Appeal No. UKEAT/0025/17/JOJ

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 28 September 2017

Before

HIS HONOUR JUDGE MARTYN BARKLEM

(SITTING ALONE)

MRS A MOSEKA APPELLANT

SHEFFIELD TEACHING HOSPITALS NHS FOUNDATION TRUST RESPONDENT

Transcript of Proceedings

JUDGMENT

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APPEARANCES

For the Appellant	DR ROLAND IBAKAKOMBO (Representative)
For the Respondent	MR ANDREW SUGARMAN (of Counsel) Instructed by: DAC Beachcroft LLP St Paul's House 23 Park Square South Leeds LS1 2ND

SUMMARY

UNFAIR DISMISSAL - Reasonableness of dismissal

RACE DISCRIMINATION - Direct

The Employment Tribunal was entitled to conclude, on the facts as found by it, that the Claimant was not prejudiced in a hearing which resulted in her dismissal on grounds of capability arising from ill health by not having been provided with notes prepared in connection with a report (such report having been provided to her) in connection with grievances made by her.

The Employment Tribunal was also entitled to find that no safe conclusions could be drawn from statistical evidence which purported to show delay in the Respondent's handling of grievances made by employees of different racial or ethnic groups.

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HIS HONOUR JUDGE MARTYN BARKLEM

1. In this Judgment I will for convenience refer to the parties by the terms used in the Decision of the Employment Tribunal. This is an appeal by the Claimant against certain findings made by the ET (chaired by Employment Judge Brain) sitting at Sheffield with members, which took place between 26 January 2016 and 1 March 2016, some 11 days having been spent hearing evidence and submissions.

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2. The Claimant was employed by the Respondent NHS Trust as a domestic/ward assistant from March 2004 until 21 May 2013 when her employment was terminated. She was initially employed at Weston Park Hospital but was reallocated to other hospitals in 2011. She describes herself as Black of African Congolese origin.

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3. The ET's Decision runs to some 353 paragraphs in a Judgment of 72 pages. It contains a lengthy exposition of the evidence that was before it, an analysis of the legal provisions applicable to its considerations, and its conclusions. Given the length of the Decision and the many issues which were engaged, I shall not attempt to précis it in this Judgment, other than to deal with the grounds of appeal which remain live.

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4. By its Decision, which was sent to the parties on 5 May 2016, the ET rejected the Claimant's claims of discrimination, harassment and unfair dismissal. These had been presented in five separate claims. The Claimant appealed to the EAT. HHJ Eady QC considered the appeal under Rule 3(7) of the **EAT Rules** on 27 July 2016 and took the view that the Notice of Appeal disclosed no reasonable grounds for bringing the appeal. The Claimant then applied under Rule 3(10) for an oral hearing. Following that hearing, in a

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Reserved Judgment handed down on 11 April 2017, The Honourable Mrs Justice Slade DBE permitted the appeal to proceed to a Full Hearing on grounds contained in an amended Notice of Appeal produced on 12 January 2017; that being the second day of the Rule 3(10) Hearing, the first being on 14 December 2016. She also permitted grounds to go forward to a Full Hearing as contained in certain paragraphs of what she stated to be the original grounds of appeal. However, it would appear that the document to which Slade J was referring when setting out the paragraphs which could also go forward was not, in fact, the original grounds of appeal but a document produced on 2 August 2016 in advance of the Rule 3(10) Hearing.

