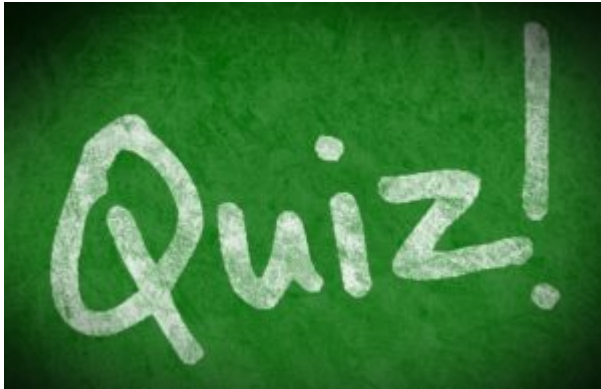


# Is Circumstantial Evidence Enough to Prove Racial Discrimination?



## SITUATION

The lone African Canadian employee of a trucking company endures racial abuse at the hands of his supervisor and co-workers. He complains to management and is warned to “stay in his lane.” Shortly thereafter, somebody leaves a noose in his locker. It’s the last straw. The employee claims he was subject to systemic racial discrimination and files a human rights complaint. The company closes ranks and vehemently denies the charges and nobody is willing to testify on the employee’s behalf. Without witnesses to corroborate his story, the employee must rely on the following evidence:

- Pictures of the noose in his locker;
- His own testimony, which is credible and reliable; and
- The fact that the manager and supervisor’s denials lack credibility and consistency.

## QUESTION

**Can the employee prove the company committed racial discrimination?**

- A. No, because he has no witnesses other than himself
- B. Yes, to the extent his circumstantial evidence is strong and believable
- C. No, because there’s no direct evidence that racial discrimination occurred
- D. Yes, because being the lone minority employee proves the company committed discrimination

## ANSWER

- B. It’s possible for the employee to prove racial discrimination relying on circumstantial evidence**

## EXPLANATION

Employees and job applicants claiming discrimination have the burden of proof. To make out a case, they must prove on a “balance of probability,” i.e., persuade the judge or jury that they experienced disadvantage, unequal or adverse treatment because they have a characteristic protected by human rights

laws, e.g., racial harassment at work because they're African Canadian. This scenario illustrates the evidence employees in discrimination lawsuits can use to meet their burden of proof.

**Direct evidence** such as video or credible and reliable first-hand eye-witness testimony carries the most weight because, as its name suggests, it proves the charge directly without need of further evidence or presumptions. The problem is that direct evidence isn't available in most racial discrimination cases. People who engage in racist conduct are typically careful to cover their tracks. Often, there are no witnesses, or at least no witnesses willing to testify on the employee's behalf.

**Indirect evidence**, aka circumstantial evidence, proves the charge on the basis of other proven facts, e.g., that a person proved to have used a racial epithet on previous occasions also used the same epithet in the case at issue. Although it's not as powerful as direct evidence, courts allow alleged victims to use circumstantial evidence to prove their charges.

But circumstantial evidence must be convincing. It often boils down to which side is more credible. In this case, the employee's account is more credible and reliable than the manager and supervisor's denials. Coupled with pictures of the noose in the locker, which indicate that acts of racism did occur in the workplace, give the employee an excellent chance to prove his racial discrimination claims. So, B is the right answer.

## **WHY WRONG ANSWERS ARE WRONG**

**A is wrong** because racial discrimination is often unwitnessed and alleged victims are the only ones who can testify on their own behalf.

**C is wrong** because direct evidence of racial discrimination is relatively rare; so alleged victims have to be allowed to rely on circumstantial evidence to have any chance of proving their claims.

**D is wrong** because, while the fact that a company has just one minority employee may be circumstantial evidence of discrimination, it's not nearly enough to prove it. The alleged victim would need much more and stronger circumstantial evidence to make out a case of discrimination.