



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant **and** **Respondent**

Mr Paul Sterling

Octopus Energy Ltd

Held at: Exeter

On: 22 to 26 June 2026

Before: Employment Judge Smail

Appearances

Claimant: In Person

Respondent: Ms A. Smith (Counsel)

RESERVED JUDGMENT

The Claimant's claims against the Respondent fail and are dismissed.

REASONS

1. By a claim form presented on 8 March 2025 the Claimant claims direct race discrimination and victimisation. Earlier complaints of unfair dismissal and protected disclosure have been withdrawn. The Claimant did not have 2 years' service with which to claim unfair dismissal.
2. The Claimant was employed by the Respondent between 15 April 2024 and 24 February 2025 when he resigned. He claims a discriminatory constructive dismissal. He was employed as an energy helper. This involved attending public places such as shopping malls and engaging with the public with view to them changing their energy supplier to the Respondent.

THE ISSUES

3. By the end of the Hearing the issues had been refined to be the following:

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

1.1. The Claimant is a black man.

1.2. Did the Respondent do the following things:

1.2.1. Failure to properly investigate his grievance of racial discrimination.

1.2.2. Dismissing his grievance as “miscommunication” without evidence.

1.2.3. Minimising or reframing his complaints to avoid addressing racism.

1.2.4. Withholding key evidence (transcripts, Slack data, SAR responses).

1.2.5. Manipulating the date of the alleged incident against him to fit his rota.

1.2.6. Suspending him immediately on an unsubstantiated customer complaint.

1.2.7. Locking him out of internal systems and denying access to pension.

1.2.8. Constructively dismiss the Claimant.

1.2.9. Acknowledge the Claimant's resignation without informing him that they had been proposing to lift his suspension.

1.3. Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant says he was treated worse than Steve Ramsay was in connection with the complaint brought against Mr Ramsay by the Claimant. The Claimant says, alternatively, he was treated worse than a hypothetical comparator.

1.4. Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to race etc?

2. Victimisation (Equality Act 2010 s. 27)

2.1. Did the Claimant do a protected act as follows: namely raising a grievance of race discrimination on 21 January 2025 and again on 14 February 2025?

2.2. Did the Respondent do the following things:

2.2.1. Immediate suspension based on an unsubstantiated allegation.

2.2.2. Manipulation of the incident date to fit his rota.

2.2.3. Withholding SAR material and transcripts.

2.2.4. Locking him out of internal systems.

2.2.5. Denying him access to pension information.

2.2.6. Damage to his professional reputation.

2.2.7. Constructively dismiss the Claimant.

2.2.8. Acknowledge the Claimant's resignation without informing him that they had been proposing to lift his suspension.

2.3. By doing so, did the Respondent subject the Claimant to detriment?

2.4. If so, was it because the Claimant had done the protected acts?

THE HEARING

4. The evidence before the Tribunal was:

- a. An agreed bundle of 600 pages,
- b. An additional bundle from the Claimant,
- c. An additional bundle of 10 pages of disclosure,
- d. Witness statement for the claimant:
- e. Witness statements for the respondent:
 - i. Mr Guy Harwood,
 - ii. Mr Joey Hull,
 - iii. Ms Jenny Newby
 - iv. Ms Kristen Brooks,
 - v. Ms Karis Danieffe-George,
 - vi. Ms Magdalena Zareba.

5. All witnesses were cross examined. Mr Guy Harwood was recalled after the Claimant made a successful application to amend.

THE LAW

6. The following statutory provisions apply to this case:

Direct discrimination

7. Section 13 EQA 2010 provides:

“(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.”

8. Race is a protected characteristic. Race includes nationality, colour, ethnic or national origin.

Victimisation

9. Section 27 EQA states that:

“(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.

10. In *MOD v Jeremiah* [1979] IRLR 436 a detriment is said to exist if ‘a reasonable worker would take the view that the treatment was to his

detriment'. This is an objective test (*St Helens Metropolitan Borough Council v Derbyshire* [2007] UKHL 16).