5. I set out the grounds on which the appeal was ordered to go forward to this Full Hearing using the exact words as they appear in Slade J's Judgment taken from the amended grounds which are in manuscript:

> **"1) The ET erred in dismissing unfair dismissal claim when there [they] concluded that Janette Watkins followed a reasonable procedure (para. 328) which the claimant's claim was dismissed in her absence, despite of willingness to attend the dismissal meeting provided she will be provided with investigation notes, statements and report which were not provided before the dismissal hearing. As per evidence on page 466 of the Bundle.**
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> **2) The Tribunal erred in dismissing the claim of race discrimination in relation to the delay in dealing with conclusion of claimant's grievances G1 and G2 as EJ Brain has arguably failed to give reasons to their conclusion at para. 299 of the Judgment as they failed to properly examine and consider the evidence from table (Pages 342-344) of time taken by the Respondent to deal with grievances about discrimination, as the table at pages 342-344 does demonstrating that white employees had their grievance about discrimination with reasonable time of 1-34 weeks the claimant's grievance G1 and G3 were respectively dealt with unreasonable delay of 54 weeks and 167 weeks (page 676 to 677)."**

6. Slade J gave the following reasons for allowing these two grounds to go forward:

> **"1) It is arguable that the Employment Tribunal erred in holding that the Respondent followed a fair procedure (paragraph 328) when the dismissal hearing proceeded in the Claimant's absence in circumstances in which she had stated she was willing to attend provided she was given notes of the investigation of the allegations against her. It seems that there was no real problem supplying her with these notes as she was given them for the appeal hearing.**
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> **2) It is arguable that the Employment Tribunal erred in dismissing the claim of race discrimination in relation to the delay in dealing with her discrimination grievance. It is arguable that the ET erred in that they failed to consider the difference in time taken in dealing with complaints of discrimination by white and of BME employees. It is said that this was the relevant comparison not the comparison of time taken in dealing with all grievances."**

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7. Slade J dismissed the original Notice of Appeal, which I take to be the document prepared on 16 August 2016, for reasons set out above, with the exception of the following grounds: "*First Claim Third Issue paragraphs 5 to 12 omitting 6, Third Claim Second Issue paragraph 33, Fourth Claim paragraphs 49 and 50 omitting 50.1-3, Fifth Claim paragraph 62*".

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8. It is necessary to set those out in order to focus on the precise state of today's hearing.

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9. First Claim, Third Issue: "*did the respondent delay the completion of the combined stage 4 grievance appeal and bullying and harassment procedure?*" (page 244 of the bundle).

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Paragraph 5:

> **"5. Tribunal erred when making a material finding contrary to the agreed evidence that as per their policy, the Respondent was to investigate any complaint: complex or non-complex complaint within 28 days from the date the complaint was made, before the Tribunal in concluding that in their Judgement, that 6 months was a reasonable length of time for an investigation of this complexity to take (para. 294) *Piggott Brothers Ltd v Jackson* [1992] ICR 85 92D, apply."**

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10. Paragraph 7:

> **"7. It was pervert [sic] for the Employment Judge not to determine whether 10 months taken by Chris Bryer to conclude the process from the terms of the reference being agreed, was a [sic] unreasonable or reasonable length of time for an investigation and not to determine whether the delay of 10 months is itself race discrimination act (para. 296, p 62) despite of accepted that the delay was unwelcome as far as the Claimant was concerned (p 299)."**

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11. Paragraph 8:

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> **"8. It was pervert [sic] for the Employment Judge to conclude that many of the delays that beset this matter after that meeting may be laid at the door of the claimant who on 13/03/2013 requested for a two months extension of time to respond in detail to Chris Bryer's report (p. 184) due to her disability stress & depression and the length of the Report as supported by the evidence on page 1619-1620 of the bundle before the tribunal particularly, the Claimant requested for a two months extension of time to respond in detail to Chris Bryer after 3 years from the date she submitted her grievance on 15 October 2010."**

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12. Paragraph 9:

> **"9. Employment Judge has erred in finding of fact and perversity when concluding that there was no evidence that through its conduct of this matter the Respondent was treating her less favourably than anyone else (p 299) as the parties before the tribunal, agreed that the table at page 942 does demonstrating actual comparators of the Respondent's handling of investigation of grievance about discrimination *British Telecommunications plc v Sheridan* [1990] IRLR 27 apply."**

