RM

EMPLOYMENT TRIBUNALS

Claimant: **Mr D De Leon**

Respondent: **London Underground Limited**

Heard at: **East London Hearing Centre**

On: **6-9 November 2018**

Before: **Employment Judge S O'Brien**

Members: **Ms J Houzer**
Mr T Brown

Representation:

Claimant: Ms Loraine of Counsel

Respondent: Ms Thomas of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. **The Claimant complaint of direct race discrimination fails and is dismissed.**

2. **The Claimant's complaint of victimisation fails and is dismissed.**

REASONS

1 On 13 December 2017, in an ET1 and Grounds of Claim drafted by Thompsons Solicitors, the claimant presented a claim comprising complaints of direct race discrimination and victimisation. The respondent resists the claims.

ISSUES

2 At a preliminary hearing on 23 April 2018, Employment Judge Russell, identified the issues to be decided at this hearing as follows:

Direct discrimination

2.1 Did the respondent treat the claimant less favourably that it treats or would treat others because of a protected characteristic (race)?

2.2 The less favourable treatment relied upon is:

2.2.1 Failing to detail to the claimant the allegations that had been made about him by three colleagues: Mr Siequein; Mr Chumroo; and Mr Comfort.

2.2.2 Failing to allow the claimant to put forward evidence against the above allegations.

2.2.3 Upholding Mr Chumroo's and Mr Comfort's complaint and imposing disciplinary sanctions on the claimant.

2.2.4 Allowing Mr Chumroo and Mr Comfort to appeal against the decision made by the respondent in respect of their complaints against the claimant.

2.2.5 Allowing a further complaint (clarified at this hearing as being an allegation that the claimant had made disparaging remarks about Mr Comfort's brother) to be made by Mr Comfort as part of his appeal.

2.2.6 Allowing Mr Siequein the opportunity to appeal against the respondent's decision in relation to his complaint against the claimant.

2.2.7 Not inviting the claimant to a meeting to discuss his complaint submitted to the respondent on 3 August 2017.

2.2.8 Failing to allow the claimant to appeal against the respondent's decision regarding his complaint.

2.2.9 Advising the claimant that his claim was vexatious.

2.2.10 Not allowing the claimant to return to work in September 2017 when his sick note expired and he was deemed fit to return to work.

Victimisation

2.3 Did the respondent subject the claimant to a detriment because he had done a protected act (bringing Employment Tribunal proceedings on 16 November 2015 against the respondent for race discrimination, and lodging a complaint of race discrimination on 2 August 2016)?

2.4 The detriment relied upon by the claimant are those acts set out in paragraphs 2.2.1 to 2.2.10 above.

Jurisdiction

2.5 Has the claimant brought his claim within the time limit set by s123(1) of the Equality Act 2010?

2.5.1 What was the date of the act to which the complaint relates?

2.5.2 Was the act to which the complaint relates and element of conduct extending over a period and, if so, when did that period end?

2.5.3 Insofar as the complaint relates to a failure to do something, when did the respondent decide on it?

2.6 If not, is it just and equitable for the Employment Tribunal to extend time for the presentation of the complaint pursuant to s123(1)(b) of the Equality Act 2010?

3 Over the course of this hearing, we took evidence on the basis of written witness statements. The claimant gave oral evidence on his own behalf. On behalf of the respondent we heard oral evidence from: Mary North (Head of Resource and Capability Management for TfL Engineering), Vincent Dardis (former Senior Operating officer), Greg Belizaire (Area Manager for the Gloucester Road group of stations), and Altaf Patel (Train Operations Manager for the Stratford Depot).

4 We were also provided with a joint bundle comprising approximately 500 pages, to which two documents were added during the hearing. We took into account all of the witness evidence and all of the documents to which it was referred, whether or not expressly set out in these reasons.

5 The parties each made oral submissions, to supplement comprehensive written submissions/skeleton arguments. We took all of these submissions into account when determining the issues before us. Ms Loraine confirmed that she was withdrawing those allegations to which paragraphs 2.2.4, 2.2.6, 2.2.8 above referred.

FINDINGS OF FACT

6 In order to determine the issues as agreed between the parties, we made following findings of fact, resolving any disputes on the balance of probabilities.

7 Insofar as it was necessary to resolve disputes between the uncorroborated evidence of the witnesses, we preferred the evidence of the respondent's witnesses for the following reason. Each of the respondent's witnesses gave straightforward answers to questions, and made concessions where appropriate. The claimant, on the other hand, was often evasive and occasionally contradictory.

8 The claimant has been employed by the respondent as a train operator since October 2006. He is based at the Stratford Depot. The claimant identifies as black British.

9 The respondent operates a harassment and bullying procedure, a full copy of which is to be found in the Tribunal bundle. In particular it contained the following provisions:

> '2.2 If any in any doubt the decision as to whether a matter is harassment or bullying will be determined by an accredited manager after discussion with the complainant. Complaints that do not fall within the agreed definitions will be dealt with under the individual grievance procedure.'
>
> '5.1 Complaints of harassment and bullying are to be dealt with in confidence and every effort should be made to resolve complaints informally and swiftly.'
>
> '5.4 No complaint will be considered to be made in bad faith simply because it was judged to be unfounded after investigation. Nevertheless, where a complaint is believed to be made in bad faith, maliciously or vexatiously, the employee who made the complaint and those who provide evidence in support will be subject investigation and thereafter possible disciplinary sanction.'
>
> '5.6 Complainants have the right to seek an independent review by an Accredited Manager if initial formal management interventions are ineffective.'

10 Under section 10 of the procedure, a complainant has the right to appeal, which appears (and we find) to be unfettered.

11 In June 2015, the claimant made a complaint about a fellow driver's (Mr Siequein), tattoo, which comprised of an eagle above a wreath surrounding a swastika. The claimant's grievance was dismissed by Ms Hedgecock, in part because by then Mr Siequein had blacked out the swastika element of the tattoo. The claimant's appeal was also rejected.

12 The claimant presented a claim to the Employment Tribunal on 16 November 2015 citing London Underground, Ms Hedgecock and Mr Siequein as respondents. In a judgement promulgated on 10 January 2017, the Employment Tribunal upheld the claimant's complaint of harassment in respect of Mr Siequein displaying the tattoo but dismissed his harassment claim insofar as it related to Ms Hedgecock not upholding his grievance and also the dismissal of his grievance appeal.