Burden of proof

11. Section 136 of The Equality Act 2010 states that:

“(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.”

12. This is a two-stage process. The first requires that the claimant prove facts from which the Tribunal could conclude that the respondent has committed an act of unlawful discrimination.

13. The second stage only comes into play if the claimant has satisfied stage one. For this stage the respondent is required to show that he did not do the unlawful act (*Igen Ltd v Wong* [2005] IRLR 258; *Efobi v Royal Mail Group Limited* [2019] IRLR 35). They must show that discrimination did not taint the act or omission in any way whatsoever.

FINDINGS OF FACT ON THE ISSUES

14. Consistent with the lack of diversity in Devon, the Claimant was the only black energy helper working for the Respondent in the region.

15. The Claimant had the capacity to be an effective salesman and had good sales figures.

16. Some background events are relevant.

29 June 2024: Samson MacNab

17. A colleague, Sampson MacNab, reported that on 29 June 2024 the Claimant was upset that an Octopus stand was not where he expected it to be at a shopping mall to enable him to work. The Claimant was reported as blaming Mr MacNab, telling him he should apologise. The Claimant is alleged then to have lost his temper and said words along the lines of ‘...if you want to rumble, let’s have a fucking rumble...come on then, I’m right here, let’s fucking sort this out’. Mr MacNab stated he felt threatened and abused. The incident was apparently witnessed by a shopping mall security guard who had complained to another Octopus colleague. Mr MacNab reported the matter to Kristen Brooks, a Regional Lead and the Claimant’s line manager. She spoke

to the Claimant who apologised, claiming he had been under stress. Ms Brooks line manager, Magdalena Zareba, a Divisional Lead, also spoke to the Claimant and decided to take it no further.

16 August 2024: Steve Wynn

18. On 19 August 2024 the Claimant had to be spoken to by Kristen Brooks for abusive language used towards their colleague Steve Wynn in a team meeting on 16 August 2024. He was still within his probation and was warned that any further incident could threaten successful completion of his probation.

27 September 2024: 'The First Customer Complaint'

19. On 27 September 2024 there was a complaint from a customer that the Claimant had shouted for an extended period at her husband who had questioned why their Octopus bill had gone up twice in a month. The Claimant was described as biting back defensively and then shouting 'for a good 10 minutes in front of other customers listening, his attitude and behaviour was disgusting, not a good look for your company and hardly a nice way to treat your customers. I'm recovering from an operation for cancer, and he was just in our faces, I had to walk off'. The complaint was upheld because the Claimant had not recorded the interaction as he needed to do after 30 seconds of complaint from a customer. Because of the failure to record, the complaint was upheld. The Claimant persuaded Ms Zareba to reverse a decision, a few days after it was initially taken, withholding in the light of this incident £570 'Octostars' bonus in respect of sales for the month. Again, no disciplinary action was taken against the Claimant.

20. We turn now to foreground events.

19 December 2024: Steve Ramsay

21. The Claimant complained about an allegedly harassing text he had received from his white colleague Steve Ramsay to the effect that the Claimant had not helped him to obtain Octostars in respect of a shift allocation. Mr Ramsay suggested he was disappointed with the Claimant given that he had helped him on other occasions, but the favour was not returned. The Claimant went on to suggest that Mr Ramsay had posted on facebook images and videos of black people in a negative situation. There was a gif/meme of a black toddler falling asleep and there was a pop-up Amazon advert showing a black man in a wheelchair opening a parcel.
22. Ms Zareba had a meeting with the Claimant on 23 January 2025 in respect of this matter. She describes a difficult meeting, with the Claimant appearing rude and aggressive. It was agreed that a colleague from another Region would look at the matter. This was Joey Hull from London. He is a black person.
23. Mr Hull met with the Claimant. The Claimant described the challenges he faced as a black man in Devon, including microaggressions, harassment and discriminatory behaviour. As we discussed in the Tribunal, and as Mr Hull acknowledged at the time, it is right that the South West is less diverse than other areas in the country. Mr Hull, however, did not see any racial intent in

