Case Number: 3303868/2018

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr B Ciocoiu	v	Network Rail Infrastructure Limited

Heard at: Watford **On**: 19-22 August 2019

Before: Employment Judge Hyams, sitting alone

Appearances:

For the Claimant: In person
For the Respondent: Ms S Tharoo, of counsel

RESERVED JUDGMENT

(1) The claimant was not dismissed within the meaning of section 95(1)(c) of the Employment Rights Act 1996. Accordingly, he was not dismissed unfairly.

(2) The respondent owes the claimant nothing by way unpaid holiday pay, unpaid ages, or sums due under the claimant's contract of employment or any other contract. Accordingly, the claimant's claim of unlawful deductions from his wages is not well-founded.

(3) The respondent did not breach the claimant's contract of employment. Accordingly, no damages are payable by the respondent to the claimant for breach of contract.

REASONS

Introduction; the claim and the issues

1 This is primarily a claim of "constructive" unfair dismissal, i.e. dismissal within the meaning of section 95(1)(c) and 98 of the Employment Rights Act 1996 ("ERA 1996"). In addition, the claimant claims unpaid wages, damages for breach of contract, and unpaid holiday pay.

2 The claimant was employed by the respondent from March 2015 until he resigned with (he said in his resignation email) immediate effect on 4 October 2017. The claimant was employed as a Scheme Project Manager by the respondent, which is responsible for the infrastructure of the public railway network in the United Kingdom.

3 The issues relating to the claim of unfair constructive dismissal were defined by Employment Judge (Jeremy) Lewis after a preliminary hearing of 13 November 2018, in paragraph 5.2 of the record of that hearing, by reference to a letter from the claimant to the tribunal dated 13 August 2018. I state them here in slightly simplified terms for the sake of convenience and clarity. When stating below (at the end of these reasons) my conclusions on the claim of constructive unfair dismissal, I do so by responding to each of the detailed allegations in the claimant's letter of 13 August 2018 as expanded in paragraph 5.2 of the record of the preliminary hearing of 13 November 2018.

4 The claim of constructive dismissal was that the implied term of trust and confidence (which is an obligation not, without reasonable and proper cause, to act in a way which is calculated or likely seriously to damage or to destroy the relationship of trust and confidence that exists, or should exist, between employer and employee as employer and employee) had been breached by the respondent as a result of the respondent doing the following things:

4.1 requiring the claimant to work at a place other than that stated in his written contract of employment;

4.2 failing to provide him with adequate line management, or alternatively a lack of clarity about who was his line manager;

4.3 the wrongful allocation of the grade of "partially achieved" rather than "good" in his performance review of April 2017;

4.4 a failure to respond in a timely way to his application for sponsorship for the Masters in Business Administration ("MBA") course for which he had applied;

4.5 a failure to take reasonable care for his health and well-being;

4.6 multiple failures to deal in a timely way with his requests to take annual leave and for medical or dental appointments;

4.7 failing to process on a number of occasions timesheets, or failing to do so in a timely manner;

4.8 rejecting 28 applications for job vacancies because (the claimant surmised) of (1) his “partially achieved” performance review grade, (2) the fact that he had stated a grievance, and (3) a “spurious” allegation of misconduct made against him; and

4.9 the making of that “spurious” allegation.

The evidence

5 I heard oral evidence from the claimant and, on behalf of the respondent, from

5.1 Ms Jessica Stewart, who was at the material time an HR [i.e. Human Resources] Business Partner employed by the respondent;

5.2 Mr Jonathan Davies, who is and was at the material time employed by the respondent as an Area Delivery Director for the Greater West;

5.3 Mr David White, who was at the material time employed by the respondent as a Senior Programme Manager;

5.4 Ms Lynne Halman, who is and was at the material time a Project Manager employed by the respondent; and

5.5 Mr Ewen Morrison, who was at the material time employed by the respondent as a Programme Manager on the respondent’s Crossrail West programme.

6 There was a joint bundle of three very full lever arch files which contained well over 1000 (monochrome) pages (1144 numbered pages with a number of additional pages with letter suffixes). The claimant had produced and put before me in addition a bundle which contained for the most part copies of parts of the joint bundle, but in colour, since he had added highlighting to a number of documents for the purposes of the hearing, and the highlighting in the monochrome copies in the joint bundle (a) had in some cases obscured the original text it covered, and (b) in other cases was simply not shown at all. I read only those parts of that bundle to which I was referred and which were relevant to the issues. The claimant’s witness statement was single line-spaced, in a rather small font size, and was 66 pages long. It contained a significant amount of argument or comment, and copious references to (and

quotations from) the pages of the bundle. I refer in these reasons only to the material parts of the evidence and the material arguments in that witness statement.

7 There were some stark conflicts of evidence about some fundamental factual matters. Where necessary, I describe them below and state how I resolved them. While my findings are stated largely in chronological order, it was not possible to deal with the evidence in a simple chronological order: it was necessary to deal with some aspects discretely.

<u>My findings of fact</u>

8 The claimant was first employed by the respondent after being offered a post in a letter dated 4 March 2015 of which there was a copy at pages 149-150 of the joint bundle. (Any reference below to a page is, unless otherwise stated, a reference to a page of that bundle. Any reference below to a page of the claimant's bundle is to a page with a letter prefix of "C", e.g. page C252.) He was then based at the respondent's Stonebridge office. The manner in which the claimant came to start work in the job from which he resigned was the subject of a major conflict of evidence.

The location at which the claimant worked after 5 December 2015 and the circumstances in which he came to work there

9 The claimant was offered the (as far as he was concerned new) post in the letter at pages 170-171. The letter was sent by Ms Halman and it was dated 3 November 2015. It stated among other things: "We will confirm your actual start date once we have completed your recruitment process." Ms Halman had interviewed the claimant for the post on 20 October 2015, and it was her clear evidence that she had told the claimant at the time of the interview that while the post was advertised as being based at Craven House, in Ealing, there was a possibility that the team was going to move to Stockley House, in Hayes (near Hayes and Harlington railway station). It was her oral evidence that on 20 October 2015 it was "highly likely" that the team would be moving to Stockley House ("Stockley") and that the interviewers (she was one of two) had discussed with all of the interviewees that possibility and asked them whether it would be a problem for them if the role was based at Stockley rather than Craven House. At page 169J there was a copy of the page of Ms Halman's notes made in the claimant's interview in which she had written under the heading "Candidate questions and close": "<u>Location</u> – No.", and "No questions."

10 Ms Halman's evidence was that she had spoken to the claimant on the telephone when she had received an email from HR informing her that the claimant had accepted the role. She said that she had as a result of receiving that email telephoned the claimant, said that she was glad that he was joining the team, and that, as discussed at interview, the team had moved to Stockley. She then sent him an email and he responded to it. It had not been put in the

bundle, or previously disclosed, but she found it on her laptop and a copy of it was put before me. It was dated 2 December 2015, and it was short and to the point: it informed the claimant of the address of the new location of the team, and said that he should report there at 9.30am on 5 December 2015. It concluded with words of welcome, and the claimant had responded to it saying simply this: "All received, thank you!"

