



EMPLOYMENT TRIBUNALS

Claimant: Mr Antony Morris
Respondent: Zeno Limited
Heard at: Manchester
On: 27-31 July 2026
Before: Employment Judge Liz Ord
Tribunal Member Mr B J McCaughey
Tribunal Member Mrs L A Buxton

Representation:

Claimant: In person
Respondent: Mr L Mordin (counsel)

JUDGMENT

The unanimous decision of the panel is:

1. The claimant was not subjected to direct race discrimination.
2. The claimant was not victimised.
3. There was no unauthorised deduction from the claimant's wages.

REASONS

Oral Judgment

1. An oral judgement was given at the hearing. However, to aid understanding, the panel decided to produce written reasons.

The Complaints and Issues

2. The claimant complains of:
 - (a) Direct race discrimination;
 - (b) Victimisation;

(c) Unauthorised deduction from wages.

3. The issues for the tribunal are set out in the attached Annex. They were finalised at a case management preliminary hearing on 8 August 2024. The list did not record a comparator. However, the claimant confirmed at the final hearing that his comparator is Thomas Coatsworth, a white Support Worker who was working through a probationary period in similar circumstances to the claimant. The claimant is black British.

Evidence

4. The tribunal had before it the following documentary evidence: a documents bundle (384 pages), a few additional letters from the claimant (submitted at the hearing and not objected to); witness statements, cast list, chronology.
5. On behalf of the claimant the tribunal heard evidence on oath from:
 - (a) Antony Morris.
 - (b) Whilst Lorraine Morris (the claimant's wife) produced a witness statement, it dealt largely with the impact of the work situation on the claimant. Accordingly it was agreed that she would only be called to give evidence if the hearing reached the remedy stage.
6. On behalf of the respondent the tribunal heard evidence on oath from:
 - (a) Daudi Mwakimwagile (Service Manager);
 - (b) Paul Smith (Area Manager);
 - (c) James Brown (CQC Registered Manager);
 - (d) Chris Stewart (Head of Human Resources).
7. Number references in brackets [01] are to pages in the documents bundle. Some people have been referred to by their initials only rather than their full names in order to protect their identity.
8. Only findings of fact relevant to the issues, and those necessary for the tribunal to determine, have been referred to in this judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. The tribunal has not referred to every document it read and/or was taken to in the findings below, but that does not mean it was not considered if the tribunal was taken to the document in evidence or as part of a reading list. The tribunal notified the parties at the outset of the hearing that they would only read documents that they were specifically referred to and would only read documents referred to in witness statements insofar as they were identified as being relevant to an issue in the case.

The Law

9. Direct discrimination

Section 13 Equality Act 2010 (EqA) - Direct discrimination

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

There are two parts to consider, namely, whether the employer:

- Treated the person less favourably than it treated others, and
- Treated the person in that way because of a protected characteristic.

Section 23 EqA - comparison by reference to circumstances, provides:

- (1) "On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case."

10. Victimisation

Section 27 EqA – Victimisation

- (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.

11. Burden of Proof for discrimination/victimisation

Section 136 EqA

- (1) This section applies to any proceedings relating to a contravention of the 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.

This is a two stage test. At the first stage, the claimant must prove (on a balance of probabilities) facts from which the tribunal could decide discrimination had taken place (the prima facie case). At the second stage (only engaged if the first stage is passed) the burden shifts to the respondent,

who must prove (on a balance of probabilities) a non-discriminatory reason for the treatment.

12. Unauthorised deduction from wages

Section 13 of the Employment Rights Act 1996 (ERA):

- (1) An employer shall not make a deduction from wages of a worker employed by him unless –
 - (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
 - (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."
- (2) ...
- (3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Case law

13. All case law as raised by the parties was considered.

Findings of Fact

14. The claimant started employment with the respondent as a Support Worker in January 2023 and at all material times was on probation. Thomas Coatsworth had also started work as a Support Worker with the respondent at around this time and was also on probation. The two men often worked together.

