



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Adegoke  
**Respondent:** Optomany Limited

**Heard at:** Ashford on: 5-7 March 2019

**Before:** EMPLOYMENT JUDGE CORRIGAN  
Mr G Anderson  
Mr D Clay

## Representation

**Claimant:** In Person  
**Respondent:** Miss P Leonard, Counsel

## RESERVED JUDGMENT

1. The Tribunal has not found a contravention of the Equality Act 2010 (not direct race discrimination nor harassment related to race).
2. The Claimant's complaint of unfair dismissal was withdrawn at the Preliminary Hearing dated 16 July 2018.
3. The Claimant's complaints are dismissed.

## REASONS

1. By his claim dated 13 November 2017 the Claimant brought complaints of direct race discrimination and harassment. He confirmed at the outset he had withdrawn his claim of unfair dismissal and did not have a claim of wrongful dismissal.
2. The issues were set out in the schedule to the Case Management Order dated 18 July 2018 (bundle pages 77-79).

### Hearing

3. We heard evidence from the Claimant on his own behalf. On behalf of the Respondent we heard evidence from Mr James Bone (Head of Network Operations), Mr Duncan Read (Team Leader/ Senior Systems Engineer) and Mr Oliver Ellis-Sargeant (Database Administrator).

4. There was an agreed bundle of 315 pages. The parties prepared written submissions and we also heard oral submissions.
5. Based on the evidence we heard and the documents before us we found the following facts.

**Facts**

6. The Respondent is a technology company delivering payment processing solutions to its clients. It is imperative that processes run efficiently and smoothly as errors can have significant impact on clients if transactions are not processed on time or accurately. They also deal with sensitive data such as credit card details. The Respondent has three sites: London, Maidstone and Dunfermline, and employs about 120 employees in total, with 73 employees in the Maidstone office.
7. The Claimant commenced employment with the Respondent as a Database Administrator on 15 March 2017. The Claimant is black African of Irish nationality. He worked in a small team, the rest of whom were white.
8. James Bone handled the Claimant's recruitment. He liked the Claimant's CV and experience. Mr Bone thought he was very experienced at using SQL but also had experience of MongoDB and Cassandra, which is rarer to find. It was intended that he would bring additional experience to the team. He was considered the perfect candidate and as a result did not need a second interview. He was given a higher salary of £45,000 to acknowledge this and considered a Senior Database Administrator (DBA).
9. The Claimant was initially inducted by Duncan Read but when Oliver Ellis-Sargeant returned on 17 May 2017 he moved seats to be inducted by him. Oliver Ellis-Sargeant was also a Database Administrator, and considered more junior.

**Allegation that Oliver Ellis-Sargeant asked the Claimant to give him breathing space (17 May 2017)**

10. In his evidence the Claimant presented a diagram suggesting that the Claimant had been given a workspace of his own between Mr Read and Mr Ellis-Sargeant but then had to move to sit on his own facing the rest of the team following a comment from Oliver Ellis-Sargeant to "go away from us and give me some breathing space". However, both Mr Ellis-Sargeant and Mr Read say that the Claimant started out perching between them with his laptop on Mr Ellis-Sargeant's desk. It was not a proper work station and was too cramped for three people. We accept their evidence. The illustration provided by the Claimant is therefore misleading and he accepted the Respondent's description in cross examination. The Claimant then moved to his own work station and was soon joined by another new staff member literally on the other side of the desks. There were already other staff working on that side, but in any event the Claimant was then face to face with Oliver Ellis-Sargeant. Oliver Ellis-Sargeant does not agree this occurred on 17 May 2017 but on the day that the Claimant's desk and work station was ready, about a week into his employment, which we accept. He accepts he may have used the term breathing space, due to the cramped seating and the fact the Claimant's desk was ready. We accept his account.

11. The Claimant compared his treatment with that of two other colleagues (including his named comparator on page 77), both of whom had also sat for some time perched between Duncan Read and Oliver Ellis-Sargeant whilst they were inducted and then one of them at least moved to sit on the other side of the desks, alongside the Claimant. He complains that they were sat between Mr Read and Mr Ellis-Sargeant for longer than he was. Duncan Read explained, and we accept, that one of the colleagues required longer induction which explains why they were perched in that location longer. He did not overhear any similar comments once they were ready to move to their assigned work station. This incident is addressed further in the conclusions below.