11 It was Ms Halman's clear evidence that there had been no discussion about the place at which the claimant would be based. In contrast, the claimant's evidence in paragraph 18 of his witness statement was in these terms:

> '18. Between 14/11/2015 and 05/12/2015. HALMAN contacted me by phone and stated to the effect that "An internal reorganisation is taking place. During these organisational changes, I require you, for up to 2 months, to work from a temporary place of work located at 192 Dawley Rood, Hayes ('DR') also known as Stockley construction site" and "after 2 months at the latest, you would be allowed to work from your contractual place of work".
>
> 18.1. I responded that the journey between my then home (in Hertfordshire) and CH, during peak commuting hours, involved up to 4 hours travel daily and explained that the additional commuting between CH and DR would add an additional 2 hours, making a total daily commute of up to 6 hours, which would be extremely burdensome. I explained that, in order to get to DR from where I lived, I had to drive through Ealing on a route that would take me directly past the CH offices. I stressed that a daily commute of up to 6 hours, on top of the 7 hours I was contractually obliged to be at work), would **impact my health through stress and fatigue**, and I requested that the commute between CH and DR be classed as business commute so it could be conducted during the 7 contractual working hours.
>
> 18.2. I pointed out that the additional commuting distance required an additional 23.2 miles of travel daily, which would have a financial impact.
>
> 18.3. In response, HALMAN stated to the effect that "the entire project team is already based in DR so you will have to work from Hayes for the next 2 months". She stated to the effect that "I expect you to be in the 192 DR office throughout the entire duration of the day. This is only a temporary change and after the reorganisation ends, after the staffing changes take place, you will be allowed to return to CH".
>
> 18.4. Given that I hod not yet started the role and I did not want to

> engage in conflict before I started, I felt intimidated and that I could not refuse the demand without jeopardising my position. Therefore, on the basis that this was only a temporary situation and that I would move to CH after, at most, two months, I acceded to the demand.' (Bold font as used in the original.)

12 Ms Halman was adamant that no such conversation had taken place. The respondent had a policy (in its "Additional Travel" policy, at pages 191-200, to which I refer further below) of not locating staff further than an hour and a half's travel from their homes, and she said that if she had been concerned about the distance from the claimant's home address at that time to Stockley then she would have not interviewed him for the post which he was offered and which he accepted. The Additional Travel policy entitled the claimant to the payment of £0.23 per mile for two years for any additional distance required to be travelled to and from home in order to attend a new, respondent-imposed, workplace.

13 Paragraph 20 of the claimant's witness statement was in these terms:

> 'Around 02/2016, after completing 2 months, I requested that HALMAN allow me to work as per contract from CH. HALMAN declined stating to the effect that "the organisation is still reorganising itself and I require you to continue to work from DR, temporarily, for another 2 months after which you can return to CH". **I invoked again the welfare, health and financial burdens imposed on me by being forced to work from DR instead of CH**. I presented HALMAN with a printed Google map (CBD 55-57 but not in JBD due to substandard replication) showing the additional mileage: 23.2 miles per day, traffic congestion coloured with red and amber, and **the commuting time during peak hours: 2 additional hours per day that I was being forced to drive in my rest time, at my own expense**. I asked at least to be allowed to commute between CH and DR during the 7 daily working hours. HALMAN rejected and stated to the effect that "if I do not get to work from CH, you certainly do not get to work from CH either". I did not pursue the argument further because I was afraid it might jeopardise my job and subsequently my capacity to provide and care for my family. I began to feel stressed and fatigued and started to lose trust in my employer.' (Bold font as used in the original.)

14 Ms Halman's evidence was firmly to the effect that she had no discussions at all with the claimant about travelling to Stockley instead of Craven House.

15 At the end of the hearing, on 22 August 2019, I explored with the claimant and Ms Tharoo the likely travelling time from the claimant's home address in December 2015 to Stockley as compared with the likely travelling time from that address to Craven House. The claimant was insistent that the only route that he could follow to Stockley was via Craven House, i.e. by going on the A406 and not (as the parties agreed was possible) via the M25. He was therefore highly reluctant to discuss the time it would have taken him to get to Stockley from his

home address if he had gone on the M25. In the end, however, it became clear that the likely travelling times were similar, but that the route to Stockley via the M25 was about 10 miles longer than the route via the A406 to Craven House.

16 The claimant used to commute using a motorbike. In his oral evidence, he said (for the first time; i.e. it was not before then said in any document, or conversation that he had had with any representative of the respondent, or in his witness statement) that the additional miles would cost him money because of the financial arrangements under which he had bought his motorbike and that it was as a result not possible for him to travel via the M25. On the final day of the hearing, in submissions, the claimant said that he had been taking a degree at London South Bank University, and that that fact plus the need for him to be able to work in London as a special constable, had meant that he had to go via Craven House and could not use the M25 for his commute to and from work.

17 The parties agreed that the first time that the claimant said in any written communication to the respondent that him working at Stockley was on a temporary basis only, was in the email dated 30 March 2017 at page 323, to which I refer further below.

18 When considering how to resolve this conflict of evidence about what was said by the claimant and Ms Halman to each other on 20 October 2015 at the claimant's interview, and during the telephone conversation that they had had before the claimant started work at Stockley on 5 December 2015, I took into account the evidence that was given by Mr Morrison, Ms Stewart and Ms Halman during the hearing that the respondent's office at Craven House had closed down during 2016. That made it unlikely that Ms Halman had said that the move was only temporary and that the team would be moving back to Craven House. I also took into account the fact that the claimant had at no stage asked whether or not working at Craven House was an option for him. The first time he had referred to it as an alternative venue in any place in the bundle was an email dated 27 June 2016 to Mr Daniel Brookes (and only Mr Brookes, i.e. it had not been copied, at least openly, to, say, Mr Morrison), who had been what appeared to be an internal recruitment consultant and who had facilitated the claimant's move from Stonebridge to (in the event) Stockley. That email was in these terms (page 230):

> "Would you be able to look into the following for me, please.
>
> The contract signed through yourself, had me placed in Ealing - Craven House at a reasonable ~one hour distance from where I live.
>
> Since I started delivering under this contract, from day one, I was asked to attend Stockley offices which is ~two hours' distance, 3-4 changes in total, so much congestion and lack of comfort, transport delays, and occasionally stations shut and trains cancelled.

> In order to avoid congestion and crowded transport due to lack of comfort, I sometimes used my personal transport, where applicable.
>
> The location of the office was a key factor for when I accepted the offer. Is there anything we can do to address this subtile [sic] office change both retrospectively and ongoing, please?"

19 That email had not been responded to. The claimant had then asked Mr Brookes by a further email on 7 July 2016 to confirm that he had read the email of 27 June 2016, and received no reply to that email. That email chain then ended.

20 In his oral evidence, the claimant said that he had not used public transport at all because he had so much to carry to and from home that it was highly inconvenient to do so. Instead, he said, he had always used his motorbike for his commuting.

21 In addition, the claimant said that he had not wanted to start off on the wrong footing with Ms Halman, so he had not wanted to say how much of a difficulty working from Stockley as compared with working at Craven House was going to be for him. That was at least mildly inconsistent with the content of paragraph 18 of his witness statement, which is set out in paragraph 11 above.

22 The content of paragraph 18 of the claimant's witness statement was also wildly inaccurate as far as travelling times were concerned. The reality was that the time it was likely to take to travel to Craven House was about the same as that to travel to Stockley, albeit that the route to the latter involved driving about 10 miles extra each way. The time it was likely to take, even in the rush hour, to drive to both places from the claimant's home was at most about an hour.

23 Given all of these factors, but also having heard and seen Ms Halman and the claimant give evidence, I preferred the evidence of Ms Halman in this regard. I also accepted her evidence in response to the content of paragraph 20 of the claimant's witness statement, namely that the claimant had not at any stage objected to her to travelling to Stockley instead of Craven House.

The respondent's Oracle system

24 The respondent had a computer network system which it called Oracle. It was part of the respondent's intranet, and had in its address line on that intranet these words (visible on, for example, page C252): "Oracle Self Service Human ...", i.e. presumably "Oracle Self Service Human Resources".

