



EMPLOYMENT TRIBUNALS

Claimants: Mr M Kornacki

Respondent: Fowler Welch Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Southampton **On:** 26-29 May 2026

Before: Employment Judge Self

Appearances

For the Claimant: Mr A Fil – Lay Representative
Ms M Penny - Interpreter

For the Respondent: Mr G Graham - Counsel

JUDGMENT

1. The Claims of Direct Race Discrimination and Race Harassment are dismissed upon withdrawal.
2. The Claim of unfair constructive dismissal is not well-founded and is dismissed.

WRITTEN REASONS

(As requested by the Claimant)

1. By a Claim Form lodged on 4 November 2023 the Claimant sought compensation for what he contended was his unfair constructive dismissal and acts of race discrimination which are characterised as being either direct race discrimination or racial harassment. The Claimant is of Polish nationality. During the course of the hearing the Claimant through his

representative withdrew the race discrimination allegations which will be dismissed upon withdrawal. I will make further observations on that at a later point in these Reasons.

2. The factual basis for this Claim is straightforward. The Claimant was an LGV driver. He was involved in a road traffic accident where it is accepted he struck a pedestrian. The Respondent made various enquiries and that culminated in a disciplinary hearing. The Claimant raised a grievance about how he was being treated which was considered and rejected. The Claimant resigned and made the claims outlined above.
3. It is remarkable that this case has taken two and a half years to come to a final hearing, that there are over 150 entries on the Judicial electronic file and that, no less than, three Case Management Hearings were required to bring it to this final hearing. Whilst it is accepted that at least some of the delay is attributable to the delays in listing hearings, a perusal of the file discloses that proportionality does not seem to have featured when considering the many applications and interventions required of the Tribunal.
4. There was a 383-page Bundle plus the Claimant's supplemental bundle and I considered such documents as I was taken to by the parties. There was a witness statement from the Claimant and his wife supporting the Claim and the Respondent had statements from called Messrs Doncaster, Whitmore, Knowles and Miles in support of their case. Mr Knowles did not attend to be cross examined and so limited weight can be given to his statement but all other witnesses were made available for cross examination. Both parties made closing submissions which I have taken into account.

The Facts

5. The Claimant was employed by the Respondent as an LGV driver between 27 May 2020 and 27 September 2023. As at the date of the material accident the Claimant had a full valid licence with no points or endorsements thereon and from the pre-event summary of the Investigation Report, the Claimant appears to have had a driving record with the Respondent which, whilst not absolutely spotless, was clearly one that would not cause any undue concern.
6. On the day in question the Claimant started work at 1900 and drove to Evesham in the Midlands where he arrived at 0100 on 11 June 2023. The lorry was loaded and the Claimant took some refreshment and rest. The Claimant left Evesham at just after 0300 and was driving back to Southampton to make a supermarket delivery. The accident itself is captured on dashcam footage and involved the Claimant striking a glancing blow on a

pedestrian who was walking down a major A road with her back to the traffic flow. The Claimant stopped further down the road and returned to the accident. The emergency services were called and the Claimant provided details to the police. The Claimant contacted the depot and was provided with transport to get him back to Hilsea.

7. Upon the Claimant's return to his depot, he was briefly questioned by the Transport Manager Mr Doncaster who states in his witness statement that the purpose was **"to check the Claimant's welfare and to collect an account of what had happened that day"**. Mr Doncaster's oral evidence was that when he greeted the Claimant, and before the actual meeting, he enquired whether the Claimant would be alright to discuss the incident and the Claimant said that he was.
8. One of the complaints that the Claimant raised was that there was no interpreter at the meeting. Mr Doncaster explained that he regularly communicated with the Claimant as part of the job and he did not consider that there was any need for an interpreter as the Claimant's English was perfectly adequate. The Claimant himself indicated that his English was good enough to get by day to day and if he did not specifically understand an instruction he would ask.
9. There are handwritten notes of the meeting and the salient points are as follows
 - a. The first question is asking how the Claimant was and the answer was that he was **"upset and worried"**.
 - b. The Claimant is also asked in the course of the meeting if there is anything that the Respondent could do for him and the answer is in the negative, and an offer to give the Claimant a lift home was declined.
 - c. The Claimant was asked to explain in his own words what had happened and whether he knew the extent of the injuries sustained in the accident.
 - d. The Claimant was asked if he had been charged or cautioned by the police and he stated that he was questioned roadside and that the police had taken his mobile phone and Digi card. The Claimant provided the police incident number and details of the police contacts involved.
 - e. The Claimant was asked to attend for a further interview at 10 am two days later and he agreed he would.
10. The meeting is written up on a formal form headed Investigation Meeting Notes – Employee Form (IMN1). There is a typed script at the start of the notes which is meant to detail the allegations and explain the possible

outcomes. Mr Doncaster explained that he was not due to work that day but attended work to see the Claimant because of the seriousness of the accident, which he asserted was the most serious that he knew of over the time he had been manager (some ten years). He stated that although he had used the “formal” investigation form he did not read out the script at the start of it which sets out the allegation and then indicates what possible outcomes there may be.