13. Paragraph 10:

> **"10. Employment Judge has erred in failing to ask themselves did the claimant, because of the protected characteristic, receive less favourable treatment than others: "the reason why" question and to answer that question by examining or constructing a comparator (actual or hypothetical) against which the claimant's treatment can be assessed leading him to wrongly conclude that:**
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> **10.1. The table at page 942 does not come close to demonstrating that white employees had their grievance more favourably treated in general and that there was no [sic] a practice of delaying grievances from non-white employees despite the figures before them and the finding that the comparator relied on here were domestic/ ward assistants as agreed by parties before EJ Little (para. 301) and as the Claimant's case was that the appropriate comparator is a white employee who had lodged a discrimination grievance (refer para. 55 of respondent)."**

14. Paragraph 11:

> **"11. Employment Judge has erred in failing to give the reason why the table at page 942 does not come close to demonstrating that white employees had their grievance more favourably treated in general and that there was a practice of delaying grievances from non-white employees and in failing to draw inferences from such evidence about how a hypothetical comparator would be treated as submitted by Dr Ibakakombo. *Balamoody v United Kingdom Central Council for Nursing, Midwifery and Health* (6 December 2001) and *Williams v HM Prison Service* [EAT 7 February 2002] apply."**

15. Paragraph 12:

> **"12. EJ Brain has erred by failing to inferences from the Respondent's delay in dealing with the stage 1, 2 and 3 of the claimant's grievances 1 to 4 *Anya v Oxford University*, para 23 apply."**

16. These points are clearly related to the second ground that has been permitted to go forward.

17. Third Claim Second Issue - paragraph 33 (page 249 of the bundle):

> **"33. EJ Brain's findings that the claimant was given the opportunity to attend but refused (para. 318) is in contrary to the agreed evidence and claimant's written submission before the Tribunal particularly; requested various investigation notes and statement were in relation to**

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the causes of the claimant's absence *Foster v Leeds Teaching Hospital NHS Trust* [[2011] All ER (D) 57 (Sep)], para. 23 apply."

18. Although it is not initially clear from the heading, the reference to paragraph 318 of the ET's Decision makes quite clear that this is about the Claimant's non-attendance at the meeting at which she was dismissed (the first ground).

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19. Fourth Claim, paragraphs 49 and 50 omitting 50.1 to 50.3. This again relates to the second ground:

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> **"49. EJ Brain has erred by failing to have regard to the agreed table [I add in parentheses it was not agreed, it was simply submitted] of which the Claimant is comparing the delay in the respondent's handling of her Appeal Grievance about discrimination and/or race harassment and the delay in the respondent's handling of white staff's Grievance about discrimination and/or race harassment from the Respondent's sheet on page 942-944.**
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> **50. The ET erred in failing to compare the treatment of the claimant with that of the other white Domestic Staffs who have raised grievances about discrimination even comparing the treatment of those in non-identical but not wholly dissimilar cases is a permissible means of judging how a hypothetical comparator would have been treated *Central Manchester University Hospitals NHS Foundation Trust v Browne* UKEAT/0294/11/CEA, para. 23 apply …"**

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20. Fifth Claim, paragraph 62, reads:

> **"62. EJ Brain has erred by failing to have regard to the agreed table of which the Claimant is comparing the delay in the respondent's handling of her Appeal Grievance about discrimination and/or race harassment and the delay in the respondent's handling of white staff's Grievance about discrimination and/or race harassment from the Respondent's sheet on page 942-944."**

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21. Here an element of confusion creeps in. This is manifestly one of the grounds upon which Slade J allowed the appeal to proceed. However, Dr Ibakakombo says in oral submission that that paragraph was erroneously transposed and what I should be looking at is the equivalent paragraph in the original grounds of appeal. That reads (at page 85 of the bundle):

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> **"62. EJ Brain has erred by not following binding authorities (*Anya v Oxford University*, para 23; *Laing v Manchester City Council* [2006] IRLR 745 apply.), which should have led to the EJ Brain to draw inferences in discrimination cases as invited by the claimant Representative."**

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22. I am far from satisfied that this is what Slade J meant to allow to proceed, but will deal with the point anyway. I was told that it dealt with the delay point (ground 2) and the facts from which inferences should have been drawn are: (1) that there were no white employees in the Domestic Service Directorate who had made complaints of race discrimination; and (2) the Claimant and Mrs Mukadi, also black of African Congolese origin, were the only two employees to be required to produce work permits despite having British passports. The second point is not one which is remotely relevant to the issues as found by the ET. The first relates plainly to the evidence of comparators and adds nothing.