25 Oracle had a number of purposes, including the management of annual leave requests and recording when timesheets had been submitted and approved. It was Mr Morrison's evidence (in paragraph 22 of his witness statement and

orally) that those timesheets were of use for internal time-recording purposes only. As far as the Crossrail project was concerned, they were important in that they permitted the respondent to recover from Crossrail Limited (which was wholly owned by the Department of Transport and Transport for London) its costs incurred in relation to the Crossrail project. Mr Morrison's evidence was to the effect that no sanction was imposed on any employee who did not complete his or her timesheets, despite their importance for internal accounting purposes. He concluded paragraph 22 of his witness statement with these words (the truth of which I accepted):

> "Therefore there was no impact on [the claimant] personally whatsoever at not having a timesheet approved."

26 One of the things that was shown on the Oracle system was the managerial or organisational structure of the respondent, shown by a system of boxes and lines of reporting. I was told by Mr Morrison (and I accepted) that the structure chart on Oracle was not an accurate depiction of the reality of his (and others') leadership roles. He said:

> "We worked in a matrix organisation in which we had functional led organisations and teams with series of dotted lines which created the teams."

27 In any event, the person in the hierarchy immediately above anyone whose name was in a box in the structure chart was regarded by Oracle as being responsible for approving or rejecting annual leave requests and approving or rejecting timesheets. If the box above an employee's box was blank, then the person whose name was above that role in the hierarchy was responsible for approving or rejecting that employee's annual leave requests and timesheets. The person whose name was in the box above an employee's box was, as far as the Oracle system was concerned, the employee's line manager.

28 The Oracle system also contained data relating to individual employees. That which related to the claimant (of which there were copies at pages C252-C253) showed him as being based at Craven House throughout the period of his employment with the respondent.

29 Only certain people could alter the name in a box on the Oracle structure chart: it was not possible for a line manager to do it, and it was not possible to alter the structure without it having a knock-on effect, which meant that any change to the content of the structure chart had to be made with circumspection and care.

30 Some of the people working for the respondent at the material times were self-employed contractors. However, they were integrated into the respondent's structure where relevant, and they were accorded roles in that structure. Nevertheless, they were always treated as temporary employees. Thus, their

names might cease to appear in a box on the structure despite the fact that they remained "employed" (using that word in a neutral manner) by the respondent in the post in question. The respondent's information technology staff would then need to put their names into the box again.

The claimant's line management from March 2016 to May 2017 and the claimant's evidence that he complained to his line managers about the fact that he was travelling to Stockley and not Craven House and the impact on his health of doing so

31 It was the claimant's case that the person whose name was in the box above his on the Oracle system had to be his line manager, so that if that person's name changed, or the box was blank, then, respectively, (1) the newly-named person was his manager, and (2) he had no manager.

32 It was Mr Morrison's and Ms Stewart's evidence that the Oracle system was flawed in some respects and did not always reflect the reality. For example, at page C477 there was an extract from the structure or organisation chart which showed that on 29 March 2017, the claimant had no manager. However, the claimant accepted that at that point, Mr Morrison was his line manager. Thus, even if only for that reason (but in any event), I accepted that the Oracle system was not a reliable indicator of who was a person's line manager.

33 The parties appeared to agree broadly on the sequence of events which occurred after the claimant's appointment to the role based (in the event) at Stockley. As stated above, the claimant started in that role on 5 December 2015. During March or early April 2016, Ms Halman moved within the respondent's organisation so that she ceased to be the claimant's line manager.

34 At pages C252-C253, the claimant's line manager was stated on various dates to be either Mr Morrison or Mr Oliver Jackson. In only one period during 2016-2017 referred to on those pages was there any different person shown as the claimant's line manager, and that was Mr Simon Pledger, between the period 04/04/2016 and 17/05/2016. That was shown on page C253. Mr Pledger was, from some point onwards during the period from 5 December 2015 until the day when Ms Halman left the team at Stockley, Ms Halman's line manager. Mr Morrison was shown as the claimant's line manager in the subsequent period, from 18/05/2016 to 09/08/2016.

35 In paragraph 24 of his witness statement, the claimant said this:

> 'On the assumption that PLEDGER was my new line manager, at some point around 05/2016. I approached him with the request to work, as per my contract, from the CH office. By this time, the 2 months referred to by HALMAN, as the maximum time I would be required to work in DR had long elapsed. PLEDGER declined my request, stating to the effect that "a

> reorganisation is taking place which would last 2 months maximum after which you can make the request again". I emphasised to him that the welfare, health and financial burdens imposed on me by NR's decision for me to work in DR had become burdensome and showed him, as I had previously done with HALMAN, a number of Google maps that I had printed out ... which illustrated, visually, the additional time (2 hours per day), mileage (23.2 miles per day), the amount of traffic congestion and expense I was incurring. I once again requested that the commuting time between CH and DR be classed as business commute, but he declined, firstly requesting that I delay my request until after the reorganisation was complete, and, secondly, informing me that, in any case, he was not my line manager and even if my request had been fulfillable, he was not authorised to consider my request.'

36 In May 2016, Mr Pledger left his role, and Mr Morrison transferred into it. It was Mr Morrison's evidence that he was told that after Ms Halman had left her employment based at Stockley, Mr Jackson was the claimant's line manager and Mr Morrison was Mr Jackson's line manager. Mr Jackson was, however, a contractor and not an employee of the respondent.

37 The claimant seemed to accept (eventually, after much prevarication) that once Ms Halman had left Stockley, Mr Jackson took over as his line manager, but he claimed to be confused by the fact that Oracle showed Mr Pledger as his line manager instead. In any event, I concluded on the balance of probabilities and having seen and heard the claimant and Mr Morrison give evidence, that the claimant was in no doubt that once Ms Halman had left her position at Stockley, Mr Jackson took over as his (the claimant's) line manager on a day-to-day basis.

38 In paragraph 32 of his witness statement, the claimant said that he had on 8 July 2016 among other things raised with Mr Morrison orally as an issue "the impact on my health, welfare and earnings caused by the additional commute between CH and DR". Mr Morrison's evidence was that that did not happen. I resolve that conflict of evidence in paragraphs 58 and 59 below, after which (in paragraph 60) I also return to the content of paragraph 24 of the claimant's witness statement, as set out in paragraph 35 above.

39 It was Mr Morrison's evidence (which I accepted) that the claimant and Mr Jackson fell out during the course of 2016. Mr Morrison described that situation in paragraphs 16-18 and 24-25 of his witness statement, which I concluded were accurate. Paragraph 16 was in these terms:

> "In late September - early October 2016 I became aware that the relationship between Olly [i.e. Mr Jackson] and Mr Ciocoiu was starting to breakdown. Olly was a contractor, external to NR. Olly raised concerns with me about Mr Ciocoiu's attitude to work and progress in his role. Olly also had concerns that Mr Ciocoiu was going on too many training

courses and was spending too much time away from his day job. Olly ultimately told me that he was not finding a use for Mr Ciocoiu. Mr Ciocoiu also came to me and said that he was worried about Olly's line management. He also said that he did not want a contractor responsible for his development."

40 Paragraph 24 of Mr Morrison's witness statement was in these terms:

> "In early October, I spoke with Olly and said to him that due to both his and Mr Ciocoiu's concerns about their working relationship I would take over the allocation of tasks to Mr Ciocoiu and undertake, informally, Mr Ciocoiu's day to day management. Olly then relayed this to Mr Ciocoiu on 3 October 2016."

41 Mr Morrison said in oral evidence that the claimant had been happy to accept the change in his line management, from Mr Jackson to him (Mr Morrison), and that it would have been obvious to the claimant that he would have to be based at Stockley. In paragraph 9 of his witness statement, Mr Morrison said this:

> "When I took over his line management, due to me allocating his tasks for him and him being allocated to the Stockley project, he would have to have been based from Stockley (where I was based) and this would have been abundantly clear to Mr Ciocoiu. Not once did he raise any concerns at this point about his work location. Further, all the objectives that were set for Mr Ciocoiu were linked to contractors and project teams who were based at Stockley."