13 On 2 August 2016, the claimant was the subject of a complaint by Mr Chumroo, who alleged that the claimant had entered into a conversation with him that day in the canteen telling Mr Chumroo that the swastika was no longer anything to do with Hinduism, and that Mr Chumroo should not be teaching his children about it. Mr Chumroo is a Hindu and felt, he said, very uncomfortable and that he should not have to come to work to be subjected to 'this type of intimidation'.

14 Mr Siequein was notified about Mr Chumroo's complaint by his union representative, Noel O'Hara, and submitted his own complaint about the claimant on 3 August 2016. In essence, it referred to the claimant showing Mr Chumroo pictures of Mr Siequein's leg and body art, and alleged that it was 'now clear that [the claimant] is running a persistent campaign against me to undermine my position at the depot by talking about me in a very negative way to my colleagues in the work place.' Mr Siequein alleged in terms that this was bullying of him which created a hostile atmosphere for him and colleagues, and complained that the claimant had behaved that way 'despite the fact that Dion has given assurances, like myself, at his return to work interview, that he would

behave professionally towards myself and others in the workplace whilst we wait for his Employment Tribunal against myself, you and London underground to be heard.'

15 As it was, Mr Siequein had brought a formal bullying complaint against the claimant's partner, Ms Delpratt, on 11 January 2016, making similar but not entirely identical complaints. In that complaint, Mr Siequein had asserted his belief that Ms Delpratt was creating a hostile workplace for him by 'reigniting the issue of the tattoo directly with my workplace colleagues and trying to imply that I am a racist again.' He alleged that the behaviour was causing stress and anxiety and was disrupting his sleep. There did not appear to be any allegation that Ms Delpratt was showing photographs of him around but just that she was asking people what they thought and whether they were offended by the tattoo.

16 As part of the fact finding into that complaint, Mr Siequein was interviewed on 26 February 2016. In that interview, Mr Siequein is recorded as saying that the claimant was a black man with family in the West Indies and pointing out that Ms Delpratt had not raised her concerns directly with him or her managers in line with procedures. He identified previous confrontations between him and the claimant with respect to a pool table, the conduct of a picket and his own liaising with British Transport Police.

17 Paul Ryan was interviewed on 27 April 16, and said that the claimant is 'a bit of a bully and uses his body language to intimidate people. He nearly got into trouble on a picket line and police were about to take action but didn't in the end.' Gary Simmons was interviewed on the same day and said that the claimant 'had not found the tattoos offensive before.'

18 Mr Siequein's bullying and harassment complaint against Ms Delpratt was upheld by the respondent on 27 May 2016. However, the subsequent disciplinary proceedings were dismissed in a decision sent on 22 September 2016 following a hearing on 19 August 2016. In the outcome summary, it was found in particular that the Ms Delpratt asking if the tattoo was offensive was a perfectly reasonable question to ask, and that almost all of the staff had known of the existence of the swastika tattoo, the subsequent complaint and the Tribunal case. The disciplinary panel concluded that there was no evidence to suggest that Ms Delpratt had perpetuated the tattoo discussion any more than others had. The panel continued:

> 'Whilst we consider that the general culture of gossip and speculation within the Depot is unacceptable, we understand that the display of such a tattoo is likely to prompt discussion and we consider that Mr Siequein would have known this given that he had known what the swastika and the eagle represented. We consider the Mr Siequein's perception that you acted maliciously and that you were intimidating him is unreasonable.'

19 Having accepted that, whilst Mr Siequein had covered up the swastika part of the tattoo, Ms Delpratt still found the remaining part of the tattoo offensive, the panel recommended that a formal review be undertaken by an accredited manager regarding the tattoos that Mr Siequein displayed. That review appears to have been undertaken on 6 October 2016 by Nick Shaw, senior project manager, who concluded that the tattoos had the potential to cause offence to members of staff and public, and recommended that

Mr Siequein be instructed to cover them whilst at work so that they could not be seen and cause offence.

20 On the 3 August 2016, the day after Mr Chumroo raised his complaint and the same day that Mr Siequein had raised his complaint against the claimant, the claimant submitted his own formal bullying complaint against Mr Siequein. He alleged that Mr Siequein had discriminated against him on the grounds of race, in that he had made a statement to Abdul Rahim on 26 February 2016 which 'racially profiles me. This has the effect of racially abusing me, as their [sic] is no evidence, and is totally made up by Mr Siequein'. The claimant went on to assert 'Bryan Siequein is known to wear a white supremacist race hate tattoo which affects my protected characteristic. This is now causing me stress and anxiety and disrupting my sleep patterns. I'm taking advice from my doctor.'

21 On 5 August 2016, Mr Comfort also submitted a bullying and harassment complaint against the claimant on the grounds of race and attempts to undermine and demean him as a union representative. In essence, it was alleged that the claimant had been telling train operators that Mr Comfort was a member of a white supremacy group and the 'white hoods' at the Stratford depot. It was alleged that the claimant was trying to sway opinion and feeling against Mr Comfort in order to undermine his position in the depot.

22 On 8 August 2016, Ewan Taylor emailed Mary North thanking her for agreeing to undertake an initial assessment of the four complaints. In particular, that email said 'it is part of a wider long-standing complaint that centred on a swastika on Siequein's leg that [the claimant] took exception to. Without going into too much detail, there are separate proceedings ongoing'. Mr Taylor then summarised the parties to each of the complaints (with the specific emails containing the complaints to follow).

23 On 9 August 2016, Mr Comfort was asked to provide more information about his complaint, which he did by return email about an hour later. Mr Comfort quoted in full a statement he said he received from Martin Bell 'late last week' which related primarily to having overheard the claimant talking to Mr Chumroo about nazi symbols and swastikas but went on to report the claimant talking about white supremacy groups and 'white hoods, and in particular Mr Comfort's involvement in such groups. Mr Comfort also claimed to have been given a recording in which the claimant refers to his brother as a 'drunk'. Mr Comfort said that he had heard the claimant saying such things before but, because of the seriousness of the present situation, had no option but to report what he had been told by Mr Bell.