11. The notes are not signed off but the Claimant was unable to provide any basis for considering that the notes were anything other than a genuine record of the salient points of the meeting. Mr Doncaster was not challenged about the veracity of the notes and the Tribunal accepts that they are an accurate summary of what actually took place.
12. There is nothing within the notes that would suggest that the Claimant had any difficulties understanding the questions he was being asked and nor is there anything that suggests that because he had been working for a long period and/or that he had been subjected to a shock that his answers were incorrect or vague. I am satisfied that the Claimant was asked whether he was able to answer questions and he agreed he would and that the answers given were accurate and consistent with later accounts. I can fully understand why the Respondent would want to have a full debrief from the driver at the earliest opportunity and why Mr Doncaster was prepared to come in on a day where he was not working to do so. I have received no evidence to suggest that the Claimant was singled out for special treatment for any personal reasons. It was the incident that was important.
13. On 13 June 2023 there was a meeting between the Claimant and Mr Whitmore, the Respondent's Driver Development Manager. A note taker was in attendance and the Claimant signed the notes off. The key points of the meeting were:
 - a. The Claimant was asked a series of short questions about the lead up to the accident and he gave short and succinct answers to them.
 - b. The Claimant gave fuller answers to describe what had happened and what he had done post-accident (197)
 - c. The Claimant was asked whether he used any **“device or any other instruments”** and the Claimant indicated he did not remember. He was also asked about the internal light being on just before the accident.
 - d. There was then a break at 1054. Just before that break the Claimant asked if he would be shown the video from the lorry and Mr Whitmore's reply was **“If we don't need to go any further then no”**. (199)

- e. The hearing recommenced at 1111. At one point Mr Whitmore states ***“Would you expect a pedestrian on that road at that time of the morning? Looking at footage, they were in same line of vision as white line. You didn't have a long time to see her. Your point of possible perception and actual perception wasn't much”***.
 - f. There was a discussion as to whether the Claimant should have had a full beam on or not.
 - g. Mr Whitmore raises the point that at 0312 on the video the Claimant can be seen to be holding something in his hand and then shows the Claimant a specific point at 3.12.44 and comments that at 0313 the Claimant placed the device on the dashboard and at 3.13.02 the lights are turned off and the collision took place at 3.13.09.
 - h. The Claimant is specifically asked whether he accepted using a device before the incident and the Claimant stated that he did not agree.
 - i. The Claimant is asked at the end of the meeting whether he is aware of the law re driving with handheld devices and the Claimant replies that you should not use anything in hand when driving and that he knew that could be an offence.
 - j. The notes are signed by the Claimant.
14. Following that meeting the Claimant was suspended on basic pay and it was described as a neutral act not a disciplinary penalty and would remain in place until the investigation into the allegation of ***“gross negligence or incompetence which may have caused unacceptable loss, damage or injury”*** (204). That is a direct quote from the disciplinary procedure wherein there are some examples of acts which might constitute gross misconduct.
15. The letter is unsigned but has Mr Doncaster's name at the bottom. Whilst he issued it, I am satisfied that it was a decision taken between him and Mr Whitmore. The letter was produced promptly at the end of the meeting and I am satisfied that that was likely to be on account of the majority of the letter being a template. The Claimant was told that the allegation was such that he could be dismissed, and the letter is very typical of the type used by many organisations.
16. On 19 June 2023 the Claimant was invited to a disciplinary hearing to be held on 22 June at Hilsea before Mr Miles, the Operations Manager. The specific allegation levelled was that the Claimant ***“collided with a pedestrian whilst distracted with a handheld device”*** which was said to amount to the potential act of gross misconduct (gross negligence or incompetence) that had been mentioned in the suspension letter. The rest of the letter explains the Claimant's right to be accompanied and the consequences if he failed to attend.