42 I accepted that evidence of Mr Morrison.

43 Mr Morrison remained the claimant's line manager until May 2017, when he (Mr Morrison) was, as he put it in paragraph 39 of his witness statement, "moved to another part of the programme and away from the Stockley office". At that point, Mr Morrison's replacement, Mr Tony Gordon, took over as the claimant's line manager. The claimant accepted that Mr Gordon took over as his line manager at that point.

The claimant's application for sponsorship for his MBA course

44 The claimant mentioned in a conversation with Mr Morrison after Mr Morrison had started to work at Stockley that he (the claimant) was planning to enrol on an MBA course. Mr Morrison suggested that he sought support for the cost of that course from the respondent, via the respondent's sponsorship programme. There was in the bundle at pages 255-260 a copy of a sponsorship document entitled "Higher Education Sponsorship Application Form (Form He1) & Guidance Document". It was completed for the most part digitally but it also had on it handwritten markings. It was signed by the claimant at page 260, and it had a date inserted digitally of 9 June 2016. Immediately under the signature

there were these words (as part of the standard wording on the form):

> "THE APPLICANT IS NOW REQUIRED TO PASS THIS FORM TO THEIR LINE MANAGER, THEIR HRBP AND THEIR ROUTE/FUNCTIONAL DIRECTOR".

45 On page 256, under the heading "IMPORTANT NOTES - PLEASE READ", there was this bullet point:

> "No retrospective applications will be considered. You must await confirmation that your sponsorship application has been accepted and a purchase order (PO) number has been provided before enrolling on your chosen course."

46 It was the claimant's evidence that Mr Morrison had said to him:

> "I will provide you with the sponsorship application template, which you need to fill in, print, sign and hand back to me and I will do the rest for you."

47 Mr Morrison denied that he had said that. He said that he would never do such a thing, not least because he had so many responsibilities that he would not have time to assume responsibility for an employee's sponsorship application in that way. In addition, he said, the respondent's practice was never to print out a document unless it was necessary to do so, so that all electronic documents remained electronic unless there was a reason to print them.

48 In fact, there was in the bundle at page 243 an email from the claimant to Mr Morrison dated 28 July 2016 in which the claimant wrote this:

> "Please find attached the support letter for the professional development and please let me know if there's anything else which may be helpful.
>
> I merged all documents into a single PDF.
>
> Thank you."

49 That was consistent with the claimant retaining responsibility for collating the necessary information before sending it to Mr Morrison digitally, for Mr Morrison then to send onto the HR department. Mr Morrison's evidence was that it had in the past taken about six months for a sponsorship application to be approved and that he probably spoke to one or more persons after 28 July 2016 and before 5 September 2016, when he sent the email of the claimant at page 243 on to the relevant HR person and Mr Dave Corkett, the relevant Route/Functional Director (to whom Mr Morrison in fact reported). On 26 September 2016, Mr Morrison informed the claimant (in the email trail at pages 238-242, Mr Morrison having "chased HR" before 13 September 2016, as

stated in his email of that date at page 241) that his request for an MBA had been turned down.

50 The claimant's witness statement contained this sentence in paragraph 35.1.1:

> "I had to secure a short term loan to pay the tuition fees for the 1st year, after which after the sponsorship had been formally accepted, I would have been in a position to repay the loan and financially support the studies from the sponsorship. Between 20/09/2016 end 25/09/2016, I had a genuine belief that my sponsorship will be granted, I acted in good faith and I accepted the academic offer."

51 However, at no time did the claimant tell the respondent that he was going to have to accept the offer of a place on the MBA course and thereby incur a liability to pay the fees for the course. He did not put before the respondent or the tribunal any documents relating to the course itself, or the conditions on which places could be accepted and the deadlines for such acceptance. In contrast, he merely wrote in reply to Mr Morrison's email of 26 September 2016 at page 238 (in his email on the same page):

> "Thank you for the feedback re MBA. I trust alternative arrangements have already been considered before delivering the feedback. I will consider this matter closed."

The claimant's performance review of 2017 and some related events

52 After he took over as the claimant's line manager in October 2016, Mr Morrison had a half-year performance review meeting with the claimant. The sequence of events from then until the next performance review was described by Mr Morrison in paragraphs 30-34 of his witness statement. I accepted the evidence in those paragraphs. In summary, Mr Morrison concluded that the claimant had not met all of his performance objectives, which meant that the rating that he received had to be "partially achieved". Only if all of the performance objectives had been achieved could the claimant receive the grade of "good". In about the middle of April 2017 the claimant told Mr Morrison that he wanted to challenge the award of the grade of "partially achieved". Mr Morrison said that he could not himself change that grade and that if the claimant wanted to discuss the issue further then he would have to discuss it with Ms Stewart, who was the relevant HR business partner. At page 316, there was an email from Mr Morrison to the claimant dated 14 April 2017 in which Mr Morrison informed the claimant that he (Mr Morrison) was not able at that stage to change the claimant's rating, so it was going to remain "partially achieved".

53 One of the things that Mr Morrison said to the claimant during the performance review process of 2017 arose from the fact that the claimant said that there were not enough hours in the day to meet all of the performance objectives. In paragraph 32 of his witness statement, Mr Morrison said this:

> "The trust I had in him at the early stages had started to erode at that stage as he would always find reasons not to complete work. I also raised concerns about the hours he worked and how this would have impacted his ability to achieve his objectives. He generally arrived at 09.30 and left at 16.30. It was at this stage that Mr Ciocoiu said that his contract was actually based at Craven House".

54 On 30 March 2017, the claimant wrote the email at page 323 to Ms Stewart. The emails in the chain above it at pages 319-323 followed that email chronologically. In them, the claimant at first merely claimed for the cost of travelling daily between Craven House and Stockley, and compensation for the loss of his personal time in having to do so. He then wrote in the email on page 322 (dated 5 April 2017) that he was getting on average one hour 30 minutes less sleep every day because he was based at Stockley rather than Craven House.

55 There was at pages 309-316 a separate chain of contemporaneous emails between the claimant and Mr Morrison, one of the topics of which was the fact that the claimant was based at Stockley. In the email of 13 April 2017 at page 311, Mr Morrison wrote this:

> "I was not aware that you have been travelling into Ealing each day and then travelling from there to [Stockley]. Can you confirm that this is true please?
>
> I was not aware that the stated location of your role was [in] issue as I understood that the journey time was roughly the same. If this is an issue for you we will look to get it changed immediately."

56 In oral evidence Mr Morrison was adamant that he had not before then known that the claimant was concerned about the fact that he was working from Stockley and not Craven House.

57 The claimant said that the respondent had an alternative venue in Ealing at which he could have been based if (as he was not aware in 2017) Craven House was no longer used by the respondent. However, the team of which the claimant was a member was based at Stockley, and it was Ms Halman's clear and firm evidence and that of Mr Morrison that the claimant could not in practice have been permitted to be based in Ealing and not at Stockley.

58 I accepted Miss Halman's and Mr Morrison's evidence in that regard. I also accepted Mr Morrison's evidence that he had not known before April 2017 that the claimant was objecting to being based at Stockley rather than Craven House and that the reasons why he was objecting to being so based included that it was having a negative effect on his health and that it was causing him to lose a significant amount of personal time. I accepted that evidence of Mr

Morrison not merely because I found his evidence to be more credible than that of the claimant in this regard, but also because it was clear that the claimant was ready and willing to complain about things that concerned him, and to do so in writing, but that he had not done so by writing to Ms Stewart on 30 March 2017 (page 323), when he referred only to seeking travel costs and compensation for the extra time spent travelling. It was only after then that he expanded his complaint so that on 5 April 2017, in the email at pages 321-322, he referred to getting on average one hour 30 minutes less sleep every day because he was based at Stockley rather than Craven House.