the text or the videos. Mr Ramsay's intent with the meme/gif of the toddler was to illustrate how he felt about a slow and boring day (i.e. like a toddler falling asleep). The Amazon post had been a pop-up advert that appeared at the point the screenshot was taken of the messaging. Mr Hull found that the Claimant had not been the subject of targeted racism or harassment. The Claimant and Mr Ramsay had different perceptions of the matter. Notwithstanding his finding, Mr Hull did go on to suggest that the team should receive racial awareness and discrimination training and there should be action on clarity around shift swaps and general workplace communication.

24. The Respondent did conclude, however, that Mr Ramsay was not guilty of misconduct. I agree with Mr Hull when he says he does not accept that the Claimant's complaint was dismissed as miscommunication without evidence and that the complaints were minimised or reframed in order to avoid addressing racism. On the contrary, racial discrimination was directly addressed and found not to have taken place. The Respondent had grounds to reach that conclusion.

10 February 2025: 'The Second Customer Complaint'

25. A complaint was received from a customer by telephone on 10 February 2025 alleging that a black male sales person had behaved in an intimidating and aggressive manner by physically grabbing her arm when she declined to sign up with Octopus, encroaching on her personal space and asking 'is it because I am black'. She claimed not to have caught his name. He was a tall guy in his 40s or 50s. She was quite shaken. She was asked to put it in writing.
26. The Claimant freely accepted that those words, as it were playing the race card, would amount to serious misconduct. He denies both that it was him who engaged with the customer and saying those words.
27. Ms Zareba, having consulted her manager, Guy Harwood, Head of Field, decided to suspend the Claimant. She thought it a serious allegation that could bring the Respondent into disrepute. The matter needed investigating. She could not risk further like incidents happening. Suspension was neutral as to what the investigation might find. He was suspended on full pay. His access to internal intranet systems was temporarily restricted.
28. There was a follow up call from the customer on 13 February 2025. She was unhappy that no one had yet got back to her. She stated that she had told the sales person at the Drake's Circus shopping centre in Plymouth that she could not transfer energy companies because she had a debt with her existing provider. The sales person seemed not to accept that. He grabbed her arm, came close to her face and asked 'is it because I'm black'. The sales person was a black gentleman. She stated that the behaviour should not be tolerated. On this occasion she said his name was Paul. She described him as very agitated and stressed.
29. Further, on 13 February 2025 Mr Harwood phoned the customer. He had listened to the calls the customer had previously made. She described the sales person as not accepting her explanation that because she had a debt

she could not transfer, pulling her back physically and asking her whether it was because he is black. She said she did not want him to lose his job; just to 'have the right conversation' with someone. She described him again as agitated and on edge. She said she did not wrench her arm or manhandle her. She was keen not to overstate this aspect. It was being asked whether it was because he is black that upset her the most. She dated the event as the Saturday at half elevenish. Mr Harwood suggested it was the Saturday and she agreed.

30. Mr Harwood regarded the customer as telling the truth. Ms Zareba listened to the early calls and regarded her as credible. Kristen Brooks listened to the recordings of the calls and regarded the customer as genuine. As did Ms Danieffe-George.

14 February 2025: the Claimant's grievance

31. The Claimant raised a grievance alleging his suspension was victimisation for having raised a complaint against Steve Ramsay. Mediation had sensibly been proposed to be held with the Claimant and Mr Ramsay, but the Claimant wanted this delayed until his grievance was addressed.

24 February 2025: the Claimant's resignation

32. The Claimant resigned with immediate effect on 24 February 2025. He claimed victimisation and retaliation at the workplace. He said he had raised concerns, but these had not been addressed meaningfully.