Incident on 16 June 2023 and the respondent's response

15. On 16 June 2023 the claimant and Mr Coatsworth were working at the Bucklow site, which was home to Supported Persons. Another Support Worker, TO, was also on duty there, along with Daudi Mwakimwagile, who was the Service Manager at the site.
16. The claimant alleges that Mr Coatsworth performed a racially motivated attack on him on site by punching him in the solar plexus and calling him a "f.....g n....r".
17. On the evening of the 16 June, the claimant sent an email to Matt Bryan (Deputy Registered Manager) setting out his version of events [129-130]. He referred to expressing disappointment when Mr Coatsworth switched over a TV channel and him then confronting the claimant and assaulting him in the kitchen. No mention was made of any racial abuse. The claimant also complained about the way Mr Mwakimwagile handled the situation, and him

asking the claimant to leave the workplace and then reversing this instruction. The claimant asked for a thorough investigation to take place.

18. The claimant wrote again to Mr Bryan on 21 June [132-6] referring to his 16 June email and suggesting that the events amounted to direct race discrimination and victimisation under the Equality Act 2010. He did not mention anything about derogatory racial words being used. He noted that he was due to be in work again on 22 June and he intended to return to his place of work at the Bucklow site.
19. The matter was investigated by the respondent and Mr Brown and Mr Stewart interviewed potential witnesses.
20. Mr Coatsworth gave evidence in an interview statement of 22 June [137-8]. In essence, the most pertinent points he made are as follows:
 - (a) The claimant had a pre-existing grievance towards him because Mr Coatsworth had reported his poor attitude at work. On the 16 June there was nobody in the living room and he switched the TV channel to something more suitable for the Supported Person, BB, who he was looking after. The claimant came in and said "who the f..k do you think you are? Have you got no manners. I was in the middle of watching a film." Mr Coatsworth said he apologised to the claimant and said he could put it back again.
 - (b) Mr Coatsworth did not want a confrontation and walked away. The claimant followed him ranting and raving about how Mr Coatsworth had no manners and should be ashamed of himself. Mr Coatsworth responded by saying they were there to work and not watch films for themselves, and the claimant needed to get a grip of work, just like everybody else.
 - (c) The claimant then spat in Mr Coatsworth's face with force and, as a gut reaction, Mr Coatsworth pushed him away and told him to f..k off. The claimant responded by saying words to the effect "you've just f....g punched me; I'm telling Daudi, you're done mate, you're finished". He was animated and loud and screaming. Mr Coatsworth stayed calm.
 - (d) As a result of the claimant's behaviour, the Supported Person, BB, became heightened and aggressive trying to defend Mr Coatsworth from the claimant. Mr Mwakimwagile and TO had to use a hold on BB. The claimant continued to shout abuse at Mr Coatsworth. Mr Mwakimwagile asked the claimant to go home.
21. TO in his interview statement of 20 June 2023 [131] said he did not witness the incident save for hearing what sounded like heated words being exchanged and the sound of someone spitting, followed by the claimant saying "you pushed me, I am going to report this to Daudi".
22. Mr Mwakimwagile, in his evidence to the Tribunal, said the following:
 - (a) Mr Mwakimwagile was upstairs and heard raised voices downstairs. He went to investigate and was met by the claimant coming up the stairs.

The claimant was angry and, in a raised voice, repeatedly shouted that he had been assaulted by Mr Coatsworth.