17. The Respondent purported to attach the Respondent's Disciplinary Policy and procedure, the investigation report and the previous notes of interview.
18. The Investigation Report is relatively short but is detailed. There was a substantial number of Exhibits and it is common ground that not all of the Exhibits were sent to the Claimant prior to his disciplinary meeting. Many of these are background matters such as induction, policies, licences, service history of the vehicle etc. Mr Miles explained that as many of the documents were not going to be relevant he deliberately decided not to forward them. The salient matters in the report are as follows:
 - a. At 216 there is a chronology of events leading up to the accident.
 - b. At 217 there is a summary of Mr Whitmore's investigation meeting
 - c. The conclusions were set out at 218-219. He noted that had full beam been in use then the point of perception, i.e. when the Claimant could have been seen the pedestrian, would have been earlier. It was accepted that where the pedestrian was walking (on white line) and the clothing worn meant that visibility was more difficult and Mr Whitmore also took into account the type of road and the time of the incident which meant that a pedestrian would be unlikely at that time and place which would have affected adversely the Claimant's anticipation of the event.
 - d. In addition, Mr Whitmore suggests that matters which had taken place just before the accident which included holding some form of electronic device and switching of the light 5.5 second before impact **could** have contributed to the anticipation time.
 - e. The police had seen the footage (219).
 - f. The conclusion was that a disciplinary hearing was merited.
19. Prior to the disciplinary meeting the Claimant requested an independent interpreter and the Claimant in response to that request provided an employee who spoke Polish to assist. He also requested that his wife attend with him and that was refused as she was neither a Trade Union representative nor a work colleague as required by policy, and indeed statute. The Claimant recognised in evidence that whilst there was no obligation to allow his wife to attend but still felt that they should have done so in the circumstances.
20. I have seen two sets of notes of the meeting. The first is the Respondent's notes and the second are the covertly recorded notes of the Claimant. When considering the notes I will bear in mind that the Claimant knew that the hearing was being recorded and others within the meeting did not. The Respondent's notes appear to be a reasonable summary of that which is in the full transcript, so far as is material.

21. From the Respondent's notes:

- a. The Claimant, when asked, denied that he had been distracted
- b. The Claimant denied that he had swerved to avoid a kerb
- c. The Claimant stated he could not remember what device he was holding or indeed that he had even held a device, and that he certainly did not have anything in his hand at point of impact.
- d. At that point the Claimant handed over a statement that he accepted he had been assisted in drafting by Mr Fil, his representative.
- e. After reading it Mr Miles immediately called a cessation to the meeting so that further evidence could be shown including the videos. Whilst the Claimant had seen the video in Mr Whitmore's meeting, he had not been given them.

22. The Claimant's statement can be summarised as follows:

- a. The Respondent was not supporting the Claimant but was causing him stress by the process.
- b. The Claimant had not seen all the exhibits and also had not been privy to the full video footage.
- c. The internal process should not have started prior to the conclusion of police enquiries.
- d. The Claimant did not deny holding something, he could not recall whether he had and he was suffering from shock and trauma.
- e. The issue of high beam was raised and it was pointed out that to use or not use was a discretion for the driver.
- f. He repeated the points made by Mr Wilmore, re the condition of the road and time etc. as points in his favour.
- g. The Claimant asserted that taking into account all the circumstances there was no opportunity to avoid the collision.
- h. The Claimant stated that he had not had sufficient time to prepare for the hearing and would not be saying anything else until police involvement had concluded. (339-340)

23. Having considered the Claimant's response to the allegations I am not sure what more could have been said on his behalf. With Mr Fil's assistance the Claimant had approached the allegations head on and had made a statement which addresses the issues that would need to be determined eloquently and fully (if a little repetitively).

24. The adjourned meeting was due to be heard on 26 June but was postponed again until 29 June. The videos were delivered to the Claimant to watch and it seems that some of the exhibits were provided. On 27 June the Claimant wrote to Mr Miles to say that he still had not received all of the exhibits and

he sought a further postponement. On 28 June the Claimant was signed off work for Anxiety and at no point thereafter was the Claimant deemed fit to work. That sick note was sent on 28 June to Mr Miles by the Claimant's wife and Mr Miles replied on 28 June signposting the Claimant towards the Employee Assistance programme.

25. On the same day the Claimant was informed by the police via his solicitor that a decision had been made to take no further action against the Claimant at that point. It said that the police's enquiries showed that ***"The manner of driving appeared to be within what was expected of a careful and competent driver message and that he had insufficient time to avoid a collision."*** The Claimant's wife sent that to Mr Miles on 11 July 2023.
26. On 13 August 2023 the Claimant submitted a formal grievance to the Respondent's head office in Lincolnshire. It appears to have been by letter and the Respondent's letter in Response states that it was received on 17 August by them. Within the Claimant makes reference to taking claims to an Employment Tribunal and raises various complaints. The grievance is ten pages long and is broken up into various sections and at paragraph 9 he provides a summary of the heads of his grievance. Mr Fil assisted with the drafting of it and it seems likely that he did the bulk, if not all, of it.
27. On 31 August 2023 Mr Knowles, the Head of Operations writes to the Claimant to invite the Claimant to attend a meeting on 6 September after the Claimant had agreed that he could meet that week ***"during school hours"***. HR would attend and an interpreter ***"independent of the Hilsea depot"*** would also be in attendance. The Claimant's request to be accompanied by his wife was refused on the basis that it was outside of the grievance policy. The Claimant was told that he was not permitted to record the grievance hearing but did so anyway. A transcript is within the bundle and the meeting went on for an hour and 21 minutes. The Claimant asserts that he was visibly struggling in the meeting and that he was not offered a break.
28. During the grievance the Claimant was asked via the interpreter whether the summary included what he wished to discuss and at 1037 the Claimant states that it was. The Claimant explained why he considered the investigation was conducted poorly and that he wished to say that a different nationality would have been treated differently. Mr Knowles sought to probe to see if there is any other conduct during the Claimant's employment with the Respondent from which race discrimination could be inferred but the Claimant does not provide an answer beyond the poor nature of the investigation and the fact that one was carried out so quickly. Pausing there the Claimant has been asked regularly throughout these proceedings why he states that the conduct alleged was race related and has failed throughout to

provide any form of answer as to why it was. The Tribunal would have had no hesitation in finding that the Claimant had failed to shift the burden of proof in any of his race claims had he not withdrawn them.