24 On 11 August 2016, Ms North notified the claimant that she had undertaken an initial review of his complaint and had sought further information regarding the part of his complaint referring to the allegation of racial profiling. She had been provided with the notes of the fact finding interview in question and understood the allegation to relate to the comment 'Dion DeLeon was a black man with family in the West Indies'. Ms North asked the claimant to let her know she was wrong. As it was, she was unable to accept that that comment could be considered racist or constitute racial profiling and so was unable to accept that that part of his complaint fell under bullying and harassment.

25 In respect of the claimant's complaint regarding Mr Siequein's tattoo, Ms North noted that the matter been investigated thoroughly and 'closed out', and was also the subject of legal proceedings. She gave the claimant the following warning:

> 'I take this opportunity to remind you that under the Harassment and Bullying Policy all complaints are assumed at the outset to be made in good faith and that employees genuinely believe that they have been harassed and bullied. Sometimes the perception held by the complainant is not reasonable. This can lead to persistent complaints being raised which might be seen as unjustified and that a reasonable employee would see that continue with the complaint is unreasonable.
>
> 'As an Accredited Manager I believe that raising the same complaint again could be seen as vexatious and I would advise you to pause and consider whether you wish to continue with your complaint.'

26 However, Ms North told the claimant that, if he believed he had further evidence to support a complaint of harassment, he should provide that to her within seven days of receipt of the letter.

27 The claimant did indeed respond to that letter, clarifying that the allegation of racial profiling concerned Mr Siequein saying that the claimant had 'had liaisons with the British Transport Police, which he categorised as a 'total lie' and 'slander' that he found 'intimidating and hostile'.

28 The claimant also referred in his further evidence to a written statement made by Paul Ryan on 27 April 16 to the effect that the claimant had a reputation of being a bully and intimidating people and also that the police were about to same take some sort of action against the claimant. The claimant further alleged that Gary Simmons had made a 'racist vexatious statement' - that the claimant didn't have any problems with white supremacist racist hate tattoos. The claimant then spent some four paragraphs going into detail about Mr Siequein's tattoos. He also alleged that Gary Comfort had been named in his original complaint regarding Mr Siequein being a white supremacist, and that Mr Chumroo had put in a vexatious bullying and harassment complaint. The claimant claimed that Mr Chumroo had approached him and asked him to talk about his Tribunal case, thus putting the claimant in a compromising position.

29 The claimant told us that the references in his complaint to Mr Siequein's tattoos were merely context for his actual complaint but were not were not part of the substance of the complaint itself. Even if that were true of his brief grievance of 3 August 2016, we find that it was reasonable for Ms North to understand the complaint concerned both matters. In any event, we fail to see how, after receipt of the claimant's further information, Ms North could have been in any doubt that the claimant was indeed seeking to complain yet again about Ms Siequein's tattoos.

30 Ms North responded further to the claimant's bullying and harassment complaint on 7 September 2016. She had read again the fact-finding notes of 26 February 2016 and was unable to determine how Mr Siequein's remark about the British Transport Police could demonstrate racism or even how it could reasonably be considered to be intimidating and hostile. In respect of the claimant's new allegations regarding Paul Ryan

and Gary Simmons, Ms North observed that the statements had been made in the context of a confidential fact-finding interview regarding a bullying and harassment investigation and was unable to accept that those statements were evidence of racism by either individual against the claimant.

31 Regarding Mr Siequein's tattoo, again Ms North observed that the matter had been investigated thoroughly and closed out. She rejected the claimant's claim to have named Gary Comfort in his original complaint. In so far as Ms North was dealing with the claimant's complaint of 3 August 2016, this was a correct conclusion. The Tribunal accepted that it was not Ms North's function to review the substance of the claimant's earlier complaint.

32 Ms North indicated that the claimant's allegation that Mr Chumroo had raised a vexatious complaint would be dealt with as part of the investigation undertaken by Liz Sandey into that complaint. She further observed that that allegation was unrelated to the claimant's original complaint against Mr Siequein. She reminded the claimant again that 'as an Accredited Manager I believe that raising the same complaints repeatedly may be seen as vexatious and I would advise you to carefully consider this.' We are in no doubt that that was a clear reference to the claimant's persistent complaints about Mr Siequein's tattoos.

33 Ms North indicated that the letter concluded her consideration of the claimant's complaints and that she had decided they did not meet the criteria for an investigation.

34 Ms North had received the claimant's response to her letter of 11 August by recorded delivery on 23 August. We were provided during proceedings with an email sent by Ms North from her iPad to herself on 26 August 2016 setting out her initial thoughts on his further submissions. It contains in particular the following two paragraphs:

> 'he appears to be raising complaints against people who raise complaints against him - this does appear vexatious in nature and no evidence is provided. I would strongly suggest that this is taken forward as. The complaints seem to be directly in response to claims made against him.'
>
> 'It appears that this this complaint has been made in bad faith. I believe that this complaint is vexatious - he wants to get [Mr Siequein] and if he can't get him he now wants to root out anybody who may have supported him. He is accusing the two witnesses of racism when they stated that they believe that he is not being genuine in his allegations of racism and that is pursuit is vindictive'.

35 We accept that Ms North reflected on her position after 26 August and by the time she sent her response on 7 September, she had formed a view no higher than that the repeated allegations could be considered vexatious. No disciplinary action was instituted or even recommended against the claimant and the claimant was categorically not told that his claim was vexatious.

36 In the meantime, Ms North had allowed the complaints of Mr Chumroo, Mr Comfort and Mr Siequein to go forward to a full investigation. The claimant was notified of

the same by Euan Taylor in a letter dated 15 August 2016. In that letter, Mr Taylor expressly said the follows:

> 'This letter is to advise you that we have received three separate harassment and bullying complaints against you from three members of staff - T/Op Bryan Siequein, T/Op Garish Chumroo and T/Op Gary Comfort. The complaints from T/Op Siequein and T/Op Chumroo relate to comments allegedly made by you in relation to a tattoo on T/Op Siequein's leg. The complaint from T/Op Comfort relates to comments allegedly made by you in relation to his being a member of a white supremacist group.'