59 In addition, the reality was (as I have found in paragraph 22 above) that the time taken to travel to Stockley from the claimant's home address was no greater than that which it would have taken to travel from that address to Craven House. The claimant appeared to me to be intelligent and to be highly likely to know that that was so. As a result, I concluded that he first raised with his line manager (either Ms Halman or Mr Morrison) the issue of the location of his workplace, i.e. Stockley as opposed to Craven House, only when he received an indication from Mr Morrison that he (the claimant) was going to receive a grade of "partially achieved" for his performance review.

60 In part for that reason, but also because I regarded it as inherently unlikely in the circumstances to be true, and because if it had been true then the claimant would in all probability have copied Mr Pledger into the email to Mr Brookes at page 230 (set out in paragraph 18 above), I rejected the evidence of the claimant in paragraph 24 of his witness statement, which is set out in paragraph 35 above.

Approvals of annual leave requests by Mr Morrison and others

61 It was Mr Morrison's evidence (both in paragraph 20 of his witness statement and orally) that while annual leave requests could be made via the Oracle system, if for one reason or another an approval was not received from the relevant employee's line manager via that system, then (1) the employee could obtain permission to take the leave "locally, for example via email", and (2) "the Oracle approval could be done retrospectively". I accepted that evidence of Mr Morrison.

The allegation of misconduct by the claimant

62 When, on 25 April 2017, Mr Morrison was considering a request made by the claimant for annual leave, Mr Morrison raised a query with the claimant about some leave that the claimant had taken on 20-24 March 2017. Mr Morrison did that in the email of 25 April 2017 at page 327. The query concerned the fact that the claimant had apparently taken the whole week off as special leave for the purposes of permitting him to be a special constable with the Metropolitan Police but that he had written in his application for leave that it was to be taken "PM only". In the sequence of emails which followed (at pages 327 to 324), the

claimant asserted that he had worked at home in the mornings on 20-24 March 2017 and Mr Morrison sought from the claimant documentary evidence of work activity during those mornings. The claimant repeatedly failed in those emails to provide such evidence, and the chain ended with the email of 8 May 2017 at the top of page 324, in which the claimant invited Mr Morrison to "sit down and discuss [the situation] with an open mindset".

63 It was the claimant's firm evidence that such a conversation did not happen, at any stage, before, on 3 August 2017, in the email at page 507, enclosing the letter dated 1 August 2017 at pages 496-497, Mr White invited the claimant to a disciplinary investigation meeting on 10 August 2017 to discuss the matter. It was Mr Morrison's equally firm evidence that he had several such conversations with the claimant, culminating in one which happened on 25 May 2017 and to which he referred in a statement that he had made for the purposes of the disciplinary investigation. It was headed "Witness Statement" and was at pages 1141-1143. At the top of page 1142, there was this passage:

> "I had a lengthy face to face discussion with Bogdan [i.e. the claimant] on the 25th May following email correspondence. Bogdan continued to question why I was asking for evidence and couldn't understand why it was an issue that he had been AWOL. I explained repeatedly that it was important that his team and his management were aware if he was in work or not and whether he was contactable throughout the week. I explained that working from home was not an automatic right and is something that should always be requested through line management. Bogdan stated that he was unsure who to ask owing to him being unaware who his line manager was. I have repeatedly disputed this with Bogdan as it was made very clear to him that he would be reporting directly to me day to day. The conversation in which he was informed of this initially took place on the 03/10/16 and I held his performance review one to one on the 19/10/17 in which I set the direction of his work through amended objectives that aligned with the new role that he was undertaking within the Stockley team - he was previously the Scheme PM allocated to managing Hanwell station reporting to Olly Jackson.
>
> ...
>
> I do not believe that Bogdan was confused as to who his line manager was at the time of the application and I believe it is a deflection tactic that he is using to confuse the situation."

64 Before that document was referred to, during cross-examination Mr Morrison described how he spent two hours pleading with the claimant to let the claimant look over his shoulder at his laptop just to see what evidence there was of email traffic on the days when the claimant claimed to have been working at home. He then said that it was just before the start of a bank holiday weekend, and that as a result of spending those two hours trying to obtain from the

claimant some evidence of him working during the mornings of 20-24 March 2017, he had missed his intended train and was as a result late when meeting up with his wife that evening, and that he had said to her how frustrated he was at having to go through "the whole procedure", as he put it.

65 The document at pages 1141-1143 was neither signed nor dated, and I noted that it referred in the passage that I have set out in paragraph 63 above to 19/10/17, evidently erroneously, since the meeting that Mr Morrison had with the claimant to set his objectives was agreed to have taken place in October 2016. That suggested that the statement might have been made after 19 October 2017, but the statement was otherwise entirely consistent with it having been made before the claimant resigned, and it was Mr White's express evidence (in paragraph 16 of his witness statement) that he had received the statement at pages 1141-1143 from Mr Morrison before 30 August 2017. I saw too that at page 522, there was an email from Mr Morrison to Mr White dated 16 August 2017, referring to his "updated ... witness statement" and saying that it was "attached". I therefore accepted on the balance of probabilities that the statement had been created within 3 months of the time of the conversation about which Mr Morrison had given oral evidence.

66 In any event, having heard and seen both the claimant and Mr Morrison give evidence about the meeting of 25 May 2017, and taking into account the content of the document at page 1142 set out in paragraph 63 above, I concluded on the balance of probabilities that there <u>was</u> a two-hour meeting between the claimant and Mr Morrison on that day, and that the claimant did indeed refuse to let Mr Morrison see by looking at the claimant's laptop whether or not the claimant had sent any work emails on 20-24 March 2017.

67 I also accepted Mr White's evidence about what happened after he had been asked (it was, he said, in late July 2017, and he was asked by Mr Corkett and Ms Stewart) to conduct an investigation into alleged misconduct by the claimant. Much of Mr White's evidence was, in fact, not contradicted by what the claimant said. The claimant attended an investigatory meeting on 10 August 2017 with Mr White. At the meeting, Mr White asked him whether he kept a "day book". Mr White's evidence in paragraph 13 of his witness statement was that most project managers employed by the respondent did so, to keep a record of work done. He continued:

> "I would have expected Mr Ciocoiu at the very least to have notes of documents and drawings he had been reviewing or formal records. These are referred to as Document Review Notes (DRN's). DRN's are formal review notes of drawings that are then sent back to the contractor who produced them. DRN's would have been a significant part of Mr Ciocoiu's work that he would either have produced or contributed to. Mr Ciocoiu didn't answer my question about the day book and my suspicions did start to grow. Having records of work completed and notes of the same is a basic part of a Scheme Project Manager role. I wouldn't have expected Mr

Ciocoiu to have been told that he needed to keep those records, whether in the form of day book or not; it was a core part of his role. I would also have expected him, in his role, to be sending emails on a daily basis, but this evidence was not forthcoming."

68 Mr White then said that the claimant said that he would need until 28 August 2017 to compile the evidence which Mr White had requested. Mr White said that he could have until 1 September 2017 to do so and that all he (Mr White) needed "was copies or details of sent emails, or date stamped documents." He continued (in paragraph 15 of his witness statement):

> "I was surprised that Mr Ciocoiu, who had brought his work laptop with him to the meeting, didn't just show me emails sent on the days in question. Had he shown me those, that in my mind would likely have been sufficient evidence to end my investigation. Mr Ciocoiu reiterated several times that he wanted to produce a pack of evidence and that was all he was prepared to do."