29. The Claimant complained that he was not specifically told meetings were “investigation meetings” and that within them he felt that he was being blamed for the collision and he raised the complaint that Mr Whitmore had said that the police had better investigators than the Respondent did which he found threatening. At this hearing that allegation was not put to Mr Whitmore. In essence the Claimant indicated that he considered that Mr Whitmore was simply trying to find a reason to find the Claimant guilty of something serious.
30. The grievance policy states that after a grievance has been submitted then once it has had a reasonable chance to consider its Response (normally 5 working days) it would then hold a hearing and seek to provide an answer within 5 working days. If the grievance was received on 17 August then the first 5 working days would expire on 24 August and from a hearing that took place on 6 September a response should have been given by 13 September. Neither time limit was kept to by the Respondent although by using words such as “normally” and “will do its utmost” it is clear that these are aspirational as opposed to absolute. HR did send an email on 14 September explaining that there would be a short delay due to a colleague’s annual leave which had delayed concluding the grievance.
31. Mr Knowles indicated that he did speak with individuals including Mr Wilmore and Mr Doncaster after the meeting. That was corroborated by both of them. There are no notes of those conversations which is unfortunate. I accept however that conversations were had.
32. On 21 September the Claimant was sent the outcome to the grievance which is set out over four pages. Mr Knowles rejected the allegation of discrimination, primarily because the Claimant himself did not provide any real basis for such a finding. That position was replicated at this hearing. So far as the harassment was concerned Mr Knowles formed the view that the questions asked of the Claimant were perfectly reasonable ones. Mr Knowles formed the view that to that point the disciplinary procedure had been followed and rolled a number of other allegations into that finding. The Claimant was reminded of his right to go to Stage 2 of the grievance procedure.
33. On 22 September the Claimant’s wife wrote back to HR to say that the outcome to the grievance had not been accepted and that the appeal would be sent over on 25 September (269). Later that same morning she asked for

the “**outcome of the gross misconduct procedure as well**” (271) to which HR promptly replied that there was no outcome to give on account of the previous hearing having been adjourned and the Claimant’s sickness since that time.

34. On 25 September the Claimant via his wife complained that he had not asked for the gross misconduct to be held up and so he wanted an outcome. The Claimant had asked to see the videos, and on that basis the hearing was stopped, and then he went sick. The Claimant also indicated that he had lost faith in the Respondent due to the grievance meeting and so would not be appealing.
35. On 27 September 2023 the Claimant sent in his letter of resignation due to “**Bullying And harassment in the workplace, allegations of poor performance or misconduct which are unfounded, Being subjected to unreasonable or unfair treatment, discrimination, loss of trust, breach of contract, unfair suspension, failure to follow ACAS Code of Practice**”. Other parts of the letter mirror aspects of the Issues that have been identified in this case and the Claimant specifically asserted constructive dismissal.
36. On 2 October the Claimant was asked to reconsider his position and proceed with stage 2 of the grievance process but when there was no response by 10 October the Respondent wrote to say that the resignation was accepted.

Unfair Constructive Dismissal

37. The statutory basis for constructive dismissal is set out at section 95 (1) (c) of the ERA 1996 and that section states that an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct.
38. It follows that the test for constructive dismissal is whether the employer’s actions or conduct amounts to a repudiatory breach of the contract of employment (**Western Excavating (ECC) Limited v Sharp (1978) 1 QB 761**).
39. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee (**Malik v BCCI SA (1998) AC 20**).

40. Any breach of the implied term of trust and confidence would amount to a repudiation of the contract of employment and the test of whether or not there has been a breach of the implied term is objective (Malik at 35C). There is no need to demonstrate intention to breach the contract. Intent is irrelevant.

41. A relatively minor act may be sufficient to entitle the employee to resign and leave the employment if it is the last straw in a series of incidents. The particular incident which finally causes the resignation may in itself be insufficient to justify that action, but that act needs to be viewed against a background of such incidents that it may be considered sufficient to warrant treating the resignation as a constructive dismissal. It is the last straw that causes the employee to terminate a deteriorating or deteriorated relationship.

42. It is clear that the repudiatory conduct may consist of a series of acts or incidents, some of which may be more trivial, which cumulatively amounts to a repudiatory breach of the implied term of trust and confidence. The question to be asked is whether the cumulative series of acts alleged, taken together, amount to a repudiatory breach of the implied term. Although the final straw may be relatively insignificant, it must not be entirely trivial. It must contribute something to the preceding acts.