The investigation of the Second Customer Complaint

33. Kristen Brooks conducted a fact-finding enquiry. She met with the Claimant on 17 February 2025. The Claimant denied that any interaction with the customer as alleged happened.
34. It transpired that he was not working at Drake's Circus on the Saturday at 11.30ish. Ms Brooks looked at shift rotas, sought the CCTV from Drake's Circus (which was refused) and consulted Samantha Witherford who had been working alongside the Claimant around that time. Ms Witherford could not recall anything of note but had taken breaks.
35. By Friday 21 February 2025, Ms Brooks and Ms Zareba had concluded that they were going to lift the suspension and clear the Claimant of the allegation because even though they believed the customer that she had dealings with the Claimant as she alleged, the date and time was wrong – the Claimant was not working then, and she only named the Claimant in the second call, having said she did not catch his name in the first. They did not communicate that to the Claimant before the weekend. They wanted to consult Mr Harwood the following week.
36. Then the Claimant resigned. Mr Harwood decided not to challenge the resignation, even though he would also have agreed to lift the suspension for the reasons suggested by Ms Brooks and Ms Zareba. Ms Zareba communicated the 'acceptance' of the resignation and offered 1 month's pay in lieu of notice, as a gratuity. The Claimant did not accept the money.

37. This last matter – acknowledging the resignation without informing the Claimant that they were going to lift the suspension and clear him of the allegation, given the state of the evidence – was not originally an issue in the case. However, it strongly suggested itself as an issue and I allowed the Claimant's application to add it. Anything else would have been unfair: the issue was strongly suggested and the Respondent could address it.
38. The Claimant's access to the intranet and HR matters such as payslips was automatically restricted when he was suspended and his profile was deleted upon resignation. Ms Brooks provided documentation he requested and manually processed outstanding expenses.

Investigation of the Claimant's grievance

39. Karis Denieffe-George investigated the Claimant's grievance, of necessity after he had resigned. She spoke to him on 28 February 2025. The meeting was video-recorded. She suggested in her witness statement that he was very aggressive and hostile at the beginning of the meeting, his demeanour only changing when she said she was from a mixed race family, her mother being from Jamaica. The Claimant invited me to view the recording. He was not 'very aggressive and hostile' at the beginning. He was straight-forward, and earnest, just having resigned.
40. The grievance focused on the handling of the Claimant's Ramsay complaint and the handling of the Second Customer Complaint. The decision was not to uphold the grievance. The reasons were scant other than 'policy and process were followed and aligned with expectations in the business...fair and reasonable actions took place throughout'.
41. Whilst the reasoning was scant, Ms Denieffe-George, had spoken to the Claimant, Joey Hull, Magdalena Zareba. She had listened to the recordings of the calls with the Second Customer and concluded the customer was genuine. She did not address the Claimant's theory as expressed to her in her meeting with him that Mr Ramsay had put someone up to make a complaint against the Claimant. She did not do so because the theory was inherently unlikely and not contained in his original grievance. The Claimant even acknowledged when floating the idea that he could be wrong about it.

CONCLUSIONS

42. The Claimant is conscious of matters of race and race discrimination. When he first started with the Respondent, he mentioned that he felt the subject of racial discrimination in earlier employments. He is interested in discrimination law and the procedures of the Employment Tribunal. He has engaged throughout these proceedings with law and procedure. He has argued his case before me as best he can, in an articulate and courteous manner.
43. But are his claims valid? I have to make a Judgment on those matters.

44. The Claimant did make protected acts when he raised a complaint against Mr Ramsay and when he raised a grievance against his suspension. He alleged race discrimination.