- (b) Mr Mwakimwagile said he tried to calm the claimant down as they were in the presence of Supported People. He asked the claimant to stay upstairs and go to the upstairs office, which he initially did.
 - (c) Mr Mwakimwagile went downstairs to find out what was going on. Mr Coatsworth said the accusations were untrue and the claimant had spat in his face. The claimant re-appeared from the top of the stairs and came down shouting verbal abuse. This caused the Supported Person, BB, to become physically aggressive towards him, necessitating the administration of a hold.
 - (d) As the claimant would not calm down Mr Mwakimwagile felt he was in no fit state to remain at work and asked him to go home. The claimant refused and went back upstairs.
 - (e) Mr Mwakimwagile called Mr Bryan, the Deputy Registered Manager, who suggested the claimant could stay at work and give a statement, if he was now separated from Mr Coatsworth and the Supported Person, BB.
 - (f) Mr Mwakimwagile then went upstairs and told the claimant he could stay at the workplace and give his account of what happened, but the claimant said he was leaving anyway.
23. The claimant was interviewed by Mr Brown on 30 June 2023 [141-148] and in essence, he complained that:
- (a) Managers had not followed the “2010 Equality Act at work” and he felt he had been racially abused. He referred to the changing of the TV channel and said Mr Coatsworth had got upset with him. Mr Coatsworth approached the claimant in the kitchen and told him that all the claimant did was watch TV and go on his phone. He then said the claimant had spat in his face and he punched the claimant in the solar plexus.
 - (b) The Supported Person, BB, was present. The claimant denied spitting. The claimant told Mr Brown that Mr Coatsworth should be dismissed. The claimant did not refer to the racially derogatory words he now alleges.
 - (c) The claimant said he complained to Mr Mwakimwagile but Mr Mwakimwagile ignored him and went downstairs to ask the staff if anyone had witnessed anything. He said the Supported Person, BB, was very heightened and was trying to attack him, possibly because Mr Mwakimwagile was talking at the top of his voice.
 - (d) Mr Mwakimwagile told the claimant to go upstairs, but he stayed downstairs. He then told the claimant to go home, but later said he was wrong and should have spoken to him first about the incident.
24. At the end of the interview Mr Stewart explained that there was insufficient evidence to show that Mr Coatsworth had committed gross misconduct and

so they would not sack him. The claimant said he did not want to work with Mr Coatsworth again, but neither did he want to see anyone sacked.

25. Mr Stewart sent an outcome letter to the claimant on 4 July [149-150] recording that the claimant did not want anyone to lose their job, although he did not want to work with Mr Coatsworth again. Mr Stewart indicated that, once the claimant said he was happy with the meeting notes, they could move on and put the situation in the past.
26. The claimant signed the notes on 7 July [141, 143, 145, 147].
27. On 1 August the claimant wrote to Mr Bryan [156-8] repeating his complaints about the 16 June incident and complaining that the respondent had taken no action against Mr Thomas in relation to the physical assault. He said this amounted to direct race discrimination under the Equality Act.
28. The claimant went on to say that, to protect his mental and physical health, he would not be returning to work until the respondent confirmed they would formally investigate his complaints against Mr Coatsworth and confirm that the claimant would not be required to work alongside Mr Coatsworth.
29. On 8 August the claimant wrote to Mr Bryan [161-66] repeating his previous allegations regarding the 16 June incident.
30. The claimant said nothing about any derogatory racial words being used in either letter. In fact the first time the words "f.....g n....r" were alleged was in the claimant's Further Information provided to the Employment Tribunal on 2 July 2024 [41].
31. Following the claimant's complaint, the respondent organised short term shift changes so that he would not have to work with Mr Coatsworth [176 2nd full paragraph].

Extension of probation period

32. Section 5 of the claimant's employment contract reserves the respondent's right to extend the probationary period at their discretion [123].
33. On 8 June Mr Mwakimwagile had a job chat with the claimant about complaints regarding his work ethic [128]. Specifically, it was said that the claimant did not help the team and refused to cook and go to the shop; he was on his phone most of the time. Mr Mwakimwagile told the claimant that he had spoken to him about these things previously and the claimant needed to comply with his duties.
34. On 6 July the claimant met with Mr Mwakimwagile for a supervision meeting [151-55]. It was noted that the claimant had done two medication practicals but had not passed them; he needed to do more practical tests before he could administer medication. The claimant also needed training to do daily log notes. Mr Mwakimwagile raised the issue of the claimant not doing some tasks and wearing earphones when on shift.