43. The paragraphs prior to his one within this section are a summary of Lord Dyson's Judgment in **London Borough of Waltham Forest v Omilaju (2005) ICR 481**. In **Kaur v Leeds Teaching Hospitals NHS Trust (2018) EWCA Civ 978** it was identified that normally it will be sufficient to answer the following questions to ask the following questions to establish whether an employee has been constructively dismissed:

- 43.1 What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?
- 43.2 Has he or she affirmed the contract since that date?
- 43.3 If not was that act or omission in itself a repudiatory breach of contract?
- 43.4 If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?
- 43.5 Did the employee respond to that breach?

43. The Issues in this Claim as define at the Case Management Hearing. For consistency purposes the numbering has been kept the same.

2.1 The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the implied term of the contract relating to mutual trust and confidence. The alleged breaches were as follows:

2.1.1 Questioning the Claimant immediately upon his return after the accident without regard for any trauma / effect on the Claimant of the accident / lack of an interpreter

2.1.2 Requesting the Claimant to attend an investigation meeting about the accident on 13 June 2023 without regard to his mental condition/the effect on the Claimant of the accident / lack of an interpreter

2.1.3 Failing to inform the Claimant before the meeting that it was an investigation meeting nor the reason for it or possible outcome.

2.1.4 Jim Whitmore acted aggressively / in a hostile manner to the Claimant in that meeting.

2.1.5 Suspending the Claimant on 13 June 2023.

2.1.6 Inviting the Claimant for a disciplinary meeting on 19 June 2023 without documentation.

2.1.7 Failing to provide all the documents that the Respondent asserted were relevant for the hearing / used in the investigation report (1 out of 25 supplied).

2.1.8 Failing to provide all the necessary documents to the Claimant in good time or at all for the disciplinary meeting.

2.1.9 Reject all points of grievance without a fair investigation.

2.1.10 Maintaining the allegation against the Claimant despite the Police report saying NFA.

2.1.11 Rejecting the Claimant's request to be accompanied by his wife on disciplinary and grievance meetings.

2.1.12 Lack of empathy by the chairman at the grievance meeting or without care for the Claimant's mental health (claimed as a breach of contract only).

2.1.13 Unreasonable delay of grievance process.

(The last of those breaches was said to have been the 'last straw' in a series of breaches, as the concept is recognised in law).

Conclusions of Constructive Dismissal Claim

44. I start with some general points. Despite the fact that there was a need for a substantial amount of assistance from our excellent interpreter the hearing ran relatively smoothly with both parties giving clear evidence. It is fair to say that the Claimant clearly found the process difficult and he was either given breaks or offered breaks to assist him when giving his evidence. The Tribunal is used to individuals giving evidence under stress and do make

allowances for that. I agree with the Claimant's representative that the contemporaneous documents etc. are a valuable resource in this case.

45. The Respondents were challenged on many aspects of their evidence by Mr Fil, but as often happens the minutiae was dwelt upon at the expense, sometimes, of issues that were perhaps more pertinent. Whilst the race claims were live Mr Fil shied away from asking any questions about either conscious or unconscious racial motives and, indeed, failed to even put the allegations of race discrimination to the witness. When this was picked up at the end of Mr Doncaster's cross examination, Mr Fil and the Claimant decided that they would not pursue the race Claim.
46. Ultimately that is their choice, but I do find it highly unfortunate that after making what are career threatening allegations against managers of the Respondent which has hung over them for 2.5 years, the Claimant did not provide them with an opportunity in open court to answer the allegations against them. Sadly, it is not a rare occurrence. I make it clear that so far as all witnesses in this case are concerned for the Respondent, namely Mr Doncaster, Mr Whitmore, Mr Miles, and Mr Knowles there is nothing that has been found that would suggest that any of their actions were motivated by race and their reputations remain unblemished in that regard. The Claimant's actions in making such allegations and then not following through has little to commend it.
47. The Claimant's evidence was clear enough. The Tribunal decided at an early time that the Claimant required an interpreter. That is often the case for those who have a different first language to English even if they speak and understand very well. It is wise in a courtroom setting to ensure that specific nuances / legal terms are fully understood. The Claimant broke into English on one occasion and his English appeared to be perfectly serviceable. Mr Doncaster who worked with the Claimant indicated that he had had no specific difficulties communicating with the Claimant whilst working with him and the Claimant in his oral evidence explained that he had no problem day to day in the workplace and when there was something he did not fully understand he simply asked questions to enhance his understanding. I will take these findings re the Claimant's capacity to communicate into account below.
48. The context of what took place is important. It arose because of a road traffic accident involving the Claimant, who was part of a workforce which included several of his countrymen and women and a wide variety of non-British employees. The Claimant provided no reason why the Respondent should have had any hostility towards him, indeed all the evidence is that the Claimant had been a perfectly good employee for all of his employment

causing the Respondent a minimum of fuss. The Claimant could not provide, despite being asked during the proceedings, any evidence from which the Tribunal could infer that race played a part and a single comment about the **“Pole from the accident”**, only emerged well after the Claim had been lodged and was never attributed to any specific person including those who made the decisions in this case. Further I take judicial notice of the fact that there are often reports highlighting a shortage of those with the Claimant’s skills.