**Allegation that Oliver Ellis-Sargeant said he had handled a heavy weapon and can kill people (May 2017)**

12. The Claimant also says that in May 2017 Oliver Ellis-Sargeant said he handled an old heavy weapon. When asked why by the Claimant it is alleged he responded "because he can kill people". The Claimant says he also said he was formerly in the military. The Claimant says this caused him to be afraid and also to consider it a threat to him and black African people generally. Despite this it was not in the original claim and only added at the preliminary hearing. This is denied by Mr Ellis-Sargeant. He says he does not own a weapon and has never handled one. Initially he said he could not imagine a context in which this would have been said however during the hearing he remembered that he had been to the Military Odyssey event and there had been various reenactments including heavy weapons and that he may have mentioned this in the office. He still did not handle weapons and would not have said he can kill people. We find Mr Ellis-Sargeant's explanation credible and prefer his account. We do agree with the Respondent's Representative that it is implausible that the Claimant overheard this and felt afraid but yet continued to sit face to face with Mr Ellis-Sargeant for another few months. It is also implausible that he did not mention this in his claim due to fear (as he claimed).

**Allegation that shortly after the Claimant commenced employment Oliver Ellis-Sargeant took the Claimant's new monitor without authorization**

13. The Claimant says Mr Ellis-Sargeant ran to him and grabbed the new monitor from the Claimant's desk. The Claimant was particularly upset as he had signed for it and felt responsible for it, and because he was not being consulted about it, but ordered to give the monitor to Oliver Ellis-Sargeant.
14. Oliver Sargeant-Ellis explained that he had issues with his two monitors. They could not be configured properly as they did not support the same number or type of cables meaning only one was actually working at the time. He spoke with the person responsible for IT who, along with Mr James Bone, had said he should take one of the new ones ordered for the Claimant. The result was that both were able to have two functioning monitors each, as they required, otherwise Mr Ellis-Sargeant would have continued with just one.

**Allegation that Oliver Ellis-Sargeant did not give the Claimant sufficient details to rectify a fault**

15. On 23 May 2017 Mr Ellis-Sargeant sent the Claimant some steps to assist the Claimant to carry out a task in relation to terminal branding. The actual process involved 5 steps but Mr Ellis-Sargeant's email only included 4 steps. The Claimant considered this to be a deliberate act to undermine him. Mr Ellis-Sargeant explained that he had the 5 steps on his Onenote and copied and pasted the steps to send to the Claimant in an email, and inadvertently missed the last step. He says it was him who helped the Claimant identify that was what had happened when the Claimant was still unable to complete the task. We are satisfied there is no evidence to suggest this was a deliberate act because of the Claimant's race, and accept it was an inadvertent error that Mr Ellis-Sargeant assisted to correct.
16. There were performance issues from start of the Claimant's employment. Mr Bone's evidence, which we accept, is that he quickly had concerns about whether the Claimant's abilities matched the experience presented in his CV in relation to SQL which is the more basic software. He found that instead of the Claimant sharing his experience with Oliver Ellis-Sargeant as had been the intention, it was Oliver Ellis-Sargeant who was helping the Claimant. He also himself observed the Claimant making errors such as trying to input letters into a numbers column. The Claimant's explanations also made Mr Bone query his understanding. There were also mistakes on tickets (specific jobs) and he would focus on the wrong aspect. As a result of the concerns the Claimant was not given access to MongoDB and Cassandra until he was trusted not to make a mistake. He needed to become proficient with SQL first. The Claimant says that the reason for his errors in part is that he did not have the industry experience, coming from the NHS. The Respondent agrees and said that the Claimant was given leeway in this respect as they would not expect him to learn the industry fully until about 12 months into post. They did however consider that certain aspects of SQL are readily transferable and it was difficulties with these that caused concern.
17. As Mr Bone explained allowing access to MongoDB is a risk as a mistake can be catastrophic to clients and the business. It therefore is not given lightly. Whilst it was initially believed that the Claimant had the relevant skills from his CV, once the above issues arose it was decided to ask him to do a free online course. The course takes 8 weeks and the Claimant passed with distinction on 3 October 2017. The Claimant believed that he should then get access, but the Respondent still wanted reassurance that he could perform the basics of the role.
18. The Claimant compared his situation to Oliver Ellis-Sargeant who commenced training in the first week of his employment and did not pass with distinction. However there were not the same performance concerns and Mr Ellis-Sargeant had been in post since 2016. He had also worked for about five years with James Bone elsewhere and came from elsewhere within the payment industry. He did the training at the time he did because there was a course starting then. The Claimant had been thought to have the experience and was asked to do the course once doubts arose. In any event Oliver Ellis-Sargeant still does not have access to Cassandra. We are satisfied that any difference in their treatment was a result of their relative skills and experience and the availability of training.