35. On 4 August the claimant had his probation review with Mr Bryan [159-60]. Mr Bryan explained that he had read his supervision document and staff file and discussed his performance with Mr Mwakimwagile. He noted that the claimant had now passed his medication competency assessment but that he still required prompting to complete daily logs and fill in handover sheets. He noted the issues over phone and earphone usage, and that Mr Mwakimwagile wanted him to get more involved with cooking and cleaning consistently. For these reasons Mr Bryan was extending the claimant's 6 month probation period for a further 3 months.
36. Mr Coatsworth's probationary period was also extended by 3 months [217].
37. In the claimant's 8 August letter to Mr Bryan [161-66], besides raising the 16 June incident, he also complained about his probation extension, which he said was in response to his race discrimination complaints. Therefore, he said, the extension itself was direct race discrimination and victimisation. The claimant did not accept that the reasons given by the respondent for the extension were true or fair.
38. The claimant complained again about the extended probation (amongst other things – see below) in a letter received by the respondent on 25 August. Mr Stewart replied reminding him that section 5 of his contract provided for an extension, and he reiterated the reasons for it.

Incident on 20 August 2023 and the respondent's response

39. There was an incident at the Bucklow site on 20 August involving a Supported Person and the claimant. The claimant telephoned Paul Smith and reported that the Supported Person had racially abused him. Mr Smith recounted their conversation in an email of 21 August to various members of management and HR [169].
40. The email records the following:
- (a) The claimant reported the Supported Person as having scratched, punched, and kicked him and the claimant put the Supported Person on the floor. Mr Smith asked the claimant 3 times to clarify that he put the Supported Person on the floor, and the claimant replied yes. The claimant said there were no witnesses.
 - (b) Mr Smith told the claimant to go home for his own protection. The claimant refused and said he needed to write the incident report. Mr Smith told him to do that and then go home. The claimant refused and ended the call.
 - (c) Mr Smith called him back. The claimant said Mr Smith was putting words in his mouth and told him he was blocking his phone number. The claimant ended the call.
 - (d) With Mr Bryan's agreement, Mr Smith went to the Bucklow site. He spoke with the claimant, who said he was writing the incident report and would then leave. Mr Smith said the claimant's tone was agitated and he told Mr Smith that his bosses would be hearing from the claimant's people.

- (e) The claimant and Mr Smith left the site building and the claimant approached Mr Smith outside in his car and questioned him. Mr Smith clarified that the claimant was not being suspended and he was just following procedure for the claimant's protection and that of the Supported Person.
41. In evidence, Mr Smith clarified that it was standard company practice for an employee to be sent home in these types of situation.
42. The incident report, completed by the claimant on 20 August [167-8], said that the Supported Person was heightened and racially abused the claimant by calling him names. It stated that the Supported Person was restricted by staff but he threw himself to the floor, which tore the claimant's garments.
43. Members of staff, who witnessed the incident were interviewed.
44. HS in her statement of 21 August [170] said the claimant was provoking the Supported Person by shadow boxing him and the Supported Person was doing the same. The claimant put the Supported Person on the floor.
45. TO in his statement of 23 August [172] said the claimant started to shadow box the Supported Person, punching the air very close to him. The Supported Person responded by kicking the claimant and grabbing his jacket. The claimant then put the Supported Person to the floor.
46. CC in his statement of 21 September [218] said he did not see anything.
47. RK in his statement of 21 September [219] confirmed that the claimant was shadow boxing in front of the Supported Person.
48. On 21 August Mr Bryan telephoned the claimant to request a statement regarding the incident, and messaged him on 22 August asking for it by 5.00pm that day [171]. The claimant did not provide a statement. Mr Bryan chased it up on 23 August and asked the claimant not to come into work the following day so that he could focus on writing the statement instead [173]. The statement was not done and the claimant came into work for his shift on 24 August. Mr Bryan asked the claimant to go home and focus on completing his statement. The claimant went home. He did not produce the statement.
49. Mr Bryan e-mailed the claimant on 25 August [174] reminding him of his previous requests for the statement. He confirmed that the claimant was not suspended from work but that they could not move forward with the investigation until they had his version of events. The claimant was asked not to come into work that weekend so he could use the time to write his statement. He was told he would still be paid his weekly contractual hours.
50. In the letter from the claimant received by the respondent on 25 August (referenced above) the claimant raised the issue of being sent home on 24 August. Mr Stewart replied on 29 August [175-6]. He confirmed that the claimant was not suspended from work on 24 August, and had simply been asked to go home to complete his statement; also he was paid in full. The

statement was still outstanding, so Mr Stewart asked him to complete it. The claimant did not do so.