The grievances

45. The protected acts were both grievances.
46. Mr Hull examined the Ramsay grievance thoroughly and concluded there was no racial discrimination. The meme/gif of the sleepy black toddler was used to illustrate a slow and boring shift. It was found not to be aimed at the Claimant. The pop-up amazon advertisement of a black man in a wheelchair opening a parcel was found to be just that; an Amazon advert. It was found not to be aimed at the Claimant. The text suggesting the Claimant had not helped Mr Ramsay in connection with a shift was found not to be discriminatory. All of these were conclusions open to Mr Hull to take. There was a basis for those conclusions. I agree with them.
47. Mr Hull investigated the grievance appropriately. He spoke to both the Claimant and Mr Ramsay. He did not dismiss Mr Ramsay's actions as 'miscommunication'. He did not minimise or reframe the Claimant's complaints to avoid addressing racism. He considered directly whether Mr Ramsay had committed a discriminatory act. Mr Hull concluded he did not.
48. In respect of the Ramsay grievance there was no less favourable treatment on the ground of race whether in comparison with Mr Ramsay or a hypothetical comparator. The position was that Mr Ramsay was cleared of discriminatory treatment on the facts.
49. Ms Danieffe-George investigated the 14 February 2025 grievance fairly. She was the Divisional Leader of the Acquisitions Team based in the South-East. She was sufficiently distanced from these events to be independent. Her reasoning in her outcome letter was summary in form, but other evidence showed she looked at the matter with more care. Mr Hull had fairly investigated the complaint against Mr Ramsay and reasonably dismissed it. It had been reasonable to suspend the Claimant, given the seriousness of the complaint. She came to a reasonable conclusion. She listened to the telephone conversations with the Second Customer and concluded they were genuine. If she did not engage with the Claimant's floated theory that Mr Ramsay put up the second customer to make a complaint, it was first because the Claimant himself had reservations about the suggestion; and secondly, because it was inherently unlikely. The customer herself did not want the Claimant to lose his job: just to communicate appropriately. Her complaint from the recorded conversations sounded genuine. The Claimant does not establish a prima facie case of discrimination. None of Ms Danieffe-George's reasoning was tainted with race or victimisation.

Withholding of transcripts, slack data and SAR responses

50. The Claimant had the transcript of the second call from the second customer. He did not have the transcript from the first and their calls until these proceedings. That was not less favourable or detrimental treatment, however, not least because no disciplinary proceedings were instigated against him before his resignation.
51. The Claimant could identify no missing slack data. That means internal messages within the Respondent.
52. I accept from Jenny Newby that she did her best to comply with the Claimant's DSAR requests. The Claimant had made several unspecific requests. She was originally inclined not to comply with requests because of their tone; ultimately, she complied.
53. There was neither less favourable treatment in comparison with Mr Ramsay or a hypothetical comparator nor detrimental treatment by reason of any protected act under this head of complaint.

Manipulating the date of the Second Customer Complaint to fit the Claimant's rota

54. In fact, the reverse is true. The Respondent was about to lift the suspension and not proceed to disciplinary because the Claimant was not working, he established, at Drake's Circus on the Saturday at 11.30ish and because the customer only named the Claimant in the second conversation. Those matters provided evidential assistance to the Claimant. Sadly, he resigned in haste.
55. A reality check, however, is important in my judgment here. The Claimant regarded the matter a bit like a Magistrates' charge: if the charge gets the date wrong, then you must be found not guilty of the charge. However, this is a civil matter based on the balance of probability. Disappointingly, there is no other black energy helper in the region. If one accepts what the Second Customer said about having a conversation with a black energy helper from Octopus who challenged her when she said she could not switch with the words 'is it because I am black' – and all Respondent managers believed her - then it can only be the Claimant. All the Respondent managers who either spoke to the Second customer or listened to her phone calls believed her. On the balance of probabilities (not the criminal test of reasonable doubt), if one believes what she said, then she is likely to have got the time and/or date wrong. If the date and time aligned, the Claimant would have been put on a disciplinary and he himself acknowledged that the matter would be serious.
56. There was no manipulation by the Respondent of the date and time. Accordingly, there can be no liability in respect of it.

