Claimant being in the 1.1% was well known to Mr Mallinson and Mr Milton.
- b. Mr Milton did nothing about it when it was specifically raised as race discrimination.
- c. Mr Mallinson specifically raised the two matters as 'situations' he had to get involved in at the dismissal hearing and those related to the Claimant's race.
- d. Two of the claimant's colleagues who did not share his protected characteristic were given warnings and the opportunity to improve and in respect of Mr Lewis that opportunity was provided by Mr Mallinson.
- e. Mr Mallinson proceeded to dismiss him based on information provided to him by Mr Milton.

31. In the circumstances of this case the facts from which we drew adverse inferences were linked through the individuals involved; the knowledge of what was said to the claimant; and the lack of action by the Respondent other than to dismiss the claimant.

32. Notwithstanding the above we did reconsider whether the burden of proof was shifted on each separate allegation. We found that it was based on our earlier findings and the below:

- a. The Claimant was told he couldn't progress "*if these issues are arising, I have had to get involved with situations like Dave/Jordan/Lewis and I have tried to understand. There have been 3 situations and you have been involved*". Those three situations included the two overtly detrimental acts of speaking about Egyptian women in a vulgar manner and isolating/singling out the claimant as the 1.1%. As we set out at paragraph [170] to imply the recipient of detrimental treatment is the cause of the 'issue' arising is a relevant fact, from which we draw the adverse inference that the Claimant raising issues about being treated differently because he is Egyptian

was a problem for the Respondent. That adverse inference is sufficient to reverse the burden of proof, particularly when considering Mr Lewis, who does not share the claimant's protected characteristic, was given a warning as well as Mr Robinson.

- b. Jamie Milton was so dismissive of the Claimants' complaints about race discrimination and clearly was trying to get the Claimant dismissed (see paragraph 171) we drew adverse inferences from the fact he was content to let racially discriminatory behavior slide, and that in oral evidence before the Tribunal he underplayed his understanding that the Claimant was raising complaints about race discrimination. Whereas he escalated complaints made by the Claimant's wife as to the Claimant's whereabouts even though the Claimant had never been given a warning.
- c. In respect of the absence reporting procedure Mr Mallinson we drew an inference that Mr Mallinson used this to deal with the Claimant who he saw as a problem failing to give him sufficient warning, and the way the dismissal process evolved (as above).
- d. The Claimant was not given a fair hearing or process, given that other staff (Mr Lewis and Mr Robisnon) were given at least a fairer process led us to the adverse inference that there was another reason for wanting to dismiss other than the fact that he had less than two years' service. We inferred poor attendance was not the real reason because Mr Mallinson had not established, and could not explain to us, what attendance was unauthorised. The fact the Claimant was involved in 'issues' which related to him raising issues about the 1.1% and Egyptian women led us to infer that his nationality could be part of the reason. We also drew adverse inferences from the fact that Mr Mallinson had clearly made his mind up prior to the hearing. He was not prepared to give the Claimant a fair opportunity and against the background of the other allegations that might be because of the Claimant's race.
- e. Regarding the comments made by JmC and LE both of those as we have set out are overtly because of the Claimant's nationality.
- f. Similarly, asserting someone will play the race card is inherently likely to undermine those with a particular protected characteristic i.e the Claimant's race.

33. We do find that the facts substantiate each other and taken together and separately the burden of proof has shifted on each of the allegations. We are not asked to reconsider the decision in respect of our findings on the Respondent's explanation and our conclusion remains that the explanation did not satisfy us that the Claimant's nationality played no part whatsoever in their treatment of him.

34. Mr Lewis was not relied upon as a statutory comparator. He formed part of the surrounding evidential picture. The facts above were sufficient without reliance upon his race as white to justify shifting the burden of proof.

35. Accordingly the factual correction concerning Mr Lewis does not affect our conclusions on liability.

Conclusion on Reconsideration

36. We accept that the judgment contained a factual error insofar as the Tribunal referred to Mr Lewis as white British.
37. We have admitted and considered fresh evidence concerning that issue.
38. Having reconsidered the matter in full we find that Mr Lewis is black British, however, that factual correction does not undermine our original decision or reasons.
39. The Claimant's case was principally concerned with treatment said to be because of his Egyptian nationality consequently our findings on liability remain unchanged.
40. We are satisfied that the burden of proof shifted in any event and that the Respondent's explanations still fail for the reasons set out in our original decision.
41. Accordingly, it is not necessary in the interests of justice to vary or revoke the judgment.
42. The Judgment is therefore confirmed.

Stay of Remedy Pending Appeal

43. We were invited to stay any potential remedy hearing if we did not revoke our decision considering the appeal. We have had regard to the overriding objective and **Towry Law Plc v Crossfield EAT 833/93**. We have considered the submissions made by the Respondent in respect of the Claimant's schedule of loss and the impact he claims the dismissal has had on his mental health and ability to obtain work. The Claimant has been a user of cannabis for many years and his poor mental health has not arisen as a consequence (or only as a consequence) of his employment at the Respondent. Therefore, the Respondent would want to explore that evidentially to challenge the causal link.
44. The impact of that on remedy is increased costs and the need for further medical evidence. The other issue is the possibility that the appeal will be successful on part but not all the judgment. For example, the finding of discrimination related to the acts of JMc and LE may survive, but that could potentially limit remedy. Therefore, there is a risk that any remedy hearing would be affected by a judgment of the EAT.
45. The other side of that argument is the significant delay, any appeal may not be concluded until 2028. Mr Askar is in the process of returning to Egypt, his wife and daughter having already relocated. He would like to be able to get on with his life and does not want to have to wait. Further, the delay in determining quantum in and of itself has a detrimental effect on him. He has indicated that he would agree to disclosure of his medical records in the UK, it is more complicated with his medical records in Egypt but he can try and obtain them (they would need translating which he cannot afford) and he would take part in a medical assessment of him, although again he cannot contribute financially to that.
46. On balance we concluded that the remedy hearing would be stayed until

the Respondent has had the opportunity to consider this decision, and until the appeal has been sifted. The Respondent shall write to the Tribunal upon the appeal being sifted, if still pursued. At that time the Respondent shall make representations as to whether it seeks a continued stay, and alternatively what directions it seeks on (a) medical disclosure and (b) expert evidence in respect of the Claimant's mental health.

Date 10 July 2026

Employment Judge Mellor

JUDGMENT SENT TO THE PARTIES
ON 27 August 2026

.....
FOR THE TRIBUNAL OFFICE

Notes

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

Public access to employment tribunal decisions

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

Recording and Transcription

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

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