49. The matters considered in this claim arise directly from the Claimant himself and the accident he was in. It is accepted that the incident was a very serious one which could have had very serious ramifications for the Claimant and the Respondent. The seriousness was expressed by the Claimant himself when he told Mr Doncaster that he was **“worried about prison, job etc.”** (172) Even at the outset the Claimant showed insight into the potential outcomes via both the criminal process and the internal process. It must have been, and I find that it was, well known to the Claimant that there would need to be an investigatory process right from the start. I will now deal with each of the thirteen matters specifically identified by the Claimant as either being a repudiatory breach of contract or that contributed to a repudiatory breach of contract.
50. **2.1.1** – It is correct that Mr Doncaster did question the Claimant immediately upon his return after the accident. Indeed, he had interrupted a day off and also had to wait some time at the office in order to do so. I find that was a sensible and pragmatic thing to do and he did so because he wanted to understand first-hand what had happened so that he was in a position to advise others in the company and to undertake whatever action was required and because he wanted to check upon the welfare of his driver and colleague.
51. I am satisfied on the evidence that the notes of the meeting are accurate and that there was no intention on the part of Mr Doncaster that this would be part of a disciplinary proceeding. The paperwork was what came to hand and at most it was a pre-investigatory meeting and the Claimant was perfectly aware that enquiries would take place. I am satisfied that the notes are an accurate reflection of the meeting. Whilst it is correct that there was no interpreter I am satisfied that there was no need for one. The Claimant was not being asked anything complex simply “what happened to you last night whilst driving”. Mr Doncaster was entitled to rely upon his past experience of the Claimant’s language skills in proceeding with the interview. Equally the Claimant could have declined the interview and asked for an interpreter but did not. I am satisfied that even though now the Claimant insists it was required that was not his view at the time. I am satisfied that the Claimant, as

he did day to day, could have asked for an explanation if required. In any event the answers are clear, consistent with the Claimant's declared position, and do not prejudice the Claimant in any way.

52. I am satisfied that the Claimant was asked if he was Ok to undertake the meeting and he said yes. I am also satisfied that if the Claimant did not feel well enough to have the conversation he could and would have done. There is no medical evidence that supports the fact that the Claimant's mental health has been affected by the accident as opposed to the process that followed. The Claimant states that he should not have been suspended and was fit to drive. I find Mr Doncaster did have regard for the Claimant's welfare, asked how he was, and whether there was anything that the company could do for the Claimant and offered the Claimant a lift home.

53. So far as the matters raised at 2.1.1 I can see no criticism of Mr Doncaster's action being made out.

54. **2.1.2** – The findings above apply for the meeting with Mr Wilmore too. The notes of the meeting which the Claimant signed off and which I accept, whilst not verbatim, are an accurate summary. If the Claimant was not fit to attend he could have said, if the Claimant was in need of an interpreter he could have asked. That is not to say that the meeting would not have still gone on. As with the first there is a definite feel of the potential problems being picked out and identified, probably by Mr Fil, and then being adopted by the Claimant, as opposed to actually being a problem at the material time.

55. **2.1.3** – On balance I am not persuaded that Mr Whitmore did read out the preamble at the start of the meeting notes (195), but the Claimant was well aware in my view that matters were being investigated and he had already indicated that he was concerned he might lose his job. I am quite satisfied that the interview would have proceeded in exactly the way that it did even had the script at the start been read and the Claimant was well aware that one of the possible outcomes could be his dismissal or lesser disciplinary punishment. In terms of the specific allegation, I am satisfied that Mr Whitmore did fail to be specific at the start of the meeting but the Claimant in any event knew full well that it was an investigation meeting and what the outcomes might be as he had already expressed concern about them.

56. **2.1.4** – The next allegation is whether or not Mr Whitmore was aggressive and hostile in the meeting. Mr Whitmore was clear that he was not and he was simply doing his job by trying to get to the bottom of what had taken place so that he could report back to the necessary bodies. Mr Whitmore did not know the Claimant and there has been no reason offered by the Claimant as to why he would be hostile. The Claimant at no time has been able to

explain what it was about the behaviour, tone and comments that might have given rise to the Claimant's perception. The Claimant's case here was never made any more specific.