69 The claimant did not, however, provide any evidence to Mr White by 1 September 2017. Instead, the claimant wrote on that day (page 605), in response to an email dated 25 August 2017 under cover of which he had been sent a copy of the notes made during the meeting of 10 August 2017, that he had been off work since 21 August 2017, that he thought that the notes made by the respondent's note-taker at the meeting were "selective, biased, ambiguous in places, exclude key quoted statements, etc", and enclosing his own notes of the meeting (pages 515-519). He then made a written and detailed complaint, dated 4 September 2017, of which there was a copy at pages 651-665. It was in the form of a letter to Mr Neil Thompson, the respondent's Regional Director, and started:

> "The purpose of this letter is to bring to the attention of the appropriate authority, events which began on 3rd November 2015 and which culminated most recently in an investigation against me for alleged misconduct (an allegation which I refute strenuously)."

70 On 21 September 2017, Mr Thompson responded to that letter from the claimant of 4 September. He did so in the letter at page 711, in which he wrote that the complaint would be dealt with by Mr Andrew Rickman of the respondent under the respondent's grievance policy.

71 In the meantime, Mr White was informed by Ms Stewart (to whom an email from the respondent's IT team was sent on 5 September 2017, stating this) that "on 20 March 2017 every single email received in his [i.e. the claimant's] NR account was forwarded to a personal account. On 21 to 24 March 2017 there were no further sent emails." Mr White decided to overlook the fact that the claimant had, without apparent justification, sent emails to his private account, even though that could in itself have justified the taking of disciplinary action.

72 Mr White was advised by Ms Stewart in an email dated 21 September 2017 (page 708) that he could (subject to what the respondent's HR Direct team advised) continue with his investigation by asking the claimant whether not he was prepared to present the requested evidence. Mr White (who had many responsibilities and for whom this was an additional task on top of his main responsibilities) contacted the claimant on 2 October 2017 by telephone, leaving him a voicemail message, and on the same day sent him the short email at page 729. The email was in these terms:

> "I understand that you are currently off work with stress for which the investigation I am undertaking is a contributory factor. With this in mind I was wondering if you would be prepared to continue with the investigation and submit your evidence pack? If we can get this closed out then I would hope that it would help with your wellbeing, but it is obviously your decision."

73 The claimant replied on the same day, in the email at pages 728-729. Mr White's evidence about that response, and what happened subsequently, was in paragraphs 25-27 of his witness statement, all of which were material:

> "25. I found Mr Ciocoiu's response to my request slightly bizarre (page 728) and knew that it would need a carefully worded response. I replied to Mr Ciocoiu on 9 October 2017, explaining that I had not drawn any conclusions during the investigation meeting and it was clear that I was conducting further investigation via a number of sources (page 794).
>
> 26. On 5 October 2017, I received a link to a file from Mr Ciocoiu that had an improvised diary prepared by him of activities he recalled undertaking 20-24 March 2017. This comprised of some 1200 pages (page 955), but this was mostly copies of documents Mr Ciocoiu said he was reviewing at the relevant time. I started reviewing this submission on 13 and 16 October 2017. Everything that Mr Ciocoiu provided was documents that he said he looked at during the period in question. There were 48 drawings in the pack provided. It seemed improbable to me that Mr Ciocoiu could have reviewed the drawings alone in the 2.5 days in question. Generally drawings take at least an hour and half to review. However I was still in the process of conducting my review when I got a phone call from Jess to say Mr Ciocoiu had resigned and I could stop my investigation.
>
> 27. Obviously my investigation was not concluded; however my impression on the review that I had completed was that no evidence had been provided of any work or output being carried out at all."

74 I asked Mr White what he meant by what he said in the second half of

paragraph 26 of his witness statement, and he said that he was suspicious as he thought that it was improbable that the claimant could have carried out a review of 48 drawings in 2 and a half days, as it would have taken an hour to an hour and a half to review each of the drawings.

Other relevant events, up to and including the claimant's resignation

75 On 20 April 2017, the claimant wrote to Ms Stewart (page 403) that he wanted to challenge his performance review rating. On the next day, in reply, Ms Stewart said that he would have to do that by raising a grievance formally. On 20 May 2017, the claimant made a detailed complaint about the outcome of his performance review (pages 338-377). On 22 May 2017, the claimant wrote to Ms Stewart (page 402) that while she had directed him to the grievance procedure, he was "confident that, for what [he aimed] to achieve, triggering the grievance procedure [would] not be necessary." The complaint of 20 May 2017 was responded to initially by Ms Stewart writing on 23 May 2017 (page 401) that she was not going review that document and that the simplest way of getting the outcome of the performance review reviewed was by raising a formal grievance which, she said, was the practice within the respondent's business for individuals who wished to have their performance rating reviewed after the performance review window had closed. On 8 June 2017, the claimant wrote an email to Mr Tony Gordon (page 399), recording that as Mr Gordon was now his line manager (as recorded by the claimant in the email at page 399 by him saying: "Tony confirmed he is managing my role"), they had agreed that Mr Gordon would receive the 20 May 2017 document "for processing". Mr Gordon then sent the claimant an email on 13 June 2017 (page 404), formally acknowledging the claimant's concerns about his performance review rating and asking him whether he was going to submit a grievance under the respondent's grievance procedure, and asking him to reply by 16 June 2017. The claimant did submit a grievance on 16 June 2017, and it was acknowledged by Mr Gordon on 21 June 2017 in the letter at page 405, in which Mr Gordon said that he would be arranging a grievance hearing to discuss the matter further. The grievance was then investigated by Mr Nigel Fenn, who held a meeting about the grievance with the claimant on 6 July 2017 (the notes of the meeting, signed by the claimant and Mr Fenn, were at pages 459-471) and then held a further meeting with the claimant on 28 July 2017. Mr Fenn produced a report (at pages 425-428). While Mr Fenn concluded a number of the allegations of the claimant in the grievance in the claimant's favour (such as saying, on page 428, that it was clear "that the line management of [the claimant] has been sub-optimal and there is a clear need for an improvement"), overall, he concluded that the claimant's grievance was not well-founded and that "a Partially Achieved grade is appropriate" (page 428). Mr Fenn formally stated the outcome of the grievance hearing in a letter dated 7 August 2017 (pages 500-501).

76 On 17 August 2017, the claimant appealed that outcome (pages 524-587), sending the documentation to Ms Mary Doody-Jenkins, the respondent's Head

of HR for Western, Wales and Crossrail. It took some time for an appropriate manager of the same grade as Mr Fenn or above it who was not working on the Crossrail project, to be appointed to determine the appeal. Mr Davies was identified as an appropriate person to determine the appeal. He agreed before 30 August 2017 to hear the appeal. That was clear from the email from Ms Stewart of 30 August 2017 to the claimant at page 697, in which Ms Stewart wrote that a band 1 manager from The Greater West Programme had agreed to hear the claimant's appeal but would not be available until after 16 September, and asking whether the claimant was "able to wait until then?" In a reply of the same date, at page 696, the claimant wrote that he did not think that a week would "make a big difference". Mr Davies was first passed the "case notes" during the week including 22 September 2017 (as he wrote in his email to the claimant of 22 September 2017 at page 800; the claimant cross-examined Mr Davies on when he received the notes, and I regarded that email as the best evidence as to when he did). Mr Davies then held a meeting with the claimant on 3 October 2017 (the notes of which were at pages 781-782).

77 The claimant did not return to work between 21 August 2017 and the day when he resigned (5 October 2017). On 22 August 2017, the claimant wrote to Mr Gordon (page 591): "What support can Network Rail offer me in relation with stress and irregular sleeping patterns?" Mr Gordon responded 55 minutes later in the email at page 648, saying that a good place to start was "the Validium service" and enclosing details of that service. The claimant contacted Validium and on the next day he wrote to Mr Gordon (page 647) that they had stated that they could not assist him, saying that his issues with the respondent were the cause of his stress and that "fixing them will lead to relief of the stress".

