

**EMPLOYMENT APPEAL TRIBUNAL**  
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal  
On 25 July 2018

**Before**

**THE HONOURABLE MRS JUSTICE SLADE DBE**

**(SITTING ALONE)**

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MR C BRYAN

APPELLANT

COLLEGE OF NORTH WEST LONDON

RESPONDENT

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Transcript of Proceedings

JUDGMENT

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## APPEARANCES

For the Appellant

MS ROBIN WHITE  
(of Counsel)  
Direct Public Access

For the Respondent

MR GRAHAME ANDERSON  
(of Counsel)  
Instructed by:  
Hill Dickinson LLP  
The Broadgate Tower  
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London  
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## **SUMMARY**

### **RACE DISCRIMINATION**

### **VICTIMISATION DISCRIMINATION – Other forms of victimisation**

### **PRACTICE AND PROCEDURE – Disposal of appeal including remission**

The Employment Tribunal erred in failing to decide two of the complaints before them. However, on the unchallenged findings of fact there could have only been one outcome, that the complaints would have been dismissed. This is one of those rare cases in which the Employment Appeal Tribunal exercising its powers under the **Employment Tribunals Act 1996** section 35(1)(a) dismisses the claims.

**A** **THE HONOURABLE MRS JUSTICE SLADE DBE**

**B** 1. Following a Rule 3(10) Hearing, one ground of appeal from the Decision of Employment Judge Henry and members (Mrs M Castro and Mr C Underwood MBE), sent to the parties on 5 December 2016, is before the Employment Appeal Tribunal (“EAT”); that is that the Employment Tribunal (“ET”) failed to deal with acts complained of in items (f) and (g) in the Scott Schedule, which had been produced in this matter between service of the ET1 and a case management hearing. Mr Anderson, counsel for the Respondent, agrees with Ms Robin White, **C** counsel for the Claimant, that the ET did not set out the issues for determination - the direct race discrimination and victimisation acts complained of in items (f) and (g) of the Scott Schedule.

**D** 2. The ground of appeal is formulated in the Notice of Appeal as follows:

**E** “... the liability tribunal needed to have posed the following questions that fell on it to be determined, namely:

**F** (a) Did those acts complained of in F and G:

i. amount to unfavourable treatment?

ii. amount to harassment on racial grounds?

iii. result from his complaint to Ms Taylor in January 2015 against his line managers?

(b) and if it found those acts to be linked to the events around June/July 2015 on the evidence before it?”

**G** It is said that the ET erred in failing to address these issues or if it did failed to give reasons for its decision.

**H**

**A**     **The Background Facts in Outline**

3.       The Claimant was an employee of the Respondent for about 10 years, having commenced employment on 6 March 1995. His employment terminated on 23 September 2015. The Claimant is of Afro-Caribbean origin.

**B**

4.       The Respondent is a further education college. The Claimant was employed as a computer technical support officer within the Respondent’s technical support team in the Information Technology department. In 2015, the technical support team consisted of 10 members: Mr Barker (the IT manager), Mr Carnell (the Claimant’s line manager), three systems and applications administrators (“SAA”), four technical support offices (“TSO”) including the Claimant, and one technical support assistant (“TSA”). The head of IT, the IT manager and the SAAs were all white. All the TSOs were black: three Afro-Caribbean and one African. The Claimant considered that he was being harassed and victimised at work by being given demeaning tasks compared with other employees at his level. He complained to Ms Taylor of HR about this and had a meeting with her on 29 January 2015. He was told by her that he could raise a grievance regarding this. The Claimant did not do this.

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5.       The Claimant was due to have an appraisal in January 2015. He asked for more time to prepare for this. The delayed appraisal was to take place in February 2015, but was not carried out. The Respondent had to make savings. They decided to achieve these by reducing the number of TSOs from four to two. The Claimant had a meeting with Ms Taylor and Mr Barker on 12 June 2015. It appears that at the meeting two topics were discussed. One was that it was to be two TSOs who were to be made redundant, rather than those at more senior level, which the Claimant thought ought to have happened. “H&B” (harassment and bullying) was also discussed or raised by the Claimant. He did not say who he felt had harassed or bullied him. The Claimant

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**A** was told that he could raise a grievance. The Claimant made a personal note at the meeting extracts of which appear at paragraph 62 of the ET's Judgment.