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23. Slade J's Reserved Judgment following the Rule 3(10) Hearing runs to 149 paragraphs, of which no fewer than 143 set out in detail why the many other grounds advanced at the Rule 3(10) Hearing were dismissed by her. I mention this simply to illustrate the complexity of the issues in the case which the ET had to deal with; if a 353 paragraph Judgment were not evidence enough to make the point.

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24. A number of the grounds which Slade J dismissed seem to have found their way back into the skeleton argument prepared by Dr Ibakakombo - the Claimant's representative, who also represented her at the ET. I will deal solely with the arguments on the grounds allowed to proceed to this hearing. I am grateful to him for the skeleton argument and a statement of case - I think it was described as - handed in today and also for the very concise skeleton argument prepared by Mr Andrew Sugarman of counsel for the Respondent, who also appeared below. I propose to deal relatively briefly with the first ground of appeal.

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25. Mr Sugarman suggested in his skeleton argument that Slade J may have been under a misapprehension that the hearing notes, which the Claimant sought before the dismissal

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hearing, were notes concerned with allegations against her - the Claimant. He points to the phrase in the Reasons set out in full above: "*she was willing to attend provided she was given notes of the investigation of the allegations against her*". In fact the notes which the Claimant sought prior to the dismissal notes were notes taken in the course of an investigation which was carried out by Mrs Chris Bryer, the Respondent's Lead Nurse in Central Nursing, who had no prior knowledge of the Claimant. This report had been commissioned by Mr Richard Parker, then Chief Operating Officer of the Respondent, as an independent individual who it was intended could look at the allegations into the first and second grievances brought by the Claimant.

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26. Mr Parker had written to the Claimant following a hearing in January 2012 expressing his view that the grievance process so far had dealt with the individual points raised but had not tackled the relationship problems which the Claimant had made reference to in her grievance. He said that whilst it would be straightforward to provide a response to individual points of grievance by continuing with stage 4 of the grievance and disciplinary procedure, he felt that it was likely to leave the Claimant with the same outstanding concerns about her treatment and working relationships with her management team.

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27. Terms of reference were drawn up. They are itemised at paragraph 66 of the ET's Judgment. None of them dealt with issues of capability or illness. A draft report was completed in September 2012, six months after the terms of reference had been drawn up between the Respondent and the Claimant's trade union. The report was finalised on 4 January 2013 and provided to the Claimant.

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28. As far as I can see from the Judgment, there was nothing in the report which impacted on the Claimant's capability. In fact, following a meeting on 19 September 2012, the Claimant was suspended from work on medical grounds and never resumed her duties (see Decision paragraph 114). Eventually, the decision was made to hold a hearing to consider the question whether the Claimant should be dismissed by reason of capability. The Claimant made attendance at that meeting conditional upon her being provided with the notes taken in the course of the investigation carried out by Mrs Bryer. She was told that these notes were part of an entirely separate process not relevant to the capability issue. The Claimant's stance, as the ET noted at paragraph 202, was that Ms Watkins, who was to hold the meeting, was not able to deal with the questions of termination of employment without an understanding of the facts which gave rise to her health issues.