78 Six minutes later, the claimant wrote to Ms Stewart the email at pages 595-596, noting the actions which had been agreed during a meeting which they had had on 16 August 2017, which started with the following two:

> "I. JS [Ms Stewart] to email BC [the claimant] both digital forms required to trigger travel expense reimbursement for Nov/2015 - Sept/2017. (Action with Jessica)
>
> 2. JS to authorise the travel expense reimbursement, for the complete period Nov/2015 - Sept/2017. This reimbursement is to be made independently of any decisions BC makes in relation to contractual place of work in the future. (Action with Jessica)".

79 On 1 September 2017, Ms Doody-Jenkins wrote to the claimant the email at pages 632-633, saying among other things:

> "[W]e await a response from you about whether or not you will accept or reject Stockley as your future contractual location that will allow both the business and yourself to move on."

80 On 11 September 2017, the claimant signed the "Additional Travel Application Form" at page 687, which covered only the first of the two years' additional travel costs to which he was entitled by reason of the application of the respondent's Additional Travel policy at pages 191-200. The claimant subsequently refused to sign an application form for the second of those two years because, he said, it would have required him to accept Stockley as his permanent place of work rather than Craven House (or, as he said to me in oral evidence, the office of the respondent in Ealing that he said he could have attended).

81 I note here that during the hearing before me, the claimant asserted that the business travel policy at pages 118-148 should have been applied to him so that he was given mileage costs calculated by reference to the distance between Craven House and Stockley and by using the higher rate per mile in that policy than in the Additional Travel Policy. That was based on the proposition that he was when working at Stockley working "away from [his] normal place of work", which was one of the situations in which it was stated, at page 121, that the policy applied.

82 In the sequence of emails at pages 695-697, the claimant kept Ms Stewart informed about his sickness absence. On 4 September 2017, he wrote that he had been "assessed by [his] doctor who recommended [that he remained] on sick leave and recover from the stress and anxiety caused by the ongoing work issues". On 15 September 2017, Ms Stewart wrote (page 695):

> "Tony Gordon officially left the business on Friday, 8th September, so Ewen Morrison will resume all line management responsibilities for you going forward, unless communicated otherwise.
> You are hopefully aware that we recently went through an Org change, but your reporting line UPN did not change.
> Miles Wilkinson will replace Olly Jackson in the Org chart, as Olly has left.
>
> ...
>
> As it is in everyone's best interest to close out the investigation [i.e. that which Mr White was conducting] sooner rather than later, would you be open to progressing/closing the investigation out while you are not at work? I believe you were going to provide a response to Dave White by 1st September.
> Also, just to make you aware in case you aren't already, as per our Network Rail terms and conditions, Company sick pay is not normally payable if you are absent when you are subject to disciplinary proceedings including being under investigation for a disciplinary offence."

(In regard to the latter assertion, Ms Stewart's evidence was that that term was clause 13 of the claimant's terms and conditions, and page 176 showed that what she wrote in that email about that clause was accurate.)

83 Throughout that period, the claimant was attending interviews (as evidenced for example by the letters at pages 693, 694, 715 and 791, dated 13, 15 and 22 September 2017 and 5 October 2017 respectively). On 21 September 2017, the claimant wrote the email at page 703 to Ms Stewart that "unfair performance records" were "hindering [his] access to the internal job market, making [him] an unfavourable target".

84 I heard evidence from Ms Stewart that access to an individual's employment record was not possible except via HR and that in the five years that she worked for the respondent, it had never been sought by a recruiting manager. She also said (in paragraph 23 of her witness statement): "I would anticipate that should some[one] in HR receive such a request that they would refuse to provide such information, as it was not relevant to the recruitment process." I accepted all of that evidence of Ms Stewart.

85 Also in the email at page 703, the claimant wrote: "I note you appointed MORRISON as my new line manager. I remind you that MORRISON is the subject of the ongoing Grievance procedure for which I submitted an Appeal." He concluded that section of his email (which contained other allegations about the inappropriateness of Mr Morrison to be his line manager):

> "I fail to see how MORRISON can be neutral and unbiased in relation to me. Alongside this conflict of interest, I cannot see how MORRISON can be a good mentor since FENN's findings state that he is the opposite."

86 That assertion was not in fact borne out by an examination of Mr Fenn's report. In any event, the claimant did not suggest an alternative to Mr Morrison being his line manager. Mr Morrison's oral evidence was that the part of the Crossrail project in which the claimant was working was "ramping down" and there was a diminishing number of employees who could be asked to line manage the claimant.

87 Also on 21 September 2017, the claimant wrote to Mr Morrison the email at page 709, which he ended with this question: "May I ask, how do you intend to manage my sickness?" Mr Morrison did not respond to that email with an answer to that question. When he was cross-examined on that failure to respond, he said that he was unable to see what the claimant meant by it, and what he could do to "manage" the claimant's sickness.

88 Also on 21 September 2017, Mr Thompson sent the claimant the letter at page 711, informing him that he had asked Mr Rickman to "investigate [the claimant's] concerns under the auspices of the Individual Grievance Policy", and that Mr Rickman would be contacting the claimant "in due course". On 2 October 2017, Mr Rickman did that in the email at pages 784-785, inviting the claimant to send "a couple of options for date & location". The claimant offered in his email of 4 October 2017 at page 784 to meet on several dates after 9

October 2017 and in reply, in an email of the same day on the same page, Mr Rickman offered to meet on 19 October 2017.

89 That meeting did not occur, because the claimant resigned by means of a letter dated 4 October 2017 (787-789), which he sent by email to Ms Stewart on 5 October 2017. He said that he sent the email on that day and not 4 October because he was so stressed that he closed his laptop down before the email was sent, and it went automatically on the next day, when he started it up again. The email in the bundle which stated that the letter was enclosed was at pages 813-814. The enclosure was described in the email as an "important communication about my Employment Contract with Network Rail" rather than as a resignation letter, but the claimant confirmed in oral evidence that the enclosure was the letter at pages 787-789. The email at pages 813-814 was sent by the claimant from his personal email address at 15:30 and ended: "Please accept my apologies if this email comes as a duplication, my Network Rail laptop manifested connectivity issues yesterday so I am re-sending the document using my personal account."

90 In his resignation letter at pages 787-789, the claimant wrote (among other things) this:

> "HR's actions effectively block the possibility of my being moving away from the untenable situation into which I have been put, and to a new role within the organisation. Having this most recent interview cancelled exacerbated the stress and anxiety I developed in the last months and has been the last straw for me. It made me realise that there can be no future for me within Network Rail and that I have reached the limits of the amount of stress I can realistically cope with. Cancellation of the interview represents, in my opinion, culmination of the consequences of a long series of breaches of contract by Network Rail."

91 That reference to a "cancelled interview" related (since there was only one interview to which the reference could relate) to the interview referred to in the email at page 786, dated 4 October 2017 and sent at 11:52, which was from Mr Toby Sinclair, a Recruitment Administrator employed by the respondent, and was in these terms:

> "Dear candidate,
>
> Please note that the interview arranged for the Scheme Project Manager role on the 5th October has been cancelled by the hiring manager.
>
> Apologies for such short notice.
>
> We are awaiting alternative dates however please can you provide your availability over the next two weeks."

92 In oral evidence, the claimant sought to change the "last straw" on which he relied from receipt of that email to the fact that Mr Morrison had been appointed to be his line manager again and that Mr Morrison had not responded to the claimant's query about how he (Mr Morrison) was going to "manage" the claimant's sickness (ast recorded in paragraph 87 above).