37 This was a reasonable, if brief, summary of the allegations that the claimant was facing.

38 The claimant was invited to a fact-finding meeting with Ms Sandey on 8 September 2016 but was unable to attend because he was unwell. A series of other dates were arranged and rearranged. In a letter dated 21 November 2016 regarding the rearrangement of that meeting for 25 November 2016, the claimant was told:

> 'It is very important that you attend this meeting, allowing AMH Sandey the opportunity to ask you such questions about the complaints that you have raised, for her to gather as much factual information as possible and for you to provide any information that you wish. In the interest of progressing with the cases and for the benefit of all parties this is the final time that this fact-finding will be arranged.'

39 As it was, the fact-finding was rearranged again and finally took place on 13 December 2016. The claimant indicated at the outset of this fact-finding meeting that he was 'feeling victimised'. His representative, Peter North, said 'Dion put in a complaint because someone was wearing a swastika and nothing was done. Now Dion is sat here facing a complaint. Dion is the only one facing charges', to which Ms Sandey responded 'I can't go anywhere near the content of the Employment Tribunal.' We note that the fact-finding was hearing was taking place a little over a month after the Employment Tribunal hearing in question and before the outcome had been promulgated.

40 Slightly later in the hearing the claimant said:

> 'If I'm taking someone to court there should be checks and balances. He is allowed to put in a complaint against me. My partner is German. At the time, we were just good friends. She commented that in Germany he would have been arrested. He took out a complaint. LU allowed him to put in a Harassment and Bullying case against me.'

41 Ms Sandey, who had already heard from the complainants, upheld Mr Chumroo's complaints and partially upheld Mr Comfort's complaint. Her conclusions were set out in a letter dated 24 January 2017. In respect of Mr Comfort, she said:

> 'The first complainant, Gary Comfort alleged that you had harassed and bullied him by referencing his name in association with White Supremacist groups with racist

views. During our meeting you told me that you did not remember making any comments like this in relation to Mr Comfort however there was a witness who was able to tell me that you spoke to colleagues on one occasion about white supremacists in LU and that Mr Comfort was one of them. On that basis I find that on balance you did refer to Gary Comfort as a white supremacist or something very similar on at least one occasion.

42 Regarding Mr Chumroo, Ms Sandey said:

'The second complainant, Garish Chumroo alleged that you had harassed and bullied him during a conversation in the canteen of Fleet House. He told me that as part of this conversation you showed him an image of a colleague's leg depicting a tattoo. This image had originally included a Swastika and you said that this was a racist image. You also went on to make comment about this image within the context of the Hindu faith. Mr Chumroo, told me that this caused him great offence as the teachings of his faith are extremely important to him. Mr Chumroo also told me you made some inappropriate comments regarding how he (Mr Chumroo) should discuss these matters with his children. Based on the evidence and on balance I prefer the evidence of Mr Chumroo and it is my decision to uphold the second complaint.

43 In respect of the those findings, Ms Sandey made three recommendations: that management advice be offered to the claimant in respect of the respondent's equality and inclusion policy; that appropriate support be offered to him to participate with the BAME group within Transport for London (although it was made clear that it was his decision whether to participate or not); and that the claimant needed additional coaching and mentoring to help with way he expressed or discussed issues.

44 Mr Chumroo and Mr Comfort were also notified on the same date that their complaints had been upheld and partially upheld respectively.

45 Ms Sandey informed the claimant on 16 February 2017 at that the complaint against him by Mr Siequein had not been upheld. By then, on 26 January 2017, the claimant had begun period of sickness absence for stress at work.

46 Each of the complainants appealed against the respective outcomes. Given that the claimant is no longer pursuing his allegations regarding these appeals, it is unnecessary for the Tribunal to go into any great detail save in respect of Mr Comfort's appeal.

47 In that regard, Mr Comfort appealed on 31 January 2017 on two grounds: that the Accredited Manager had refused to inform him what actual action was being taken against the claimant and what would be done to prevent further issues occurring; and that the recorded conversation which supported his complaint had been rejected.

48 Fernando Soler, Service Control Manager and an Accredited Manager, was appointed to hear the appeals. Mr Comfort was notified by letter dated 20 February 2017 that he was to be interviewed by Mr Soler on 24 February 2017. At this meeting, amongst other things Mr Comfort said, '[the claimant has] been off two years and really should be

out of the company'. It was suggested to us that Mr Comfort was indicating a clear wish to have the claimant dismissed; however, he went on later in the interview to say, 'I want it recognised and I want it stopped. He has no respect for anyone. The rationale in the result for him making these comments was because he was under stress. We all have stress, but we don't go around calling people of white supremacist? I am not trying to get him punished…'

49 Mr Soler similarly interviewed the other appealing complainants, and also the claimant on 20 April 2017. At the point of this interview, the claimant was still absent from work with work-related stress. However, Mr Soler specifically stated, 'In terms of the risk assessment, at this time there is to be no contact between any party, just to be clear, until the case of my appeal investigation is complete. In terms of risk assessment, separation is the decision. Okay?', to which the claimant's representative indicated that they were 'okay with that.'

50 As a result of representations made on the part of the claimant, Mr Soler was replaced by Vince Dardis as the appeal officer. Inevitably, this caused some delay.

51 In the meanwhile, on 26 April 2017, a remedy hearing was held in respect of the claimant's earlier Employment Tribunal claim against the respondent, Ms Hedgecock and Mr Siequein and he was awarded £3000 in respect of injured feelings, plus interest and one third of his fees.

52 At a case conference on 28 April 2017, the claimant indicated that he was under a lot of stress. It was discussed whether the claimant would return to duty on 15 May 2017. However, it was indicated on the claimant's behalf that he did not want to do light duties at TAD (Temporary Alternative Duties) and that, if matters between him and the complainants had not been resolved by 15 May, he would prefer to remain at home than go on TAD. In the event, the claimant suffered a myocardial infarction on 12 May 2017 and was admitted to hospital.

53 On 1 May 2017, Ms Delpratt saw Mr Siequein him at Stratford in three-quarter length trousers, which left his tattooed lower legs on public display. Ms Delpratt raised a grievance on 2 May 17 indicating that she felt violated in the workplace. She complained that she had been given a 'cast-iron guarantee' by Mr Belizaire on 20 April 2017 that Mr Siequein would wear full length trousers to cover is "highly offensive tattoos" when the workplace. The Tribunal also notes that Mr Siequein had by 17 November 2016 agreed to cover up his tattoos and that he had been doing that by wearing trousers to work.