51. On 1 September Mr Brown emailed the claimant asking for the statement and enquiring whether there was any reason for not providing one [384]. The statement was not forthcoming.
52. On 21 September Mr Brown made another request for the statement [220] explaining that it was required under the respondent's Accident and Incident Reporting Policy and Procedure [297-301]. The claimant did not respond.
53. On 17 October, during the claimant's grievance meeting (see below) the claimant agreed to provide a statement and did so [244-46]. In the statement the claimant said that the Supported Person came over to him and wanted to go out. The Supported Person grabbed the claimant's top and threw himself on the ground, tearing the top in the process.
54. HS, CC and RK were re-interviewed by Mr Bryan on 23 October, following the receipt of the claimant's statement. They re-iterated their accounts [247-9].
55. Mr Brown considered the matter and concluded that there was insufficient evidence to demonstrate that the claimant had abused the Supported Person. He sent the claimant an investigation outcome letter dated 24 October 2023 [250-51]. It concluded that no further action was to be taken, and the claimant was invited to return to work.
56. The letter also said that some of the accounts provided by staff raised questions about the claimant's actions around Supported People that may have contributed to their anxiety, and the claimant had described being in a physical altercation with one of those Supported People. However, Mr Brown was satisfied that the claimant did not intentionally engage in abuse. Nonetheless, he noted that the claimant had not used the correct handling techniques.
57. The claimant challenged the outcome in a letter to Mr Stewart of 27 October [257-63]. He complained that Mr Brown's letter did not address his grievances, it was misleading and untrue, and the findings had subjected him to less favourable treatment on racial grounds. He asked for a full response to his grievances and the concerns raised about the letter.
58. The respondent did not revisit Mr Brown's outcome decision.
59. Following the claimant's clearance of abuse, attempts were made unsuccessfully to get him back to work. Mr Bryan subsequently wrote to him on 30 October sending him the upcoming work rotas and asking him to make contact [264].
60. Shortly thereafter, the claimant was signed off work due to sickness and did not return. He resigned on 18 September 2024 [291-93].

Grievances

61. The claimant submitted a grievance to Mr Stewart on 5 September 2023 [178-182]. It was sub-headed “Grievance 1 - Decision to Extend my Probation on 4 August 2023”; and “Grievance 2 - Decision to send me home on 20 August 2023 and 24 August 2023 and Prevent from returning to work since this date”. Mr Stewart responded with an outcome letter of 12 September 2023, which did not uphold the grievances [183-87].
62. The claimant raised a second grievance on 25 September 2023 [221-29]. It was sub-headed Grievance 3 - the Decision to exclude me from returning to work is a breach of the ZENO limited policy and procedures, and ACAS policy and procedures, and is an act of Direct Discrimination on Racial Grounds and Victimisation under the Equality Act 2010”; Grievance 4 – ZENO Limited, Mr Matt Bryan (Manager), Mr James Stewart (Registered Manager) and Mr Chris Stewart (HR Business Partner) have jointly lied about my position regarding providing a Statement”; Grievance 5 - Failure to follow the correct procedures in handling/investigating my Formal Grievance in accordance with the Guidelines set by ACAS, and is unlawful”.
63. The claimant was invited to a grievance meeting with Mr Stewart on 17 October 2023, at which all 5 points of grievance were thoroughly discussed [233-43]. Mr Stewart sent the claimant a grievance outcome letter dated 25 October 2023 [252-26]. It addressed all 5 points in detail and notified the claimant of his right of appeal.
64. The claimant did not submit an appeal.

Wages

65. Paragraph 17 of the claimant’s employment contract provides that the claimant is entitled to Statutory Sick Pay for any period of absence due to sickness or injury subject to meeting required conditions [125]. There is no entitlement in the contract to contractual sick pay.
66. The claimant did not deal with this claim in his witness statement. When questioned about it in cross examination he said the maths was incorrect but he could not remember the figures exactly.
67. Mr Stewart’s evidence was that the claimant was paid in full until he was invited to return to work by Mr Brown. The claimant then provided fit notes and was moved to Statutory Sick Pay. No deductions from wages were made.