**B** 6. The Claimant requested a second meeting regarding the redundancy exercise. The second meeting was held with the Claimant, Ms Taylor, and Mr Barker on 23 June 2015. The Decision to make TSOs, rather than other staff, redundant was discussed. The ET held at paragraph 62 of their Judgment, "*on cross-examination, the claimant advised that the comparison of treatment was as against his colleague TSOs who were of similar racial group, such that race was not the*  
**C** *consideration for the differential treatment alleged*". This was in regard to allegedly being given demeaning tasks compared with other employees at his level. Further, the ET held, "*It is accepted that during this discussion there was no mention of issues of harassment or bullying*" (paragraph  
**D** 64). The Claimant then submitted an email of 24 June, dealt with at paragraph 64 of the Tribunal's Judgment. It is accepted that during this discussion there was no mention of issues of harassment or bullying. However, it is the Claimant's submission that he thereafter submitted an  
**E** email dated 24 June 2015, which provided:

**"Structure charts - ... Discussion in consultation - Extension**

**Hi both**

**Concerning: structure charts, etc. Which was discussed in my individual consultation meeting - extension ... That is needed by the end of this week at the latest by yourself.**

**A couple of other point (linking to the charts)**

**Ethnicity:**

**As an observation that comes to mind is that all affected members (as things stand) are people of colour. Add into that anything above first line support are white."**

**G** It was suggested that this email of 24 June constituted a complaint of race discrimination.

**H** 7. Thereafter, the redundancy exercise was continued. There was a scoring exercise to ascertain who was to be selected for redundancy amongst the two members of staff at the

**A** Claimant's level. The Claimant scored second to last on the redundancy selection criteria. He was therefore selected for redundancy and was given notice from 1 July 2015, subject to the outcome of an appeal against his selection for redundancy.

**B**  
**C** 8. Following an incident on 7 July 2015, in which Mr Barker's car was scratched, the Respondent concluded that the Claimant had carried it out and dismissed him for gross misconduct. The Claimant presented the claim to the ET on 15 February 2016, alleging unfair dismissal, race discrimination, and breach of contract for not being given notice.

**D** 9. Between lodging the ET1 and the case management hearing, the Claimant's representative, Mr Sen, prepared a lengthy Scott Schedule of allegations. Those under (f) and (g) are material to this appeal and they are as follows:

**E** **“[F] Race discrimination, Direct discrimination, Harassment and victimisation**

**January 2015 and 23 September 2013**

**F. Period of Victimisation/Bullying**

**Date: January 2015 and ongoing**

**Act: Prevalent / out of the ordinary Harassment from David on a day to day basis.**

**Who: David Carnell (mainly) and Garod Barker**

**F**  
**G** **Act was: Giving me yet again demeaning tasks in Project Group (unlike to exact counterparts) to be exact: Manually connecting cables while my exact counterparts are doing many operational duties which no doubt has aided their career development. Lack of support, information and requested tools (compared again to counterparts) on what is needed to complete new rooms or blocks within a tight deadline. Persistently berating me about a certain Track-iT job (David put this request in the system on behalf of Learning Support) which should of went the way of Upper line of Support or to the designated Image Project group as other similar task does. At a certain point the atmosphere from the aforementioned in a verbal manner towards me was getting very unprofessional, this resulted me going to see the Principal. I was met by Aga (Secretariat Manager) whom cajoled and inform myself after some electronic communication to see Human Resources and at that point I had a discussion with Jo Taylor informed me that I could complain but warned me that they could retaliate if I did.”**

Pausing there, the allegations made precede the meeting with Ms Taylor.

**H** **“[G] Race discrimination, Direct discrimination, Harassment and victimisation**

**February 2015**

**G: Annual Appraisal**

A

Date: February 2015

Act: Not fully conducting Appraisal ... which has not been completed for the last three years aka. 2014 and 2013 both in February.

Who: David Carnell

Act Was: Going through the process of completing on-line forms, discussion with line manager about a 12 month action plan to aid my career development then nothing is signed (I have repeatedly check this with Staff Development Unit)

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Repercussions of this leads to general stagnation of development in an environment where technical changes are constant and also to large degree - lack of motivation."

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10. A Case Management Hearing was held by Employment Judge Southam on 14 April 2016. He identified complaints made in the ET1 and by then in the Scott Schedule, which had been prepared. At paragraph 6, it appears that after lengthy discussion and reference to a Scott Schedule the Claimant's representative had prepared, the Employment Judge observed it was clarified that the Claimant makes the complaints set out below.