54 The grievance was heard and the outcome given to Mr Siequein by letter dated 25 May 2017 accepting his explanation for being dressed the way he was on 1 May 2017 and issuing him with a letter of suitable management advice. Given the outcome of the previous tribunal and the results of the respondent's own review regarding Mr Siequein's tattoos, the Tribunal is somewhat surprised that the decision was made merely to give him management advice on this occasion.

55 The claimant attended a sickness review on 16 June 2017 at McDonald's in Westfield Shopping Centre, Stratford, at which point he remained understandably unfit to return to any form of duties.

56 A further case conference meeting took place on 22 August 2017. At that case conference, the claimant indicated his belief that it was the court case that had effected his health. The claimant told Greg Belizaire, then Train Operations Manager Stratford, that he was looking forward to returning to work upon expiry of his sick note but feared for his job, 'especially at the thought of being set up'. At that case conference meeting, Mr Belizaire recorded the following [379]:

> '[The claimant] reported that said [Mr Siequein] has a harassment and bullying charge against him even though he has hates symbols on his body. He reported that with all these LU has allowed him to present a H&B charge against him. [The claimant] stated that he needed to highlight it because he believes he will be set up by colleagues. He reported that he has a disabled brother he looks after and so needed to be on the Jubilee line. He stated that until the H&B complaint is concluded it will continue to cause him pain.'

57 The claimant told Mr Belizaire about Mr Siequein having been caught wearing shorts despite having reassured the Employment Tribunal he would always wear trousers. Mr Belizaire confirmed to the claimant at the conclusion of the case conference that he would return to work on 4 September 2017 with a return to work interview put booked for 4pm that day but that he would be unable to drive until he had had an occupational health appointment.

58 Also on 22 August 2017, Mr Dardis was notified that Mr Comfort had seen the claimant at the Stratford depot when he had attended for his case conference and had become 'stressed out' as a result. On 29 August 2017, Mr Dardis met with Mr Comfort, who elaborated that he had been in the depot car park with other colleagues when the claimant had stopped, stood with his arms folded across his chest and stared at them in an obviously hostile manner. Consequently, it was apparent to Mr Dardis that he needed to keep all of the parties apart. Given that the claimant had been off sick for a significant period of time and the other parties were still at work, Mr Dardis decided to require that the claimant did not attend work until the grievance appeals had been resolved.

59 This was a course of action that Mr Dardis himself had taken on a number of occasions previously in a variety of circumstances including circumstances similar to the claimant's and he did not view it as a suspension. Regrettably, neither Mr Dardis nor Mr Belizaire notified the claimant personally of this decision but instead relied on the claimant's union official to tell him. Even more unfortunately, the message was passed to the claimant that he should view himself as having been suspended.

60 The claimant's occupational health assessment took place on 2 October 2017. The claimant reported feeling aggrieved at not being allowed back to work which caused him symptoms of anxiety. Occupational health indicated that they would need to arrange for an investigation to be done privately regarding his heart prior to him resuming full duties but had not done so that day in view of the reported anxiety-related symptoms.

61 Occupational health reported that the claimant was fit for restricted duties, the restrictions to be: no live trackwork; no work on track where there was movement of trains; being accompanied if going out onto the track at all times; no heavy lifting; and no

physically demanding tasks. No timeframe was given for a return to full duties. The report also stated:

> 'Understandably should Mr DeLeon be continued to be exposed the individuals or situations (or similar) that led to the stress previously there may be recurrent or ongoing stress-related symptoms.
>
> 'As mentioned above I have deferred a referral for investigation from a cardiac point of view until Mr DeLeon's stress-related symptoms have resolved fully. Please let us know once this is the case and we will be happy to advise you further thereafter.'

62 At a meeting between the claimant and Mr Dardis on 9 November 2017, at which the claimant was represented by Mark Harding, the issue of the claimant being required to stay away from work was raised by Mr Harding. Mr Harding stated that the claimant had been suspended and barred from work because of Mr Comfort. Mr Dardis indicated that it was usual in those circumstances to keep people separated and that his understanding had been that the claimant was sick. He confirmed that the decision made in accordance with a risk assessment and that the claimant was to stay away from Stratford until the end of the process. Mr Dardis stressed that his decision was not a punishment. Even if the claimant had been under a misapprehension as to what was happening and why prior to this meeting, he had now had it fully explained to him.

63 The claimant also made plain in his oral evidence that he did not expect to return to work until he had had his cardiac assessment.

64 One ground of Gary Comfort's appeal was that Ms Sandey had not allowed him to rely on Martin Bell's tape recording of the claimant allegedly making disparaging remarks about his brother. Mr Dardis took the view that it was necessary to listen to the tape to determine whether it was relevant evidence, but that it was equally as important to give the claimant the opportunity to comment on the tape. Having listened to the tape, he was satisfied that it was potentially relevant and gave the claimant early opportunity to listen to it in the presence of his union representative. The claimant confirmed that it was his voice on the recording ad but made no other comment on it. Mr Harding submitted that it was obviously a 'set-up' and that the tape could have been doctored but also said, 'unfortunately it was a fact that Mr Comfort was a drunk'.

65 Consequentially, Mr Dardis found that the claimant had made disparaging remarks about Mr Comfort's brother and upheld that aspect of the appeal. However, given the time that passed since the incident in question (according to Mr Bell over a year previously), Mr Dardis considered that no formal disciplinary proceedings would be appropriate. Instead, in the outcome letter dated 30 November 2017, Mr Dardis indicated that he would be referring the matter to the employing manager for discussion and issue of suitable management advice before the claimant returned to work. He also encouraged the parties to enter into mediation.

66 The claimant also met with Altaf Patel (by then Train Operations Manager Stratford) on 9 November 2017. It was agreed at that meeting that the next important next step was for the claimant to be referred to a cardiac specialist at Harley Street.

67 On 6 December 2017, Mr Patel wrote to the claimant, inviting him to a 'sickness review meeting' on 15 December 2017. This was a standard letter but, perhaps understandably, provoked a response by email from the claimant's union representative reminding Mr Patel that the current non-attendance was a management decision and not by reason of sickness. Mr Patel responded, apologising for the technically incorrect wording on the letter but making clear that a review meeting was necessary to discuss the situation and to 'close out any risk assessments which were carried out in the past to prevent the claimant from attending at Stratford.'