Discussion and Conclusions

68. We have discussed each complaint and allegation in the order it appears in the list of complaints and issues. The issue number is reproduced in the heading of our discussion on each allegation.

Direct race discrimination

1.2.1: “f.....g n....r”

69. The claimant did not make the allegation in any of the multiple accounts he gave of the situation to his employer. The first mention he made of it was in

his Further Information provided to the Tribunal on 2 July 2024, over a year after the incident.

70. If such a comment had been made, the claimant would have reported it along with the other matters. He did not. We do not accept that the comment was made.

1.2.2: Respondent's response to 16 June incident

71. The claimant appears to criticise Mr Mwakimwagile largely because he asked the claimant to leave the premises, he spoke to another member of staff before taking a statement from the claimant, and he asked Mr Coatsworth if he was OK.
72. Mr Mwakimwagile had to react quickly to contain the situation and in such circumstances his actions could not be expected to be an art of perfection. He did not act inappropriately and did what he could to calm down the situation.
73. Whilst he initially asked the claimant to leave, this was because the claimant was agitated and shouting and not following instructions, which adversely impacted the Supported Person. It is not unusual for the respondent to send employees home in response to difficult circumstances. Mr Mwakimwagile did not ask Mr Coatsworth to leave because Mr Coatsworth was calm and co-operative.
74. There was nothing wrong in asking Mr Coatsworth if he was alright, or in speaking to others briefly before discussing the matter with the claimant. Certainly, there is nothing to infer that Mr Mwakimwagile, who is also black, was racist towards the claimant.
75. Thereafter, the matter was properly investigated by Mr Stewart. There is no evidence that race was a factor in his considerations.

1.2.3: Probation extension

76. The employment contract provided for an extension of probation at the respondent's discretion. The respondent extended both the claimant's and Mr Coatsworth's probation periods because of issues with performance. This was quite proper. There is no evidence it had anything to do with race.

1.2.4: Suspension on 20 August and being sent home

77. The claimant was never suspended at any stage. He was asked to go home for his own protection on 20 August after the incident with the Supported Person. This was normal practice for the respondent in such circumstances. He was paid in full. There is no evidence that this request had anything to do with race.

1.2.5: Prevented from returning to work on 24 August

78. The claimant had been asked several times to provide a statement about the 20 August incident and had failed to do so. He was asked to go home on 24 August to write his statement so that the investigation could progress. He

was paid in full despite not producing the statement. There is no evidence that this had anything to do with race.

1.2.6: Rejection of grievance of 12 September

79. There was no grievance of 12 September, although the initial outcome to the claimant's grievance of 5 September was dated 12 September. The 5 September grievance was further considered in detail alongside the second grievance of 25 September. Whilst the grievances were not upheld, they were thoroughly investigated and the outcome was properly reasoned. There is no indication of any racial motive for the decision.

1.2.7: Mr Brown's investigation letter of 24 October

80. The claimant does not accept that the statements given by staff about the 20 August incident raise questions about his actions. However, it is clear to us from our findings of fact that they do.
81. The claimant says that Mr Brown's wording accused him of abusing a Support Person. Mr Brown's letter recorded that the claimant described being in a physical altercation with a Supported Person, although the claimant did not intentionally engage in abuse. From the evidence before us, Mr Brown was entitled to reach this conclusion.
82. There is nothing in Mr Brown's letter that suggests his findings or anything else in his letter were racially motivated.

1.2.8: 24 October letter did not address grievances

83. That is correct. The 24 October letter dealt with the 20 August incident, not the claimant's grievances. Mr Stewart's grievance outcome letter of 25 October addressed and properly reasoned each grievance in detail. There is no evidence that any of the findings were racially motivated.

1.2.9: Claimant's appeal against 24 October letter was refused

84. That is correct. The letter of 24 October cleared the claimant of intentional abuse and said that no further action was to be taken. There was no right of appeal against this decision as it did not result in disciplinary action. This had nothing to do with race.