**Allegation that Oliver Ellis-Sargeant stated that it was cheaper to have cats and dogs than children**

19. On 4 August 2017 upon the birth of the Claimant's child Mr Ellis-Sargeant said it is cheaper to have cats and dogs than a baby. Mr Ellis -Sargeant accepts he may have said this in a humorous way as he does not have children but does have cats. He has also said something similar to James Bone. The Claimant was very offended as it was not congratulatory. He says that he understood Mr Ellis-Sargeant was calling his child a dog, and therefore him (the Claimant) a dog and compared it to the notorious signs in the past which said "no blacks, no dogs, no Irish". We find this is an additional interpretation that he has added with time, and that it is not in fact what Mr Ellis-Sargeant was saying. It involves contortion of the words to reach this conclusion. We do not find it had anything to do with the Claimant's race, there was no intention to compare the Claimant's child to a dog and the same comment was in any event made to a white member of staff.
20. Due to the ongoing concerns about the Claimant's skills in August James Bone moved the Claimant's work place so that he sat directly between James Bone and Oliver Ellis-Sargeant.
21. Part of the Claimant's duties was to be on call out of hours to be a first responder to requests for assistance. This is a really important part of the role as this is when transactions go the banks and if issues are not addressed can result in delays. The Claimant was informed specifically of the need for prompt response in the letter dated 17 July 2017 at page 246 bundle. Nevertheless on 27 August 2017 the Claimant failed to respond to four different calls and only returned them the following day.

**Allegation that Oliver Ellis-Sargeant said "I don't know why they are employing immigrants"**

22. At some time between July-September 2017 the Claimant witnessed candidates arriving for interview who were black and the Claimant assumed potentially of African origin. He says that Oliver Ellis-Sargeant looked at him sternly and said to Duncan Read 'I don't know why they are employing immigrant as if the company is meant for immigrant [sic]'. This is denied by both Mr Ellis-Sargeant and Mr Read. They both remember the interviews and the black candidates but not any offensive comment about immigrants. Mr Ellis-Sargeant says he has worked with people of many races and nationalities in his career and treats all work colleagues with the same professional courtesy. Mr Read describes Mr Ellis-Sargeant as open-minded and intelligent. He does not consider he would make such a comment, and if it was made, it is something he would be shocked by and therefore would have remembered. The Claimant made no complaint about it at the time or at any time during his employment. We find that Mr Ellis-Sargeant did not make this comment.

**Not reimbursing the Claimant for a mobile phone repair**

23. In August 2017 the Claimant damaged his mobile phone. It was suggested he repair it himself and get reimbursed through the expenses process as the speediest solution. The intention to reimburse the Claimant is evident from the email on page 259. The Claimant had the phone repaired. He says he then tried to pursue

reimbursement with the invoice from James Bone who deferred the issue. He also seeks to say he raised the issue in his response to a generic email about the condition of phones in preparation for their replacement and sale (page 285) but all that said was that he once had the screen on the phone replaced. He did not ever put in an expense form. We find the Claimant did not understand how the expense process worked and as a result had not put in the claim which is why it was not initially paid. James Bone did not at any point say he would be getting back to him. In the event the Respondent has offered to pay but the Claimant has asked it be deferred to this hearing. We find that there was a misunderstanding over the expense process but the Respondent always had the intention to pay, and it is hoped still will.