68 The absence review meeting planned for 15 December 2017 appears actually to have taken place on 18 December 2017. The claimant's desire to return to work was discussed and Mr Patel reassured the claimant that he would close the risk assessment provided that the claimant could assure Mr Patel that he would not talk about previous grievances around the depot. This was an entirely reasonably request to make given the history of the matter and the substance of the upheld grievances against the claimant.

69 The claimant was then referred to TAD to start from 20 December 2017. Mr Patel also emailed occupational health on 20 December 2017 to confirm that the incident causing the stress and anxiety was concluded and that the claimant was ready to return to duty pending a cardiac assessment. The results of the claimant's cardiac assessment on 22 Feb 17 were described as 'reassuring' and he was passed fit to return to work. A training plan was then developed following which the claimant returned to full duties with effect from 1 May 2018.

THE LAW

Unlawful Discrimination/Victimisation

70 Section 13(1) of the Equality Act 2010 (EA) provides that:

> 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.

71 Race is a protected characteristic.

72 Section 27(1) EA provides 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.

73 Bringing proceedings under the Act and making an allegation (whether or not express) that a person has contravened the Act are both protected acts (s27(2) EA).

74 Pursuant to section 136 EA, if there are facts from which the Tribunal could decide in the absence of any other explanation that a person contravened the provision of the Act, the Tribunal must hold that the contravention occurred unless the employer can show to the contrary.

75 The leading case on the approach to be taken by Tribunals in discrimination cases remains **Igen Ltd v Wong [2005] IRLR 258**. In particular, it is important to bear in mind that employers would rarely be prepared to admit such discrimination, even to themselves, and that in deciding whether a claimant has proved a prima facie case, the Tribunal's analysis would usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

76 It is now settled law that the claimant must prove facts from which a tribunal could conclude in the absence of an innocent explanation that discrimination and/or victimisation (as the case may be) had happened before the burden shifts to the respondent to provide an innocent expiration for the acts in question (**Adoyele v City Link [2018] IRLR 114**).

77 Considerable guidance has been given by the appellate courts to Employment Tribunal's on the circumstances in which it would and would not be appropriate to draw inferences in discrimination cases.

78 It is insufficient for the claimant to show merely a difference in characteristic and a difference in treatment; there must be 'something more' for the burden to shift (**Madarassy v Nomura International plc [2007] IRLR 246**). Similarly, unfair or unreasonable treatment of itself is insufficient to shift the burden of proof onto the respondent **Bahl v Law Society [2003] IRLR 640** per Elias J at para 100, approved by the Court of Appeal at **[2004] IRLR 799**).

Time Limits

79 A claim can be made to an Employment Tribunal regarding unlawful discrimination pursuant to s123 of the Equality Act 2010 (EA). The time limit is three months beginning with the date of the act in question or such time as is just and equitable in all the circumstances. Time stops running during a period of early conciliation, in which case the time limit is extended if necessary to end one month after the issue of an early conciliation certificate. Conduct extending over a period is to be treated as done at the end of the period (s123(3)(a) EA).

80 Pursuant to s33 of the Limitation Act 1980 (power to extend time in personal injury actions), a court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension, and to have regard to all the other circumstances, in particular: (a) the length of and reasons for the delay; (b) the extent to which the cogency of the evidence is likely to be affected by the delay; (c) the extent to which the party sued had co-operated with any requests for information; (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and (e) the steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

81 In **British Coal Corpn v Keeble [1997] IRLR 336**, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (**Southwark London Borough v Afolabi**

[2003] IRLR 220). The burden lies on C to persuade the Tribunal that it should exercise its discretion.

82 The Tribunal may extend time when it considers it to be just and equitable to do so. It is for the claimant to persuade the Tribunal to exercise its discretion.

CONCLUSIONS

83 We were urged by the respondent to find that the acts alleged by the claimant were discrete and unconnected, and not therefore part of a continuing act. It was submitted that all allegations save for those detailed in paragraphs 2.2.5 and 2.2.10 above were out of time. We considered, however, that the other matters, even if strictly out of time, would nevertheless constitute background facts from which we could infer unlawful discrimination and/or victimisation in respect of the claims which were manifestly in time. It was, therefore, necessary for us to make factual findings as to whether those incidents happened.

84 We concluded that the most efficient and just way to deal with this case was to make finding on each of the alleged acts and, if it then became apparent that time issues had arisen, to go on to deal with matters of jurisdiction. Although we have necessarily had to make findings on each discrete allegation, we have considered the situation holistically in order to avoid taking a fragmented approach, drawing such inferences as was appropriate.

85 It is alleged that the respondent failed to detail the allegations made against the claimant by three colleagues, Mr Siequein, Mr Comfort and Mr Chumroo (paragraph 2.2.1). However, the letter notifying the claimant of the complaints made against him did in in our view are set out in sufficient detail the nature of the allegations against him. These allegations were further explored and explained to him in his investigation meeting. Even if the claimant genuinely believed himself initially to lack material detail of the allegations, this was not a reasonable belief. Therefore, this allegation is not made out on the facts and it is unnecessary to consider whether there was an unlawful reason for it.

86 The claimant alleges that the respondent failed to allow him to put forward evidence against the above allegations (paragraph 2.2.2). However, Miss Loraine acknowledged that had been no attempt by the claimant to put forward the evidence which had been disallowed. This issue therefore mutated in closing submissions into an allegation that the claimant had not been asked if he had any fresh evidence to advance.

87 However, in the letter dated 21 November 2016 inviting the claimant to a fact-finding meeting on 25 November 2016, he was clearly notified that it was his one and only opportunity to give as much evidence as he wished. At the meeting with Ms Sandey, there was no indication whatsoever that the claimant, who was accompanied by his union representative, was denied any opportunity to offer whatever information or evidence he wished, or was closed down having begun to offer any such evidence or information. It is perhaps of note that at one point the claimant union representative asked for a 20 minute break, which the claimant himself indicated he did not wish to take.