1.2.10: Deduction in pay from September 2023

85. There was no unauthorised deduction in the claimant's pay.

Overall conclusion on race discrimination

86. The claimant has not demonstrated, on a balance of probabilities, a prima facie case of race discrimination with respect to any of the allegations. There is no evidence that he was treated less favourably because of his race. Therefore, the burden of proof does not shift to the respondent and his claims fail.

Victimisation

Protected Acts

87. The respondent accepts that allegations **2.1.3 to 2.1.6** constitute protected acts. We concur with that view.
88. With respect to **2.1.1** we find that the words “f.....g n....r” were not spoken and the claimant did not make such a complaint. Consequently, there was no protected act.
89. As regards **2.1.2**, the 16 June email complaining of assault did not raise any racial issues or matters in connection with the Equality Act. Therefore, we find that this email was not a protected act.

Detriments

90. The claimant relies on allegations **1.2.2 - 1.2.10** above and we repeat our observations on those allegations.
91. We find that there are no facts from which we could conclude that any of these allegations occurred because the claimant did a protected act, or the respondent believed him to have done so, or might do so. There is no evidence of any detriment linked to a protected act. The reasons for the respondent's actions were not the protected acts. The protected acts did not influence the respondent's actions. Consequently, regardless of whether any of the facts amount to a detriment, the elements needed to show victimisation are not present.

Overall conclusion on victimisation

92. The claimant has not demonstrated, on a balance of probabilities, a prima facie case of victimisation with respect to any of the allegations. Therefore, the burden of proof does not shift to the respondent and the claims fail.

Unauthorised deduction from wages

93. The claimant was paid in full up to the conclusion of the investigation into the 20 August incident. He was then invited back to work, but went off sick. He was therefore paid Statutory Sick Pay in accordance with his contract. There is no evidence of any unauthorised deduction of wages and consequently, this claim fails.

Elizabeth C Ord

Employment Judge Liz Ord

Date 31 July 2026

JUDGMENT SENT TO THE PARTIES ON
10 September 2026

.....
FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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

ANNEX

Complaints and Issues

1. Direct race discrimination (Equality Act 2010 section 13)

1.1 The claimant is Black British.

1.2 What are the facts in relation to the following allegations:

1.2.1 The alleged racially-motivated assault of the claimant by a white colleague on 16 June 2023. The claimant says that this assault was racially motivated because the person assaulting him called him a “f***ing nigger” during the assault.

1.2.2 The respondent’s response to the claimant on 16 June 2023 after he reported the alleged racially motivated assault

1.2.3 The claimant was told his probation period was extended on 4 August 2023. He alleges he had already passed his probation period at the end of July 2023;

1.2.4 The alleged assault of the claimant by a supported person on 20 August 2023. The claimant alleges he was suspended from work and sent home. It is the respondent’s case that the claimant used inappropriate language that caused distress to the supported person and was sent home for this reason;

1.2.5 The claimant was prevented from returning to work on 24 August 2023 and sent home, despite offering to provide a statement. The respondent’s case is that the claimant was asked to provide a written statement in relation to the incident of 20 August but had refused to do so, so they were unable to investigate the incident or allow him to return to work;

1.2.6 The claimant’s grievance of 12 September 2023 was rejected by the respondent;

1.2.7 On 24 October 2023, James Brown, manager of the respondent, wrote to the claimant about the investigation into his conduct. The claimant’s case is that although he was cleared of any wrongdoing, specific findings were made against him by Mr Brown which amounted to less favourable treatment. Those findings were that:

“...The account provided by staff raised questions about your actions around the supported people that may have

contributed to their anxiety, and you also described being in a physical altercation with one of the supported people, I am satisfied that you did not intentionally engage in abuse of supported person."

And:

"...It is clear that you did not follow CPI techniques (...utilising approved blocks, holds or turning away techniques)..."

The claimant does not accept that statements purportedly obtained in August 2023 and 18-23 October 2023 from staff present on 20 August 2023 "raised question" about his actions. The claimant also says that it is clear from Mr Brown's wording that he was being accused of having "abused" a supported person which he categorically denies.