57. I accept that tone etc cannot be judged in a transcript but save for the comment asking the Claimant whether he was always late, which appears to be unnecessary (195), the questions are short and pertinent to the issues in hand. There is a logical structure which takes the Claimant chronologically through the incident asking open questions to allow the Claimant to expand as he wishes. The Claimant is given an opportunity to go through things in his own words and he does that. There is no indication that the process would have been improved with an interpreter. The Claimant provides answers which he has been consistent with since the accident.
58. Once that basic information is gathered Mr Whitmore probes issues such as whether or not there was a high beam used and checks understanding about that and makes enquiries in relation to hand-held devices. Objectively the questions are all the type of questions one might ask if one is trying to get to the bottom of a road traffic accident. There are a couple of occasions where the Claimant is defensive. That is not a criticism, as I can understand why the Claimant might feel that way because he knows what might be at stake.
59. At a later point in the interview and having gathered the Claimant's original position the Claimant is shown the video. I consider that to do it in this order was a perfectly acceptable technique to get the basic story so that honesty can be gauged. There are times in the meeting where it appears that Mr Whitmore is trying to help the Claimant out i.e., at the top of (200) where he explains why in the circumstances of time and place it could be that the Claimant had little time to see the pedestrian.
60. The Investigation Report is a thorough document which is set out in an orderly fashion and the conclusions are certainly ones that an objective observer might conclude as being reasonable. Taking into account the points that the Claimant particularly takes issue with, it is surely beyond doubt that on a long straight road, as can be seen in the video, a full beam was likely to have picked up the pedestrian earlier. There is no criticism necessarily that he did not have it on but the facts are facts. Mr Whitmore fairly sets out all the reasons why the factual situation would have meant that the pedestrian appearing would have been unexpected and so have affected anticipation / reaction time. Equally it was entirely fair and proper for other possible distractions to be raised such as what was being held and the light being turned off shortly before the accident. It seems to me that there was enough to conclude that a further disciplinary review be conducted. Indeed, on the facts as found, it was inevitable.

61. There is nothing from the report that persuades me that Mr Whitmore held a hostile animus toward the Claimant, taking into account the notes of the meeting and the fact that no reason for hostility has been given. I reject the aggressive and/or hostile manner alleged.
62. **2.1.5** – The Claimant was suspended. In my view the Respondent should look at their suspension policy as the contract is oddly worded, as is the disciplinary policy, and my impression was that suspension is routinely imposed without too much thought going into it. If the Claimant came back to work he would be driving a motor vehicle. In the investigation there was some evidence to support that one of the causal factors may have been being distracted due to holding a handheld device shortly before the accident and not fully focussing. In addition, the Claimant was claiming not to know what had been in his hand, which the Respondent was quite entitled to be sceptical about. In all the circumstances there was evidence which if found could lead to a finding of negligence and accordingly suspending the Claimant until any doubts in him could be assuaged seems perfectly reasonable.
63. **2.1.6, 2.1.7 and 2.1.8** – The Claimant was invited to the disciplinary meeting without all of the documentation listed in the exhibits. I am not satisfied that the Claimant was sent any of the exhibits beforehand. It should be in the Respondent's gift to say precisely what was sent, but that audit trail is insufficient. The Claimant did have however the principal documents which were the meeting notes with Mr Whitmore and his investigation report. The report is cross referred and so each exhibit's relevance is shown and there are very few materially relevant ones in the conclusion section or indeed the investigation part.
64. Mr Miles explained that he chose what to pass on as he could see that many of the exhibits were background documents that really did not have any bearing upon the key issues which was the way the Claimant drove for a short period on the evening in question. Whilst I agree with Mr Miles assessment and whilst I accept that he did not send all of the documents with the best of motives, ultimately the Claimant was entitled to see all that Mr Whitmore had seen including the relevant video footage.
65. I accept that was a failing but when it was pointed out the meeting was immediately postponed for that failing to be remedied and as a result the Claimant suffered no specific prejudice at that meeting, save that the process was extended to a further date.

66.2.1.9 - The Claimant did raise a grievance and the totality of it was really about the handling of the disciplinary matters which was specifically asserted to be discriminatory and involved matters that directly went to the gathering of evidence in respect thereof and the steps taken thus far in the disciplinary process. Why they could not have been dealt with in the disciplinary process is a mystery. There does not seem to have been any reason for a grievance to take place. It is not entirely clear why the grievance route was taken by the Claimant nor why it was allowed to proceed down that route by the Respondent. I do not say that it was wrong to do so on either side, but ultimately it just built in an additional layer of complexity.

67. In any grievance one must consider proportionality. The Claimant was given a full opportunity to state his grievance at the meeting and Mr Knowles was proactive as can be seen in the transcript in trying to drag out concrete examples of the complaints that the Claimant made. Although Mr Knowles did not give evidence we know that he spoke to both Doncaster and Whitmore from their evidence. As a learning point notes should have been kept of those meetings, so that could be more properly evidenced. As against Mr Whitmore the allegation is really no more than that he questioned the Claimant as if he were guilty and from that the Claimant formed the view he was being discriminatory because of his race. The grievance does not actually refer to him being aggressive or hostile in terms. The note taker could have been interviewed but I consider it was reasonable not to do so on the basis of the allegations made at the time.