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11. At paragraph 6.2, it is recorded:

"In paragraphs which appear below paragraph or section 12, the claimant makes six allegations, identified by letter. He pursues only the last two of these allegations, namely, the allegation at paragraph F, referring to January 2015 and thereafter, which begins with an allegation that the claimant was subjected to demeaning tasks in a project group. He also pursues the allegation at paragraph G in respect of his annual appraisal. These are allegations of race discrimination."

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12. At paragraph 6.3, the Employment Judge said "*The alleged protected act supporting all allegations of victimisation is that, during his redundancy consultation meeting, on 23 June 2015, he alleged that there had been race discrimination in the construction of the redundancy selection pools*".

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13. Employment Judge Southam made a further Order, a Deposit Order. The Employment Judge considered that the Claimant's allegations or arguments that:

H

"(1) He was subjected to demeaning tasks (as described more fully at paragraph 12F of the claimant's Particulars of Claim) and



A

(2) The respondent did not complete his annual appraisals (more particularly described in paragraph 12G of the Particulars of Claim),

have little reasonable prospect of success.

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The Claimant was ordered to pay a deposit of £200 in respect of each of those allegations. Those payments were made.

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14. The substantive hearing of the claims took place between 5 and 11 October 2016. The Claimant was represented by Mr Sen, who had prepared the Scott Schedule.

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15. The complaints raised in the ground of appeal before the Court presently are that the ET failed to identify the issues in (f) and (g), which were referred to in the case management decision of Employment Judge Southam.

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16. The ET, in the Decision under appeal, referred at paragraph 3.2, under a heading “*Race discrimination and victimisation (alleged protected act made orally in the redundancy consultation meeting on 23 June 2015)*”, which precisely reflected what Employment Judge Southam had recorded in his directions at the case management direction, namely that the protected act relied upon was an oral allegation in the course of the redundancy consultation meeting on 23 June 2015.

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17. As far as harassment (which is not the subject of this appeal) is concerned, at paragraph 3.3.3 the ET posed the question, “*Did Mr Carnell fail to conduct annual appraisals as set out at paragraph 12(g) of the claimant’s Scott Schedule?*”. At paragraph 3.4.1 under the heading “*Direct race discrimination*”, it was said “*If the allegations above are true, did they amount to less favourable treatment than that afforded the comparator?*”. At 3.5.1 the Tribunal posed

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A themselves the following issue relevant to the claim of victimisation, “*Did the claimant allege race discrimination in the redundancy consultation meeting on 23 June 2015 and thereby do a protected act?*”.

B **The Judgment of the ET**

*Harassment*

18. At paragraph 203, under the heading “*Harassment*”, the ET held:

C “With regards [to] the claimant’s claim for harassment the tribunal deals with this briefly. On the elements for harassment being put to the claimant, being predicated on considerations of race, the claimant has stated that he was not complaining that it was because of race but that he had received unfavourable treatment. The claimant has not made out a claim for which harassment could be alleged. The tribunal finds no substance to the claimant’s claims for harassment.”

D There was no appeal from this conclusion.

*Direct Race Discrimination*

E 19. At paragraph 204 the Tribunal held:

F “For the reasons above stated, the tribunal has found no evidence to support a complaint for direct discrimination on the protected characteristic of race. The claimant has not presented evidence from which this tribunal could conclude in the absence of an explanation from the respondent that the treatment of which he complains could have been on grounds of race, otherwise than the fact that he is of black Afro-Caribbean origin, which is not sufficient to ground a complaint for race discrimination.”

*Victimisation*

G 20. At paragraph 205 the Tribunal held:

“As above stated, the claimant has not done a protected act for the purposes of s.27 of the Equality Act 2010.”

H 21. Related to that conclusion, at paragraph 184 the ET held:

“On the claimant submitting that a protected act had been made orally in the redundancy consultation meeting on 23 June 2015, the tribunal finds that the claimant did not make a protected act at the redundancy consultation meeting on 23 June 2015. However, on the tribunal being referred to the correspondence of 24 June 2015, and informed that that was the

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protected act, the tribunal finds nothing by that correspondence that satisfies s.27(2) of the Equality Act 2010, so as to amount to a protected act.”