- 1.2.8 The letter of 24 October 2023 failed to address the claimant's grievances in his letters dated 5 September 2023 and 23 September 2023.

In his letter dated 5 September 2023 the claimant raised 2 grievances:

1. About the decision to extend his probation on 4 August 2023;
2. About the decision to send him home on 20 August 2023 and 24 August 2023 and to prevent him from returning to work since that date.

In the letter of 25 September 2023 the claimant raised three further grievances, namely:

3. About the decision to exclude the claimant from returning to work in breach of the respondent's policy and procedures and ACAS policy and procedures.
4. The respondent, Matt Bryan (Manager), Mr James Stewart (Registered Manager) and Mr Chris Stewart (HR Business Partner) jointly lying about the claimant's position regarding providing a statement in relation to the incident on 20 August 2023.
5. About a failure to follow the correct procedures in handling and investigating the claimant's formal grievance on 5 September 2023.

1.2.9 1.2.9 The claimant's "appeal" dated 27 October 2023 against James Brown's findings in his letter of 24 October 2023, was refused by the respondent failing to respond to the claimant's requests in that letter. Those requests were that the respondent:

- 1.2.9.1 provide a full response to the grievances in his letters of 5 and 25 September 2023;
- 1.2.9.2 provide a full response to the concerns that he raised in his letter of 27 October about the contents of Mr Brown's letter of 24 October;
- 1.2.9.3 provide copies of the statements obtained from staff present at work on 20 August 2023 regarding the incident between the claimant and the supported person;
- 1.2.9.4 remove from the claimant's personnel file that he had "abused" a supported person.
- 1.2.10 The alleged deduction of the claimant's pay from September 2023 to date.

1.3 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race was or would have been treated?

1.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race?

1.5 If so, has the respondent shown that there was no less favourable treatment because of race?

2. Victimisation (Equality Act 2010 section 27)

2.1 Did the claimant do protected acts as follows:

- 2.1.1 On 16 June 2023 the claimant complaining to his line manager that he was physically assaulted by a white staff member who also called him a "f***ing nigger".
- 2.1.2 On 16 June 2023 the claimant sending an email to the respondent in which he complains that he had experienced physical abuse and victimisation in the workplace.
- 2.1.3 On 21 June 2023 sending a letter addressed to Matt Bryan alleging direct discrimination in breach of the Equality Act 2010.
- 2.1.4 On 1 August 2023 the claimant sending a chasing letter to Mr Bryan enquiring about the complaints in his letter of 16 June 2023.
- 2.1.5 On 8 August 2023 the claimant sending a further chasing letter to Matt Bryan referring back to the claimant's letter of 21 June 2023.
- 2.1.6 On 5 September 2023 the claimant sending a letter to Christopher Stewart (HR Manager) raising a grievance and giving "notice of proceedings under the Equality Act 2010".

2.2 Did the respondent do the following things:

- 2.2.1 The claimant relies on the same allegations as in 1.2.2-1.2.10 above

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

2.4 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?

2.5 If so, has the respondent shown that there was no contravention of section 27?

3. Remedy for discrimination or victimisation

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

3.2 What financial losses has the discrimination caused the claimant?

3.3 Has the claimant taken reasonable steps to replace lost earnings?

- 3.4 If not, for what period of loss should the claimant be compensated?
- 3.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 3.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 3.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 3.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 3.9 Did the respondent or the claimant unreasonably fail to comply with it?
- 3.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?
- 3.11 By what proportion, up to 25%?
- 3.12 Should interest be awarded? How much?
- 4. **Unauthorised deductions**
 - 4.1 Were the wages paid to the claimant from September 2023 less than the wages he should have been paid? The claimant accepts that because he was off sick the respondent was entitled to pay him sick pay but disputes that the amount of sick pay he was paid was correct.
 - 4.2 Was any deduction required or authorised by statute?
 - 4.3 Was any deduction required or authorised by a written term of the contract?
 - 4.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?
 - 4.5 Did the claimant agree in writing to the deduction before it was made?
 - 4.6 How much is the claimant owed?