24. At some point James Bone began completing a record of the concerns about the Claimant's performance in the document (pp 289 -293).
25. Nevertheless the email at page 261 shows that the expectation was that the Claimant would still be employed the following year and working on MongoDB as it was expected he would attend a MongoDB conference the following year.
26. From 12 September 2017 James Bone held regular performance meetings with the Claimant. The Claimant agreed that these are reflected in the document at pages 289-293 and that that is an accurate record of those meetings. These record James Bone informing the Claimant of his concerns and agreed actions to address them. He also explained to the Claimant that these issues needed to be addressed before he could move on to the more complex aspects of his role which would include MongoDB and Cassandra. Effort was put into ensuring the Claimant understood his role and had the chance to identify his strengths.

#### **Allegation that Oliver Ellis-Sargeant referred to the Claimant as a Tea BA**

27. The Claimant says that Oliver Ellis-Sargeant began referring to him as Tea BA from Dell (the Claimant having previously worked at Dell). As a result the Claimant stopped making tea. The Respondent's witnesses accept that it was part of the office banter to refer to DBA's (Database Administrators) as Tea BAs. It was not directed at the Claimant in particular. Mr Ellis-Sargeant was not aware he had been at Dell and does not remember a specific mention of Dell.
28. The Claimant relies on the email at page 273 from Duncan Read to the group on 19 September 2017 including Oliver Ellis-Sargeant and the Claimant. Out of context it makes little sense. It refers to someone called Ori with reference that he should make more tea:

"No, but that Ori does I had to ask him, he was a but [sic] rude about it all.

Also, he never made a cup of tea today, can you ask him to make one tomorrow, if he wants to fit in with everyone he'll need to make some tea, or coffee."

The Claimant assumes that this is about him. The reason for this is that it is about a male who is not yet fully part of the team and he also links it to the decision he made to stop making tea and he suggests it makes sense in that context.

29. Mr Read says his email above was in fact a reference to Oliver Ellis-Sargeant. He says that sometimes Oliver, known as Ollie, would attend work with a different hair style. They gave him a nickname Ori on those days, joking that it was Ollie's twin brother "Ori" who had come to work in his place. The email was in fact a joke about that, and that "Ori" the fictional character should make more tea. We accept that explanation and that the reference to tea BA was used indiscriminately within the team and not just directed at the Claimant.
30. The Claimant was invited to social events and at times attended, demonstrating that he was getting on with his colleagues as a team. One such invitation is dated the day after the above email (page 277).
31. In September the Claimant mistakenly updated non-Amex card schemes with the Amex merchant ID leading to 148 rejected transactions (bundle 282a (dated 5 October 2017)).
32. On 1 October 2017 again the Claimant failed to pick up a call promptly whilst on call, even after being told how important this was. Mr Bone's frustration with the Claimant is apparent from the webchat he had with his own line manager on 2 October 2017. He said "spent some of yesterday fixing files and moaning at [the Claimant]" about the missed call on call the day before. Mr Bone's manager is recorded as saying he was shocked at this, after everything that had been explained to the Claimant and he expected someone "under the microscope" would have been making every effort (pages 281-282).
33. On 3 October 2017 Mr Bone noted the Claimant misunderstood his permissions and did not appreciate that he had DB Owner access which is the highest level of access, despite believing he needed greater access. The Respondent's evidence, which we accept, was that the Claimant had all the access and permissions needed to perform the role expected of him. Had he demonstrated sufficient capability with SQL he would have then moved on to MongoDB and Cassandra
34. James Bone remained concerned about the Claimant's ability which led to the decision that he failed probation on 13 October 2017. Until that decision James Bone was seeking to ensure that the Claimant's skills improved sufficiently. The probation review meeting on 13 October 2017 is recorded on pages 287-288. The Claimant mentioned the issue with the monitor and "bullying" for the first time here, but did not mention the other incidents he alleges.
35. Mr Bone did take into account Mr Ellis-Sargeant's views. Mr Ellis-Sargeant did make some observations, to the degree that supporting the Claimant was impacting on his work and also where issues were going to come to Mr Bone's attention. Mr Bone has since discovered that there were other issues which Mr Ellis-Sargeant remedied without bringing to his attention, thereby covering for the Claimant. We are satisfied that James Bone was genuinely frustrated with the Claimant's performance and concerned about the lack of knowledge and skill he was witnessing. Although Oliver Ellis-Sargeant inputted his views, the two were in agreement on this and the situation was impacting on Oliver Ellis-Sargeant.