### **The Reconsideration Judgment**

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22. Mr Sen, on behalf of the Claimant, applied for reconsideration of the ET’s Judgment. The application for reconsideration was based on a contention that the ET did not consider in its Judgment the two allegations in (f) and (g). Those allegations were that the Claimant had been given demeaning tasks based on a protected act in January 2015, and that Mr Carnell failed to conduct an annual appraisal in February 2015.

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23. The ET on 4 December 2017 confirmed their Decision. In the course of the Reasons for rejecting the application for reconsideration, the ET held that the allocation of tasks was a matter of general management applied to all staff, with the Claimant being treated no differently from others. The ET observed that, on the evidence, it was at the Claimant’s request that the appraisal was arranged for 10 February 2015. There was no evidence as to why the appraisal did not take place on that date and that there were no facts from which it could be inferred that the appraisal was not held because of considerations of race. An appeal from the dismissal of the reconsideration application was itself dismissed by the EAT.

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### **The Ground of Appeal**

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24. Ms White submits that the ET erred in failing to set out those issues and to determine the complaints of race discrimination and victimisation set out in (f) and (g) of the Scott Schedule. It is accepted on behalf of the Claimant that the ET dealt with the claims of harassment raised in those sections. In submissions in support of the appeal, Ms White relies in particular on the fact that the ET at the Liability Hearing did not set out in the list of issues or identified that what was said at the meeting on 29 January 2015 was a protected act.

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A 25. Turning to the allegations made in (f), Ms White rightly acknowledged that the Claimant  
did not assert that a complaint of race discrimination was made by him to Ms Taylor in the  
meeting of 29 January 2015 relied upon and referred to in (f). Findings of fact on the meeting of  
B 29 January 2015 were made in the Tribunal’s Judgment at paragraphs 38 and 39. With regards  
to this account, it is not in dispute that the Claimant raised an issue regarding allocation of jobs  
in January, Ms Taylor’s evidence was that the matter having been raised with her was not taken  
C further. On 29 January 2015, the Claimant went to see Ms Taylor raising the issue of being  
harassed and bullied. It is Ms Taylor’s evidence that exactly what the Claimant was saying other  
than he felt victimised or harassed in some way was not clear. The Claimant gave no specific  
D names or examples. It is further Ms Taylor’s evidence that in discussing the Claimant’s concerns,  
he had spoken in cryptic terms referring to persons as “*those who shall not be named*”.

E 26. The Claimant’s evidence was in a statement prepared for the purpose of the ET  
proceedings. In the statement at paragraph 16, the Claimant dealt with events in January 2015.  
He stated as follows:

F “In January 2015 My Line Manager giving me yet again demeaning tasks in Project Group  
(unlike the work given to exact counterparts) to be exact: Manually connecting cables while my  
exact counterparts are doing many operational duties which no doubt has aided their career  
development. Lack of support, information and requested tools (compared again to  
G counterparts) on what is needed to complete new rooms or blocks within a tight deadline.  
Persistently berating me about a certain Track-iT job (David put this request in the system on  
behalf of Learning Support) which should have gone to the Upper line of Support or to the  
designated Image Project group as other similar tasks go to. At a certain point the atmosphere  
from the aforementioned in their verbal mannerism towards me was getting very  
unprofessional, this resulted in me going to see the Principal. I was met by Aga (Secretariat  
Manager) whom cajoled and inform myself after some electronic communication to see Human  
Resources and at that point I had a discussion with Jo Taylor informed me that I could complain  
but warned me that they could retaliate if I did: see pages 721-724.”

H 27. Those allegations are reflected and repeated in the Scott Schedule and that must be taken  
to be relying on evidence of the meeting of 29 January 2015 with Ms Taylor. It is accepted by  
Ms White on behalf of the Claimant, that at the January 2015 meeting the Claimant did not allege  
that the matters of which he complained were because of race discrimination. He simply

**A** complained about being allocated menial tasks. When asked how this evidence could support an allegation that what the Claimant said at the meeting on 29 January 2015 was a protected act, Ms White said that the ET should have inferred that the allegations were in fact allegations of race discrimination, in that they should have related the much later allegation of race discrimination made five months after that event in a different context from the other meeting. They should have read back the allegation of race discrimination in redundancy selection as affecting the conversation with Ms Taylor on 29 January 2015.