Immediate suspension based on an unsubstantiated complaint

57. The Respondent managers believed the complaint from the Second Customer credible. The Claimant acknowledged that it would be a serious matter of misconduct 'to play the race card' in the manner alleged. It was

entirely reasonable, in my judgment, to suspend on a precautionary neutral basis. The suspension was without prejudice to the outcome of the investigation.

58. Mr Ramsay is not an appropriate comparator here because the text he sent and the images on his messaging did not necessarily amount to prima facie misconduct; in contrast to the allegation against the Claimant where using the alleged phrase 'is it because I am black' plainly involves prima facie misconduct, if used.
59. There was neither less favourable treatment in comparison with Mr Ramsay or a hypothetical comparator nor detrimental treatment by reason of any protected act under this head of complaint. The reason for the suspension was the belief in the potential seriousness of the matter. It was not the complaint against Mr Ramsay.

Being locked out of internal systems/denial of access to pension information

60. This was an automatic consequence of first the suspension and then the resignation. There was neither less favourable treatment in comparison with Mr Ramsay or a hypothetical comparator nor detrimental treatment by reason of any protected act. Being locked out of the intranet flowed automatically. Ms Brooks assisted the Claimant with access to anything he needed.
61. In any event, the Claimant held a pension with Smart Pension, a separate company from the Respondent. He had access to that at all times.

Constructive dismissal?

62. I find that the Respondent acted with reasonable cause in suspending the Claimant in the light of the Second Customer complaint. Similarly, Mr Hull had reasonable cause to reject the complaint against Mr Ramsay. In those circumstances, there can be no breach of the implied term of trust and confidence amounting to a constructive dismissal. None of those matters amounted to less favourable treatment in comparison with Mr Ramsay or a hypothetical comparator or to detrimental treatment by reason of any protected act.

Damage to Professional Reputation

63. There is no evidence that the Respondent communicated any of these matters to third parties in a defamatory fashion, or at all. There was neither less favourable treatment in comparison with Mr Ramsay or a hypothetical comparator nor detrimental treatment by reason of any protected act.

Acknowledging the Claimant's resignation without informing him that they had been proposing to lift his suspension.

64. This is the claim allowed in by amendment. It is a claim worthy of serious consideration.
65. Acceptance of a resignation is not a prerequisite to an effective resignation. Once a resignation is made by an employee, it takes effect without any action

from the employer. An employer can seek to persuade an employee out of it, however, that did not happen here. Was that discriminatory?

66. Neither Ms Zareba nor Mr Harwood were minded to talk the Claimant out of resigning. This was because the Claimant had been in receipt of two unpleasant customer complaints, had a serious complaint from one colleague (MacNab) and had to be spoken to about abusive language used to Steve Wynn in a team meeting. They held a belief that there were behavioural issues with the Claimant. That belief was not discriminatory because the Claimant is a black man. They believed the poor behaviour was factual. The resignation, further, was clear and unequivocal. The Claimant was upset with the Respondent. Whilst they had thought there were evidential difficulties around the Second Customer Complaint, they clearly believed the Second Customer that she had been challenged by the Claimant in the way alleged. They were content to let the Claimant go.
67. Whilst it is disappointing that the Claimant left a job he could be good at, and often was, the decision to let him go without challenging his resignation does not involve less favourable treatment in comparison with Mr Ramsay or a hypothetical comparator or detrimental treatment by reason of any protected act. They believed Mr Ramsay had done nothing wrong, in contrast to their belief about the Claimant. They did not, as a matter of fact, let him go because he had brought grievances. There was no prima facie discrimination, transferring the burden to the Respondent.
68. In summary, then, the Claimant does not establish liability against the Respondent.

Employment Judge Smail
5 September 2026

Judgment sent to the parties on
24 September 2026