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29. It has been suggested today on the Claimant's behalf that Ms Watkins was unaware that the Claimant had sought the papers underlying Mrs Bryer's report and that these had been refused. This is plainly not the case on the ET's findings of fact at paragraph 207, which reads:

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> **"207. … On any view, it is clear from the correspondence that we have looked at that the Claimant was given a fair opportunity to attend the meeting, declined to do so pending receipt of Chris Bryer's investigation notes and was given ample warning that the meeting would proceed in her absence should she fail to attend without good reason (and that the absence of the notes was not a good reason)."**

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30. The ET's findings on the unfair dismissal claim starts at paragraph 322 of the Decision. It holds that there was no doubt that the Respondent had discharged the burden of proof upon it to show that it had available a statutorily permitted reason for the Claimant's dismissal; mainly capability. It held that the Occupational Health advice which it pursued was crystal clear. The Claimant was incapable of performing her role as a Domestic Assistant notwithstanding the many adjustments that the Respondent had made. Eventually, the meeting was held in the Claimant's absence and she was notified of dismissal by the letter of 25 May 2013. That

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decision was appealed by the Claimant on grounds which included the failure to provide notes. An appeal took place at which the Claimant attended accompanied by her husband on 23 July 2013.

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31. Prior to that meeting the notes taken in the course of Mrs Bryer's investigation had been provided to her. The Claimant provided a statement of case at the appeal hearing which made no mention of the notes. It is fair to observe that the Claimant fell ill at the hearing and had to leave prior to its conclusion. However, it is equally fair to note that the ET recorded at paragraph 221 of its Decision that the Claimant "*gave no evidence before us as to how the contents of those notes should have affected the outcome*". I asked the same question of Dr Ibakakombo today. His reply was that the Claimant might have persuaded them to give her something along the lines of a career break. I simply cannot see how the report by Mrs Bryer or the underlying notes, which had nothing whatsoever to do with the capability issues, could have made the slightest difference. The ET pointed out that there was no evidence of any link between her alleged treatment by the Respondent and any of her medical issues. The case is entirely different on the facts from the case of **Leeds Teaching Hospital NHS Trust v Foster** UKEAT/0552/10/JOJ which is of no application here.

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32. At paragraph 329 of the Decision the ET held that Ms Watkins, the decision taker, reasonably considered that the investigation notes taken by Mrs Bryer were not needed for her to determine the issue of the Claimant's fitness for work. It noted that, in her evidence, the Claimant could not explain why she required the information or what difference it would have made. It concluded that Ms Watkins was right in her assessment that her role was to consider the Claimant's capacity for work and that she was not precluded from making a decision to dismiss the Claimant, even if the Claimant were to be right upon the issue of causation. That

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latter point went to the comments at paragraph 325 of the Decision that the ET had taken the view that the Claimant considered that the Respondent should not have dismissed her because, on her case, it was the Respondent which had rendered her incapable of work, something for which, the ET held, there was no evidence at all.

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33. It went on to conclude at paragraph 331 that if there was an issue with the investigation notes, this was cured at appeal stage anyway. The Claimant had had them before her at that stage but made no use of them. It is often the case that, at a Full Hearing, the EAT has information and detailed submissions before it, which is lacking at the stages of which consideration is being given as to whether a case should go forward to a Full Hearing.

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34. It is not for me to form a judgment of my own based on the evidence before the ET. If I find that there was evidence before the ET from which it could have reasonably drawn the conclusions that it did, that must be an end to it. It seems to me that ground 1 of the appeal and the associated paragraphs relating to it disclose no error on the part of the ET. The procedure followed by the Respondent is set out in detail in the ET's findings and the question of the Bryer investigation notes, which had nothing whatsoever do to with any allegation made against the Claimant, there were none, were fully explored by the ET which made fully reasoned findings of fact which seem to me to be unimpeachable. It follows that ground 1 fails.