**B**

**C**

**D** 28. Ms White fairly acknowledged that this argument had not been advanced in the Notice of Appeal or in the skeleton argument for this appeal. Having consulted with Mr Sen who was sitting next to her, counsel said that Mr Sen (who represented the Claimant at the ET) wanted her to say that he was to have been understood as making such a submission to the ET. I can find no basis for this in Mr Sen's written submissions or any record of it in the ET's Decision or importantly in the reconsideration application also made by Mr Sen.

**E**

**F** 29. Mr Anderson submitted that there was no evidence to support a protected act on 29 January 2015. Only one protected act had been alleged, which was on 23 June 2015. I agree. There are no findings of fact to support a contention that the Claimant made a protected act on 29 January 2015. The evidence of the Claimant himself does not support such a contention. That evidence is contained in his witness statement at paragraph 16.

**G**

**Discussion**

**H** 30. The Claimant does not say that he alleged race discrimination at the meeting on 29 January 2015. It would be impermissible to read an allegation made five months later, made in a different context - namely selection for redundancy - as affecting how a meeting on a different

**A** topic should be understood. Further, what must be applied is the statutory test for victimisation.  
Section 27 of the **Equality Act 2010** provides as follows:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because -

(a) B does a protected act, or

**B** (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act -

...

(d) making an allegation (whether or not express) that A or another person has contravened this Act.”

**C** Ms White rightly points to (d).

**D** 31. If a person does not make an allegation of race discrimination and if at the time of committing the alleged acts or victimisation by subjecting B to a detriment, A had no reason to know or suspect that an allegation of race discrimination had been made, then the Claimant cannot establish victimisation. What is required to establish victimisation is that A subjects B to a detriment because B has done or does a protected act. The causation element cannot be there if  
**E** A does not know that B is alleging or is to be taken to allege discrimination. Therefore, it does not assist, even if it were permissible, which it is not, to read back into an event five months earlier in a totally different context, an allegation of race discrimination. That would not assist  
**F** at all unless the perpetrator knew or is to be taken to have known from surrounding acts that an allegation of race discrimination was being made.

**G** 32. Even accepting the Claimant’s new argument, until the allegation of race discrimination had been made on either 23 or 24 June 2015, the Respondent would have no reason to believe that any earlier complaints should be viewed as race discrimination. All acts, therefore, of the Respondent up to 23 June, even on the Claimant’s new argument, cannot be attributed to a course  
**H** of race discrimination or race allegation.

**A** 33. Accordingly, on the material before it, the ET could not have found that giving demeaning tasks as alleged in (f) was or were acts of victimisation. Nor was there any basis on the findings of fact to find that the allocation of tasks was direct race discrimination. This allegation along with that of failing to carry out an assessment was the subject of the Reconsideration Judgment.

**B** The ET considered matters again on the material that was placed before them and came to the clear conclusion that the reason for the allocation of tasks said to be demeaning was a result of a management decision. Further, it was the result of a management decision on the allocation of

**C** tasks between those who were described by the Claimant as comparators, namely staff all of whom were black, and all of whom were employed at the same level as the Claimant.

**D** 34. The complaints about the annual appraisal are the subject (g) on the Scott Schedule. The annual appraisal matter is referred to in the Claimant's statement at paragraph 17 in which he says:

**E** **"My Annual Appraisal which was discussions were carried out in February 2015. Once again that was not completed to make sure I double checked this with Professional Development and Standards Unit and my reservations were confirmed: see pages 725-727."**

**F** 35. Counsel contended the ET should have looked at the failure to give an appraisal in February 2015 in the light of the allegation in a previous paragraph of the statement made by the Claimant, namely paragraph 13. That is a fairly substantial paragraph dealing with events in September 2014, and having set out various matters it includes at the end of the paragraph:

**G** **"... I believe this was victimisation to what they believe as myself being outspoken and also black and Matthew being a favourite and being white. This was very unjust."**

**H** 36. Ms White seeks to advance a similar argument, although different in time as to how the conversation of 29 January 2015 should have been viewed. It is said that the conversation should have been considered in the light of events five months after the said to be protected act. Again, this matter referred to in paragraph 13 was several months before acts complained of in the ET1

**A** and in a totally different context. What the Court is being asked to do is to transpose forward in time and in a different context an allegation of race discrimination made of events in September 2014, forward to events in January 2015 onwards.