68. In my view the Claimant is conflating fairness with getting what he wants. A fair process means listening, investigating and reporting. Many of the matters are the same as I have had to consider. Whilst the process was not perfect the issues are in my view relatively minor and the main issue – discrimination – wholly unfounded. The grievance was rejected and I consider that after a fair investigation there were grounds for so doing.

69.2.1.10 – The Claimant asserts that the allegation should have been dropped against the Respondent as soon as the police dropped their investigation and informed that No Further Action should be taken. Of course that is an option that they could have taken, but I am satisfied that they did not have to and that there was perfectly good reason for them not to. The police had seen the information and had taken a view that no prosecution should be pursued. The allegation against the Claimant was whether the Claimant collided with a pedestrian whilst distracted by a handheld device which is different from any specific criminal offence although if those facts were found then it could lead to an allegation of careless driving in the criminal courts. Further the standard of proof is very different i.e., from beyond reasonable doubt to whether it is made out on the balance of probabilities. The Respondent has

an obligation to ensure that their lorries are driven by drivers who are safe and comply with good practice. I can see no reason why they were obligated to stop when the police did and it certainly would not amount to a breach of contract. In fact, it was the responsible and non-lazy thing to do.

70. **2.1.11** – Statute and the internal policy aligned with who could attend the meeting with the Claimant. He accepts that his wife would not have been within the permitted categories. The Claimant's wife indicated at this hearing she was not asked to be there to interpret but to assist. The Respondent could have permitted it but I can see no good reason put forward as to why they should have done so. It is clearly not a breach of contract to comply with one's own policies.
71. **2.1.12** – The Claimant attended the grievance meeting and by so doing impliedly indicated, in the absence of any contrary submission, that he was fit to do so. At that point the Claimant was off sick with anxiety. I acknowledge that in those circumstances it would have been prudent for Mr Knowles to check that the Claimant was fit to continue, but equally if it was an issue the Claimant could quite easily have brought the matter up himself or sought breaks if matters were getting stressful. There is no indication in the transcript of the Claimant being unable to deal with issues as they arose.
72. **2.1.13** – I do not accept that there was an unreasonable delay in the grievance process. Compared with the vast majority of the cases that come before me the grievance was dealt with very swiftly. Whilst I acknowledge that the aspirational time limits were not met that is more a reflection of the grievance procedure being divorced from reality. This was a detailed grievance, made over the school summer holidays when I can take judicial notice that availability of individual is often sub-optimal on account of annual leave. One must not look at matters as if the Claimant's grievance was the only thing going on in the workplace. The grievance had to be fitted in along with other work. It appears from the correspondence that the Claimant had made a request that the hearing should take place during school hours which presupposes that it would be in September. To deal with the grievance in just over one month and to get an outcome out within two weeks of the grievance meeting does not amount objectively to "unreasonable delay". In addition, HR kept the Claimant updated that there would be a short delay to the outcome.
73. So those are my findings on the Claimant's complaints. Where does it take us in respect of a constructive dismissal? Adopting the Kaur test:
- a. What was the most recent act or omission on the part of the employer which the employee says caused or triggered his or her resignation?

The Claimant asserts that it was the unreasonable delay in the grievance process.

- b. Has he or she affirmed the contract since that date?

The Claimant did not affirm his contract after the grievance result was sent to him.

- c. If not was that act or omission in itself a repudiatory breach of contract?

On the findings of fact made above i.e., there was no unreasonable delay, there was no repudiatory breach of contract. Even if one widens out matters to consider all of the grievance complaints as I am satisfied that the investigation was reasonable as was the outcome and taking into account the parts I have expressed as being an issue it does not come close to fulfilling the Malik test.

- d. If not, was it nevertheless a part of a course of conduct which viewed cumulatively amounted to a repudiatory breach of the implied term of trust and confidence?

I have looked at the totality of my conclusions above and in particular where I have indicated the Respondent could have done better, again it does not come close to fulfilling the Malik test.

74. Accordingly, I do not have to consider the last Kaur stage which is whether the employee responds to that breach as I have found no breach.

75. As there has been no breach there has been no dismissal and without a dismissal there can be no unfair dismissal. Accordingly, I do not need to deal with issues of contributory fault which would involve an analysis of whether there was blameworthy and culpable conduct which would necessarily involve me assessing the Claimant's driving. I will refrain, therefore, from expressing any findings on that point. There is also no need for me to reflect upon what would have happened to the disciplinary process had the Claimant not resigned before the end of it. Clearly both of those factors have the capacity to substantially reduce any Order for compensation, had the Claimant persuaded me that he had been unfairly dismissed.

76. The unfair dismissal claim is not well-founded and is dismissed and the race discrimination claims are dismissed upon withdrawal.

REASONS APPROVED BY EMPLOYMENT JUDGE SELF ON 28 August 2026

Sent to the parties on:
28th August 2026

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For the Tribunal Office:
Simon Fraser

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