88 Only when the claimant's union representative referred back to the claimant's original complaint against Mr Siequein, which was at that point the subject of Employment Tribunal proceedings, did Ms Sandey say, 'I can't go anywhere near the content of the Employment Tribunal.' It was submitted to us that this was Ms Sandey indicated that she was not prepared to investigate any allegations of victimisation arising from the claimant's earlier claim; however, we simply cannot agree. It is absolutely clear us that Ms Sandey was simply indicating that those matters were already resolved and would not be reopened. It remained open for the claimant to make clear, if he so wished, that he was alleging victimisation as a result of that claim rather than seeking to reopen the claim itself. He did not. Consequently, we do not find the allegation is factually made out, either as originally pleaded or, if we were minded to allow the amendment, as Miss Loraine put it to us in closing submissions.

89 Turning to the allegation in paragraph 2.2.3 above, it is not in dispute that Ms Sandey upheld the grievances of Mr Chumroo and (partially) of Mr Comfort against the claimant. It is also accepted by Miss Loraine that no disciplinary sanction was imposed upon the claimant, although she sought in closing submissions to reframe this allegation as being that the claimant was made the subject of action less short of disciplinary sanction and that that in itself was less favourable treatment. Nevertheless, she emphasised that the core of this allegation was the fact that the grievances were upheld per se. We will deal below with our conclusions as to the reasons for this.

90 The allegation in 2.2.4 above is not being pursued. It was the individuals' unfettered right to appeal against the determination of their complaints and does not give rise to any adverse inference against the respondent.

91 In respect of paragraph 2.2.5, it is agreed between the parties that Mr Dardis did uphold Mr Comfort's allegation that the claimant made disparaging remarks about his brother to go forward and then uphold it. We observe, however, that the allegation in question had in fact been allowed to go forward for investigation by Mary North. It appeared to us that claimant's complaint was rather that, Ms Sandey having dismissed the allegation on the basis she would not listen to the tape, Mr Dardis did listen to the tape. That chronology is entirely uncontroversial and we will deal with the reasons for it below.

92 The allegation in 2.2.6 is not pursued. As with the abandoned allegation in paragraph 2.2.4, no adverse inference can be drawn from Mr Siequein's being allowed to appeal against dismissal of his complaint; it was his right to do so.

93 Regarding the allegation in 2.2.7, as a matter of fact the claimant was not invited to a meeting and again we will deal with the reasons for that below.

94 Ms Loraine concedes the allegation in paragraph 2.2.8. In our view, this was an appropriate concession bearing in mind that the bullying and harassment procedure provides for no right of appeal against a decision that a complaint does not meet the criteria for an investigation.

95 It is alleged that the claimant was notified that his complaint was vexatious (paragraph 2.2.9). However, as we have found above, on any reading of the two letters sent to him by Mary North, the claimant was merely advised on each occasion that the

submitting of a repeat grievant might be considered vexatious. Even if the claimant in all the circumstances had understood that he was being told that his claim was in fact vexatious, we do not accept that that was a reasonable conclusion anybody could have drawn, in particular, given that no disciplinary action was taken against the claimant (as might otherwise have been expected).

96 Again, Miss Loraine sought to reframe in submissions this allegation as being that the claimant had been given the impression that his complaint was considered vexatious. We do not consider that it would be appropriate to allow such a change in the claimant's case in closing submissions, in particular since Ms Thomas was not able to explore that matter properly with the claimant in cross-examination. In any event, we do not accept that it could be unfavourable or less favourable treatment for someone to be under an unreasonable misapprehension of the meaning of a letter written in perfectly reasonable terms.

97 As for the allegation in paragraph 2.2.10, is uncontentious that the claimant was not allowed to return to work in September 2017 when his then sicknote expired and we considered the reasons for that decision below.

98 Having made findings of fact about the incidents relied upon, we went on to consider whether these were less favourable treatment than a hypothetical or actual comparator would have been or was treated on the grounds of the claimant's race. Miss Loraine suggests that the entirety of the respondent's behaviour gives rise to the inference that the claimant was treated as alleged because he was a black man bringing a race discrimination claim. In this regard, we took into account not only the specific instances are relied upon individually, but also stepped back and took a holistic view of the conduct between the parties.

99 We were invited to draw adverse inferences from what the claimant described as being repeatedly closed down when ever he attempted to raise matters of race whereas, he said, other people raising complaints against the claimant (or, indeed, his partner) were listened to. We were unable to agree at all with this categorisation.

100 Looking back to the very genesis of the problems between the parties, the claimant raised a complaint about Mr Siequein (in particular his Nazi tattoo) and, although his grievance and appeal were both dismissed, the complaint was investigated and he was given a hearing. It is incorrect, therefore, to say that whenever the claimant raised complaints in respect of his race he did not get a hearing at all or was closed down.

101 Similarly, when Ms Delpratt raised a complaint about Mr Siequein in May 2017, she was listened to and her complaint was upheld. Her appeal, which appeared centre on the inadequacy of actions taken by the respondent against Mr Siequein thereafter was given a thorough consideration and disposal by the respondent.

102 The complaints raised by claimant's antagonists did, we find, cross the threshold and were given consideration but were not all upheld. For instance, Mr Siequein's complaint against the claimant dated 3 August 2016 was dismissed by Ms Sandey and again on appeal. Therefore, we find no evidence whatsoever of disparate treatment, whether on the grounds of race or otherwise. We also note that one of the complainants

against the claimant was a non-white individual who made a complaint of unlawful discrimination (albeit on the grounds of religion rather than race) and was heard.

103 Neither were we able to detect a disparity of sanction. For instance, whilst Mr Siequein's complaint against Ms Delpratt in January 2016 was upheld, no disciplinary sanction was imposed. Indeed, the disciplinary charges against her were dismissed. Whilst Mr Siequein was only given suitable management advice in respect of the subsequent complaint made against him by Ms Delpratt in May 2017, that was no lighter than the action taken against the claimant in respect of the complaints against him.

104 There was an unfortunate failure on the part of the respondent to notify the claimant in a timely manner that a decision had been made, subject to a risk assessment, to ensure separation of the parties by requiring him not return to work. However, we were simply unable to find that that was sufficient to draw an adverse inference, where there was no other sign whatsoever that the respondent's actions were in any way influenced by the claimant's race.

105 We asked ourselves how else the respondent could have been expected to act given the complaints in question against the claimant. In particular, Mr Chumroo had made an adequately particularised allocation of mistreatment on the grounds of his religion. The respondent would have been foolhardy in the extreme not to take it seriously.