## Relevant Law

36. Section 13 Equality Act 2010 states that a person (A) discriminates against another (B) if, because of a protected characteristic (including race), A treats B less favourably than A treats or would treat others. Section 9 provides that “race” includes “colour;...ethnic or national origins”.
37. Section 23 Equality Act 2010 provides that on a comparison for the purpose of section 13 there must be no material difference between the circumstances of the Claimant’s case and any comparator’s case.
38. Section 26 Equality Act 2010 states that A person (A) harasses another (B) if A engages in unwanted conduct related to a protected characteristic (including race) and the conduct has the purpose or effect of violating B is dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has had such an effect the Tribunal must take account B’s perceptions, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
39. The burden of proof is set out at section 136 Equality Act. This states that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that s 13 or s 26 has been contravened by A then it must hold the contravention occurred unless A shows that it did not contravene the provision.

## Conclusions

### Direct Race Discrimination

*Has the Respondent treated the Claimant less favourably than it treated or would have treated the identified comparators on page 77 or a hypothetical comparator? If so, has the Claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of race? If so, what is the Respondent’s explanation? Does it prove a non-discriminatory reason for any proven treatment?*

### **Allegation that Oliver Ellis-Sargeant asked the Claimant to give him breathing space (17 May 2017)**

40. At the start of their employment the Claimant and two other colleagues each sat perched between Mr Read and Mr Ellis-Sargeant for a period whilst they were inducted. The others were sat there for longer periods than the Claimant. When the Claimant’s desk was ready Mr Ellis-Sargeant did make a comment about giving him some breathing space, in the context of the work station being too cramped for three and the Claimant’s work station being ready, which was directly facing his own. Similar comments were not made once the colleagues were ready to move to their assigned work station.
41. We do not see that the Claimant’s treatment was less favourable in terms of the time perched between two colleagues as it is arguably preferable to be given a proper work station sooner rather than later. His new work station was directly facing Mr Ellis-Sargeant. It may be that the Claimant was the only one to whom reference to “breathing space” was made. We do not find this less favourable. We find it was not said maliciously and was in the context of the Claimant being perched between two



workstations and his own work station being made available. In any event we accept the explanation by Mr Ellis-Sargeant that his comments had nothing to do with race but reflected the cramped arrangement and the fact the Claimant's desk was ready.

**Allegation that Oliver Ellis-Sargeant said he had handled a heavy weapon and can kill people (May 2017)**

42. The Claimant relied on a hypothetical comparator in respect of this allegation. We have not found that Mr Ellis-Sargeant made reference to handling a heavy weapon and suggesting he could kill people, as the Claimant alleges. He did describe visiting Military Odyssey which we find he would have done to any colleague. This is not less favourable treatment and we are satisfied it had nothing to do with the Claimant's race.

**Allegation that shortly after the Claimant began Oliver Ellis-Sargeant took the Claimant's new monitor without authorization**

43. Mr Ellis-Sargeant did take the Claimant's new monitor as he had issues with his own monitor. We are satisfied that this action was done under the instruction of IT to solve an issue with the monitors and ensure both the Claimant and Mr Ellis-Sargeant had two functioning monitors each, as they required. The Claimant relied on a hypothetical comparator. This would have been done to anyone who had just received two new monitors which would fix the compatibility issue that Mr Ellis-Sargeant was experiencing. This was not less favourable treatment as both members of staff ended up with the resources they needed to work effectively and was nothing to do with the Claimant's race.