**B** 37. For similar reasons as given in relation to reading back events of 23 June 2015 to 29  
**C** January 2015 in my judgment, this is an impermissible reading. Further, as with the previous  
**D** argument, it was not raised in the grounds of appeal. It is not in the skeleton argument. It was  
**E** not raised before the ET and it was not raised in the application for reconsideration. In my  
**F** judgment, on the findings of fact made by the ET in relation to the failure to carry out the appraisal  
**G** in February 2015, there is no material which could have supported a conclusion that not carrying  
**H** out the appraisal at that time was victimisation for having carried out a protected act or direct  
race discrimination.

**E** **Conclusion**

**F** 38. In my judgment, the ET did fail to consider separately and to decide the allegations of  
**G** victimisation and direct race discrimination raised in paragraphs (f) and (g) of the Scott Schedule.  
**H** Those had been referred to and identified by Employment Judge Southam in his case management  
directions. An ET is required to consider and make decisions on all the allegations placed before  
it. There were many in this case. It is unfortunate that these were not enumerated in the list of  
issues to be decided. In particular, the question of the allegation of a protected act being made  
on 29 January 2015, emphasised in particular in this appeal before me, was not identified. It is  
fair to say that at all stages up until now, although it was in the Scott Schedule, it had not been  
identified as a protected act either in the case management directions or in the substantive  
decision of the ET under appeal.



**A** 39. However, in my judgment, this is one of those rare cases where all the relevant facts have  
been found. So far as the allegation in (f) is concerned, which relies upon a protected act on 29  
**B** January 2015, it is agreed by the Claimant that he made no allegation of race discrimination in  
the meeting on that date. It can be seen from the statement of the Claimant what he says about  
his complaints of being allocated demeaning tasks and that those tasks led to his meeting with  
Ms Taylor on 29 January. There are two significant matters which arise from his own evidence.  
**C** First, that the allocation of demeaning tasks preceded the discussion during which it is sought to  
be said that there was a protected act. Secondly, much more importantly, that it is recognised  
that no allegation of race discrimination was made in the course of that meeting.

**D** 40. As discussed earlier in this Judgment and decided, it would have been impermissible for  
an ET to somehow read back an allegation of race discrimination made five months after this  
conversation in a totally different context as moderating what was said by the Claimant on 29  
**E** January. Further, since that happened five months later, it could have had no causative effect on  
actions taken by the Respondent on 23 or 24 June 2015.

**F** 41. Accordingly, on the basis of the allegation victimisation made in (f), the allegation that  
there had been a protected act on 29 January 2015, would had been bound to fail. As for any  
other protected act, that of 23 June or 24 June, that was considered and dealt with by the ET in  
their Judgment. Further, the complaints made are of events before 23 and 24 June 2015. There  
**G** is no prospect of success of a claim of victimisation as set out in (f) in the Schedule.

**H** 42. As far as the allegation of race discrimination in relation to the matters set out in (f) are  
concerned, the Tribunal, both in the original Judgment and in their Reconsideration Judgment,  
considered the reason for the allocation of demeaning tasks to the Claimant - the subject of the

**A** complaints in (f) - and could find no basis for an allegation of race discrimination. Those are findings of fact, which are unassailable and would be binding on any remitted hearing.

**B** 43. As far as (g) is concerned, the matter of not carrying out an assessment and appraisal in February 2015 again, the findings of fact made by the ET could not support a finding that the reason for not carrying out the appraisal was on grounds of race or was an act of discrimination or victimisation. Further, there is absolutely nothing in the evidence in the witness statement of  
**C** the Claimant, which is the best evidence of what he said to the ET, to support the contentions in (g) in the Scott Schedule.

**D** 44. For the reasons given, it would be impermissible for an ET to read forward allegations made in respect of September 2014, dealt with in paragraph 13 of the witness statement, as complaints of discrimination affecting the decisions, if they were decisions, in respect of when the appraisal of the Claimant was to take place. In my judgment, there would be only one answer to the claims made in (f) and (g) of the Scott Schedule and that answer would be that those claims have to be dismissed. This is the rare case in which this EAT exercising powers under  
**E** **Employment Tribunals Act 1996** section 35(1)(a) makes the decision that these claims be  
**F** dismissed.

**G** 45. I should conclude by saying that Ms White has had a difficult and uphill task, which she has discharged with moderation and consideration.

**H**