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35. I turn to the second ground. In his skeleton argument, Mr Sugarman sets out the agreed issue relevant to this ground which was before the ET. It is contained in a case management summary dated 18 May 2015 and is as follows: "*Did the respondent delay the completion of the combined Stage 4 grievance appeal and bullying and harassment procedure?*" (paragraph 7.1.5) and "*If it did, was that because of the claimant's race?*" (paragraph 7.1.6). Indeed, that is

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mirrored in the heading in the Claimant's August 2016 grounds of appeal, albeit with the addition of 7.1.6. This was, therefore, clearly a narrowly defined issue. The ET's conclusions in relation to this are to be found at paragraphs 292 to 299 of the Decision and, it may fairly be said, avoid giving an explicit answer to the first question. I set them out below:

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> **"292. The next issue that arises under claim 1 is whether the Respondent delayed the completion of the stage 4 grievance appeal and bullying/harassment procedure (in relation to G1 and G2). The Respondent accepts that stage 4 took a long time to resolve. The period of the delay relates from the date upon which the Claimant appealed Mr O'Regan's decision at stage 3 of G1. This was on 28 September 2011. The Respondent accepts that G2 took a long time to deal with having been lodged on 5 October 2010 with the report not being sent to the Claimant until 5 March 2012. The substantive complaint relates not to those delays in and of themselves but, rather, to the delay in completing the combined stage 4 grievance appeal which dealt with both G1 and G2.**

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> **293. The grievance process as it relates to G1 was with the agreement of the Claimant (through her trade union) suspended on 19 January 2012 in order to facilitate Chris Bryer's report. It was then determined on 4 April 2012 that the Claimant's appeal of 30 March 2012 in relation to G2 would be combined within Mrs Bryer's terms of reference. Again, the Claimant did not object to that course of action. We refer to paragraphs 64 to 66 and 92 to 94.**

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> **294. There was then a delay due to Mrs Bryer's holiday and bereavement. This spanned a period between 14 March and 12 April 2012. We refer to paragraph 95 and to page 1271. The Respondent readily accepts that the investigation took longer than anticipated due to the complexity and the depth of the issues. There was no evidence that Mrs Bryer was delaying matters unreasonably (or at all for that matter). She in fact completed the draft report on 6 September 2012 (paragraph 104) some six months after the terms of reference were agreed between the Respondent and the Claimant's trade union. In our judgment, that was a reasonable length of time for an investigation of this complexity to take.**

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> **295. Rachel Gears then went on maternity leave. Mrs Lawford had to take over and familiarise herself with matters. Mr Parker requested further information on 27 September 2012. The Claimant was kept updated (see paragraph 132/page 1459). The report was finalised on 4 January 2013 (paragraph 134). We have commented in particular at paragraph 164 upon the breadth of Chris Bryer's report and the amount of documentation that she had to consider. She also interviewed all of the witnesses referred to in paragraph 8 of her witness statement. She concluded the process within 10 months from the terms of the reference being agreed.**

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> **296. The report was balanced. She criticised the Respondent in certain respects. However she found no merit in many of the Claimant's historical grievances or any evidence that the Respondent's actions were tainted by race discrimination.**

> **297. Mrs Bryer then invited the Claimant to attend a meeting to discuss the report. This took place on 29 January 2013. The meeting was adjourned because the Claimant was unwell. It resumed on 18 February 2013. We refer to paragraphs 166 to 172.**

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> **298. Many of the delays that beset this matter after that meeting may be laid at the door of the Claimant. She requested, not unreasonably, substantial periods of time to consider Chris Bryer's report (paragraph 184). She wanted to delay matters pending receipt of the interview notes that Chris Bryer had obtained during the course of her investigation. Mrs Bryer set about obtaining permission. Therefore, the delay between the issue of the report to the Claimant in January 2013 and the resolution of G1 and G2 at stage 4 after delivery of the report to the Claimant was to a large degree attributable to requests made by the Claimant herself which the Respondent was happy to accommodate.**

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> **299. Put simply, there was no evidence before the Tribunal that the delay was because of race. We can accept that the delay was unwelcome as far as the Claimant was concerned. However, there was no evidence that through its conduct of this matter the Respondent was treating her less favourably than anybody else. The table at page 942 does not come close to demonstrating that white employees had their grievance more favourably treated in general and that there was a practice of delaying grievances from non-white employees. The Claimant**