106 The claimant, however, had submitted a complaint, one part of which on any analysis constituted repetition of a matter which had resolved by the respondent and was also the subject of Tribunal proceedings, and the other part of which could not on any reasonable view constitute a well-founded allegation of bullying.

107 Even the further information he provided focussed principally on his repetition of the previous complaints against Mr Siequein, or added entirely matters. Furthermore, those new matters arose from comments made in confidential fact-finding meetings, in respect of which no adverse consequences whatsoever had arisen to the claimant.

108 We find that Ms North was perfectly entitled, indeed was obligated, to take the view she did of the complaints. Similarly, Ms Sandey reached conclusions on the complaints facing the claimant which were entirely open to her and were untainted by race. Indeed, she dismissed Mr Siequein's complaint against the claimant.

109 As for Mr Dardis's decision to allow Mr Comfort's additional complaint, we were unable to discern any improper motive in his decision to take into account the tape recording or to uphold the allegation as part of Mr Comfort's appeal. On the contrary, he approached that matter in an entirely objectively fair way, giving the claimant the opportunity to comment on the tape. The complaint was upheld against the claimant principally because, notwithstanding that he was given the opportunity to comment on the tape, he chose not to. In essence, the claimant admitted that he had made disparaging remarks about Mr Comfort's brother and gave no explanation why. The claimant certainly did not set out how the incident was a setup in revenge for his having brought either race claims, because he was black or because he had an employment tribunal claim underway.

110 In respect of Ms North's failure to invite the claimant to a meeting to discuss his complaint, the fact is that the process only requires a discussion between the parties but does not specify that the decision has to be face-to-face. As a matter of fact, Ms North did seek and take into account further information from the claimant before the final decision was made not to permit his complaint to go forward. Indeed, that was the way Ms North sought clarification from Mr Comfort about his own complaint. The process did not permit an appeal against Ms North's decision and we do not consider that Ms North carried out her role in any way inappropriately. Therefore, we were unable to discern any differential treatment whether because of race or otherwise.

111 The claimant had been made aware as early as his meeting with Mr Soler on 20 April 2017 that there was to be no contact between the parties because of a risk assessment until the appeal investigation had been completed. Therefore, whilst the respondent was undoubtedly remiss to fail to notify the claimant formally in writing of that decision when otherwise the possibility of his returning on limited duties had arisen, we find that the claimant ought not to have been surprised and that it was an entirely reasonable stance for the respondent to take.

112 Indeed, again we asked ourselves what else the respondent could have done in the circumstances, in particular when it had been told by least one of the complainants that the claimant's presence on one occasion had made them feel stressed and uncomfortable. We find that it was entirely reasonable for the respondent to undertake a risk assessment and to decide that the parties would be kept separate until final resolution of the appeal. Following resolution of the final appeal on 30 November 2017, it was in relatively short order that the claimant was cleared to return to working in mid-December. Again, even taking a step back and look at the entirety of the circumstances, we are unable to discern any possible connection with the claimant's race.

113 Consequently, the claimant's complaint of direct race discrimination fails and is dismissed.

114 Turning to the allegation of victimisation, it is agreed between the parties that the claimant's complaint to the Employment Tribunal and his email of 3 August were both protected acts.

115 Again, we stepped back and viewed the entire circumstances to see whether any of the acts we had found occurred were nontrivially influenced by either protected act and again were unable to find any basis upon which to draw such a conclusion.

116 Even if it were right that any of the individual complainants had brought their complaints in revenge for the claimant having brought his previous Employment Tribunal claim that does not form part of the claimant's case. Instead, he alleges that it was the respondent's handling of those complaints which constituted victimisation. We should in any event make clear that we did not find that any of the complainants were influenced by anything other than having their complaints addressed.

117 As is clear from our findings above, we did not accept that Ms Sandey refused to consider whether the complaints facing the claimant were acts of victimisation. Instead, she indicated that she was not going to go behind the complaints which formed part of the

Employment Tribunal claim itself. Even if that were a misunderstanding on her part, it remained open to the claimant to advance any argument he liked and put forward any evidence he wished at that hearing. Ms Sandey did not uphold all of the complaints against the claimant (in particular refusing to uphold Mr Siequein's complaint against claimant). Therefore, we find no basis whatsoever to draw a link between the claimant's protected acts and Ms Sandey upholding the complaints of Mr Chumroo and (partially) of Mr Comfort.

118 Indeed, we find that the respondent followed due process in respect of every one of the complaints made at around that time. In respect of the live claims that were before Ms Sandey, we find that she had proper grounds to reach the conclusions she did.

119 Once again, we asked ourselves what a respondent faced with well-founded complaints against the claimant should have done in in the circumstances. Manifestly, it would have been entirely inappropriate to reject these complaints simply because the claimant had an Employment Tribunal claim and/or was alleging race discrimination.

120 For the same reasons given above in respect of direct race discrimination complaint, we find no indication whatsoever that Mr Dardis's approach to the Mr Comfort's additional allegation was in any way influenced by the claimant's protected acts. Instead, having justifiably reached the conclusion that apparently relevant evidence had been left out of consideration by Ms Sandey, he gave the claimant a fair opportunity to listen and comment on the tape in question and reached a conclusion which was perfectly open to him.

121 For the same reasons we found that Mary North acted in a way entirely unconnected with the claimant's race we find that, her actions were entirely unconnected with his protected acts (save for her warning about vexatiousness, which related to the repetitive nature of the complaint rather than its substance).

122 Similarly, for the same reasons we found that not allowing the claimant to return on 20 September 2017 was unrelated to his race, we find no basis whatsoever to conclude that that treatment was influenced by any protected act.

123 In any event, the fact is that the claimant had not expected to return to work until he undertook his cardiac assessment. It was made clear by occupational health that his cardiac assessment was not going to take place until the workplace stresses had been addressed. Those workplace stresses were not addressed until 30 November 2017 and the claimant returned to work promptly thereafter. Therefore, notwithstanding the respondent's unfortunate failure to notify him in writing of the decision that he should remain away from work pending a resolution of the complainants' appeals, the claimant thereby suffered no unfavourable or less favourable treatment.

124 For those reasons, the claimant's complaint of victimisation is dismissed.

125 As none of the allegations were made out, it is unnecessary to continue whether they formed part of a continuing act, whether any were out of time and whether it was appropriate in such circumstances to extend time.

Employment Judge O’Brien

28 January 2019