**Allegation that Oliver Ellis-Sargeant stated that it was cheaper to have cats and dogs than children**

44. Mr Oliver Ellis-Sargeant did make a comment along these lines when the Claimant's child was born. The Claimant was offended by it as it was not congratulatory. A similar comment was made to Mr Bone who is white, though not the comparator chosen by the Claimant. This therefore was not less favourable treatment, but in any event had nothing to do with the Claimant's race. It was intended in a humorous way when the Claimant's baby was born as Oliver Ellis-Sargeant does not have children but does have cats and he said similar to James Bone.

**Allegation that Oliver Ellis-Sargeant said "I don't know why they are employing immigrants"**

45. We have found that the alleged statement about employing immigrants was not said.

**Allegation Oliver Ellis-Sargeant referred to the Claimant as a Tea BA**

46. Database Administrators in general were referred to as Tea BA as a joke. It was not directed at the Claimant in particular. The message the Claimant relies on is in fact a joke made by Mr Read about Oliver Ellis-Sargeant (or rather his imaginary alter ego) making tea.
47. Jokes about tea BA and making tea were not less favourable treatment. They were not intended to be offensive or malicious but light hearted office banter directed at

the team in general. They had nothing to do with the Claimant's race. The Claimant in his cross examination of Mr Ellis-Sargeant asked questions about whether Mr Ellis-Sargeant had drawn a connection between the colour of tea and race. We find this was not the case. The reference to tea related to the making of tea for the team and not anyone's race.

## **Dismissal**

48. In respect of the dismissal we are satisfied that this had nothing to do with race, but was because of the concerns about the Claimant's performance as outlined in the overview of the probation period document at pages 289-293. The Claimant had not shown the ability which the Respondent had anticipated when he was appointed. Despite holding meetings with the Claimant and seeking to support him to address performance concerns James Bone remained really concerned about the Claimant's ability which led to the decision that he failed probation on 13 October 2017. Until that decision James Bone was seeking to ensure that the Claimant's skills improved sufficiently.
49. The Claimant asserts that the dismissal is on grounds of race as it is tainted by Oliver Ellis-Sargeant's views, which Mr Bone said he took into account. We accept that Mr Bone had his own concerns about the Claimant. Mr Ellis-Sargeant did make some observations, to the degree that supporting the Claimant was impacting on his work and also where issues were going to come to Mr Bone's attention in any event. Mr Bone has since discovered that there were other issues which Mr Ellis-Sargeant remedied without bringing to his attention, thereby covering for the Claimant.
50. We are satisfied that James Bone was genuinely frustrated with the Claimant's performance and concerned about the lack of knowledge and skill he was witnessing. Although Oliver Ellis-Sargeant inputted his views, the two were in agreement on this and the performance issues were impacting on Oliver Ellis-Sargeant. Mr Bone took his views on board but made his own decision. Mr Bone regards Mr Ellis-Sargeant as a trusted member of the team who can discuss technical issues with him.
51. The Claimant cites as a particular example that he returned to the office on the evening of 6 October as he had forgotten his umbrella. He says that Mr Bone and Mr Ellis-Sargeant were deep in conversation but stopped when he arrived, so he "knew something was up". Mr Ellis-Sargeant accepted they might have been having a conversation about the Claimant's performance as his views were considered leading up to the decision. We accept this was related to the Claimant's performance and not his race. The Claimant also says that Mr Ellis-Sargeant made a point of saying goodbye before going on holiday the following week and said he hoped to see the Claimant the next week. The Claimant says it was unusual for Mr Ellis-Sargeant to tell him about his holiday. He believes Mr Ellis-Sargeant knew he was going to be dismissed. This is denied but in any event this does not suggest the dismissal was for reason of race rather than the performance concerns which were impacting Mr Ellis-Sargeant and which Mr Bone admits were discussed with him.

**Allegation that Oliver Ellis-Sargeant did not give the Claimant sufficient details to rectify a fault (23 May 2017)**

52. Sending 4 out of 5 steps which the Claimant needed was simply a mistake in copying and pasting a document that was quickly rectified. This was not less favourable treatment as it could have happened to anyone. It had nothing to do with the Claimant's race.