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> **therefore is unable to establish any less favourable treatment let alone that it was upon the grounds of race and/or upon the grounds of disability."**

36. Dr Ibakakombo in his skeleton argument makes much of the table referred to at paragraph 299 of the Decision and seems to argue that something should be made of the fact that people named in it who have raised grievances but who are not of the precise ethnic origin of the Claimant - that is Black of African Congolese origin - should not be regarded as comparators. In argument today, he argued that only persons who worked in the Domestic Services Directorate should be regarded as comparable. Individuals described as "Bangladeshi" and "Caribbean" - and I infer from the nomenclature in the tables that these are self-descriptions by employees who have ticked boxes, perhaps at the outset of their employment - are not to be regarded as comparable as they were not Black of African Congolese origin. Skin colour, he said, was not the issue here.

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37. At paragraph 262 of its Judgment the ET had commented in respect of the tables as follows:

> **"262. … Mr Sugarman put it to [the Claimant] that she had deliberately selected only a few examples and that in reality people of different races had had their grievances dealt with over different time frames and that no safe conclusion could be reached from the table that black employees had their grievances dealt with slower or in some way less favourably than the white employees. Having carefully considered the table, there is merit in Mr Sugarman's point. We see that some black employees had their complaints dealt with quick [sic] than did white employees and, of course, vice versa."**

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38. The reality is that the Tribunal looked carefully at the table and concluded, sensibly in my judgment, that it did not assist in answering the questions which I have already set out. Essentially, did the Respondent delay the process and, if they did so, was it because of the Claimant's ethnic origin? The table showed that variations from the stated 28 week norm for dealing with a grievance were relatively commonplace: equally some grievances were dealt with very speedily. Race cannot be said from the data set in the table to have played any part.

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Statistical evidence can, of course, be powerful in looking at the question whether discrimination can be inferred, but there has to be a body of statistical evidence which is probative of something. Manifestly this was not the case here.

39. I reject the submission that any valid inference could or should have been drawn from the fact that no members of the Domestic Services Directorate made allegations of race discrimination particularly as the issue that the ET was dealing with here is the time that resolution of the grievance took. It would also be impermissible to look at the circumstances of a lady who is referred to frequently in the skeleton argument - Ms or Mrs Mukadi - who made no grievance whatsoever. Accordingly, in the absence of valid statistical evidence, the ET was obliged to look at the primary evidence causing it to reach the conclusion which it did at paragraph 299 of the Decision, already set out.

40. The ET was conscious of the Claimant's very clear position that those members of the Respondent Trust who gave evidence at the hearing - in many cases senior employees - were party to a racist conspiracy with which the HR Department was in cahoots. The allegation of racism went even so far as to embrace Ms Watkins and Mr Burgin who had not met the Claimant until the ET hearing. It found (at paragraph 12 of the Decision) that there was "*no basis for any of the Claimant's allegations against the Respondent and its employees*" and said this:

> **"12. … We contrast the Claimant's propensity to make incredibly serious (but baseless) allegations with the demeanour of the Respondent's witnesses all of whom impressed the Tribunal as measured, honest and credible."**

41. Ultimately, it was for the ET to decide whether the undoubted delay was in some way influenced, on the one hand, by the many factors engaged in this very complex set of grievances and their handling through a cumbersome four-stage procedure, made longer by the decision to

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commission an independent report, or on the other hand, by the Claimant's race or ethnic origins. The ET weighed up the evidence and set out its conclusions in an admirably clear way upon a view of the evidence which it was entitled to take and, in my judgment, it discloses no issue of law that could remotely be described as erroneous.

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42. I have already pointed out that those paragraphs in the August 2016 document which were permitted to go forward by Slade J do no more than restate, in one way or another, the two central points which were set out above but points that I have taken fully into account. It follows that the appeal fails.

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