**Not giving the Claimant any or any sufficient training**

53. The Claimant complains he was treated less favourably in respect of training. He did do the MongoDB training. The regular meetings with James Bone show that the Claimant was being supported in being able to do the role. Prior to these he had on the job training which is appropriate for that role and indeed we heard that others were given similar training when they started. The point the Respondent makes is that it was expected that the Claimant had the relevant knowledge and skills already, from his CV and interview and therefore should not have needed so much support. The Claimant was given at least as much support as anyone else, possibly more, and the same as a hypothetical comparator in his position, with his CV and stated experience. There is no evidence of less favourable treatment because of race in respect of the training he received.

**Not reimbursing the Claimant for the telephone repair**

54. The Respondent has always been happy to reimburse the Claimant for the telephone repair upon submission of the invoice and expense form. The Claimant had not submitted the form prior to his dismissal and it was his decision to defer payment once the Respondent offered to pay after these proceedings commenced. The failure to pay had nothing to do with the Claimant's race and is likely to have happened to anyone who did not put in the relevant expense form.
55. The Claimant has not proven facts from which we could conclude he suffered less favourable treatment was on grounds of race. In any event we are satisfied with the Respondent's explanations as given above and the Respondent's actions had nothing to do with race.

**Harassment**

*Can the Claimant establish that the events he described took place? Was the conduct related to the Claimant's race? Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? Did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?*

56. The Claimant relied on the same above conduct for the harassment claim. We have already found the conduct was not related to race. Some of the conduct was unwanted but none of it had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. To the degree that the Claimant perceived it to have that effect at

the time, it was not reasonably perceived as such. We observe that a feature of this case is that the Claimant has misconstrued phrases said/written by Oliver Ellis-Sargeant and Duncan Read and added meaning beyond the phrases used (either at the time or later). He did not understand the context of the phrases such as the Ori joke, even when explained in this hearing. We do accept his misinterpretation has led to genuine distress. The Respondent accused him of lying and we do not find that he has lied.

57. The reference to giving “breathing space” was said in the context of the Claimant having been perched between Mr Read and Mr Ellis-Sargeant, and his work station just opposite Mr Ellis-Sargeant being ready. It did not have the purpose, and it is not reasonable to perceive that it had the effect, of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. It was not related to race.
58. Mr Oliver Ellis-Sargeant did not refer to handling a heavy weapon or suggest he could kill people. He did say that he went to the Military Odyssey. It did not have the purpose, and it is not reasonable to perceive that it had the effect, of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. It was not related to race. It is not reasonable to consider this a threat to the Claimant and black African people generally.
59. Mr Oliver Ellis-Sargeant did say it is cheaper to have cats and dogs than children. He intended it to be humorous upon the birth of the Claimant’s child. He had said similar to Mr Bone. The Claimant was offended as it was not congratulatory but it is not reasonable to perceive that it had the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. It was not related to race. It is not reasonable to perceive this as Mr Ellis-Sargeant calling the Claimant’s child a dog, and therefore him (the Claimant) a dog or to compare it to the notorious signs in the past which said “no blacks, no dogs, no Irish”.
60. Mr Oliver Ellis-Sargeant did not make the alleged comment about employing immigrants.
61. The Claimant was referred to as Tea BA as were other Database Administrators. The email joke the Claimant relies on is about Oliver Ellis-Sargeant and not the Claimant. The purpose was light hearted office banter about making tea for the team directed at all the team. It had nothing to do with race. It is not reasonable to perceive that it had the effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant.
62. The Claimant was provided with sufficient monitors to do his job. His monitor was swapped with Oliver Ellis-Sargeant so they would both have enough monitors to do their role. The Claimant was dismissed because of performance issues meaning he did not pass probation. The Claimant received training and support to do the job. Mr Ellis-Sargeant on one occasion made an error copying and pasting some instructions to the Claimant, which was then rectified with his help. The Claimant did not receive reimbursement of the cost of his phone repair because he had not put in his expenses claim. None of these fit the definition of harassment.

63. As we did not find in favour of the Claimant in respect of any of his claims there was no need to look at time limits.

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Employment Judge Corrigan  
12 July 2019