93 On 6 October 2017, Ms Nyakavaranda, a colleague of Ms Stewart's, wrote to Ms Stewart and a colleague (Mr Roshan) this (in the email of that date at page 792):

> "Hi guys,
> I made an offer to Bogdan [i.e. the claimant] a few days ago for an SPM role in Thameslink and he accepted, however, the hiring manager has informed me he has resigned. I have tried to ring him several times with no luck. Could you please confirm if this is the case."

94 Ms Stewart confirmed in oral evidence that she had received that email. She said that she could not recall whether she or Mr Roshan had "actioned" it. The claimant denied being offered and accepting a role in the respondent's operations in relation to Thameslink. In the event, for the reasons stated below, I did not need to determine whether or not he was telling the truth in that regard.

95 Ms Stewart acknowledged receipt of the claimant's email enclosing his resignation letter on 5 October 2017 (page 813). Then on 12 October, in Ms Stewart's absence from work, Ms Rachel Evans sent the claimant the email at pages 812-813, saying:

> "Having reviewed your letter, we need to have an informal discussion with you and look at how we might best address the concerns you have raised; with a view to coming to a mutually acceptable resolution. This will hopefully negate the need for you to resign from Network Rail."

96 On the same day, in the email at page 812, the claimant wrote that he no longer wanted the meeting with Mr Rickman, as he had resigned. On 13 October 2017, the claimant sent Ms Stewart the email at pages 810-811, stating that he had resigned on 4 October 2017 by a letter "which was to take immediate effect" and that he was certain that it would be best if his contract was terminated with such effect "instead of allowing for more harm to be done by stalling or delaying the implementation of my resignation".

Other relevant matters

97 The claimant said (but he put no documents before me to prove) that he had not been offered alternative employment (i.e. by an employer other than the respondent) before, a month after resigning, he started work for another employer.

98 The claimant never did sign an application form for the payment, for the second year in respect of which he was eligible, of additional travel costs applying the respondent's Additional Travel policy, despite being pressed by Ms Stewart to do so on several occasions, the last being in the email of 11 December 2017 at page 876. He did, however, on 20 October 2017 (as shown in the pay statement at page 829) receive payment of the first year's costs after (on 11 October 2017: as shown by the letter at pages 805-806) the respondent approved that payment. The Additional Travel policy required (page 194) the applicant for the payment of additional travel costs to complete an "Additional Travel Application Form" before payment could be authorised and then made under the policy.

99 On 25 October 2017, Mr Davies signed and sent to the claimant by post a letter (page 846) informing him that he had determined the claimant's appeal against the dismissal of his grievance about his performance grading. The letter was sent by Mr Davies also by email on 30 October 2017 (page 857). Mr Davies allowed the claimant's appeal and concluded that he should have a rating of "Good" for his performance review.

100 The respondent paid the claimant all of what it calculated to be his outstanding holiday pay entitlement (as at the date of his resignation) of 10 days' pay (as evidenced by the email from Ms Stewart to the claimant at page 878-879). The respondent's holiday year ran from 1 January to 31 December. At page 287C, the claimant had written in an email to Mr Morrison dated 12 December 2016: "Moving forward, there will be no A/L days carried forward into 2017". The claimant was unable to show by reference to any evidence other than an assertion in his schedule of loss at page 28Q (which he repeated in oral evidence), that he had not been permitted to take holiday during 2017 on two of the days that the respondent (via Ms Tharoo, in her closing submissions and on instructions) said the respondent's records showed he had been on holiday (3 and 5 May 2017). Thus, no documentary evidence was put before me to show that the claimant had not in fact taken those two days as holiday.

<u>The relevant law</u>

101 The case law concerning what is a breach of the implied term of trust and confidence includes the illuminating case of *Omilaju v Waltham Forest London Borough Council* [2005] ICR 481. I referred the parties to (and took into account fully the analysis in) paragraphs 14-16 of the judgment of Dyson LJ, with which Wall and May LJJ agreed. Here, paragraph 16 was of particular relevance, and Ms Tharoo relied on it accordingly:

> 'Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "de minimis non curat lex") is of general application.'

102 Paragraph 14.4 was also of particular relevance. It is in these terms:

> 'The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in *Mahmud* [i.e. Malik v BCCI [1998] AC 20], at p 610h, the conduct relied on as constituting the breach must
>
> > "impinge on the relationship in the sense that, looked at *objectivel*y, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (emphasis added).'

103 Another helpful and relevant authority is that of the Court of Appeal in *Nottinghamshire County Council v Meikle* [2005] ICR 1, where, at paragraph 33, Keene LJ said this:

> "The proper approach, therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the acceptance of the repudiation. It follows that, in the present case, it was enough that the employee resigned in response, at least in part, to fundamental breaches of contract by NCC."

104 During the parties' submissions, I discussed the law of contract relating to acceptance of a repudiation or affirmation of a contract, and the law relating to the acceptance of a change of workplace, so that the contract is varied by that acceptance. However, while that case law is relevant to the question whether any term of the claimant's contract of employment was breached, with damages accordingly being payable for any loss caused by that breach, that case law is not determinative of the claim of constructive unfair dismissal because it is possible for an employee to rely on a previous repudiation of the contract of employment (i.e. which has not been accepted by the employee, since the employee has instead affirmed the contract) as part of an accumulation of conduct which, together, constitutes a breach of the implied term of trust and confidence. That was recently confirmed by the Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust* [2019] ICR 1.

105 The case law concerning the question whether an employee can be taken by his or her conduct to have accepted an imposed change so that it has become a term of his or her contract of employment includes *Aparau v Iceland Frozen Foods plc* [1996] IRLR 119. Although the conclusion in that case was that the employee could not be taken to have agreed to an imposed change by reason of continuing to work after being given new terms of employment which

included a clause implementing the change, since the imposed change did not have any immediate effect, the case is helpful in that it shows that if an imposed change takes effect immediately and the employee works on without protest for any significant period of time, then it is open to a court or tribunal to conclude that the employee has agreed to the change so that it takes effect by way of a variation of the contract.

My conclusions on the claim that the claimant was dismissed constructively

106 As indicated above, the issues in the claim that the claimant had been dismissed within the meaning of section 95(1)(c) of the ERA 1996 were stated in detail in the claimant's letter to the tribunal of 13 August 2018 and the record of the preliminary hearing of 13 November 2018. In turn, my conclusions on the factual claims made in those documents were as follows.

The claim of breach of contract regarding place of work

107 I rejected the claimant's allegations concerning the imposition on him of an unwanted place of work, namely Stockley rather than Craven House, on the facts (see paragraphs 9-23 above). The only time (before April 2017) that the claimant overtly objected to the location at which he was working, which he did in the email dated 27 June 2016 to Mr Daniel Brookes set out in paragraph 18 above, he did not send that email to his line manager or the relevant HR business partner, and he did not follow it up in any meaningful way. By that stage, the claimant had for over six months been going without protest to Stockley instead of Craven House.

108 In any event, in my judgment it was in no way apparently detrimental to the claimant to require him to work at Stockley instead of Craven House in the circumstance that he at no time said why he (as he insisted) had to drive past Craven House on his way to Stockley, in the circumstances that (1) the time that it would take to drive from home to Stockley (albeit on a longer route) would take approximately the same as the time it would take to drive from home to Craven House, and (2) the respondent's Additional Travel policy entitled the claimant to financial compensation for the increase in the number of miles he had to drive each way each day (in the event 10 each way).

109 Equally, it was not accurate to say, as it was recorded in paragraph 5.2(a)(iii) of the record of the preliminary hearing (at page 28D), that "HR refused to reimburse travel expenses incurred from 7 December 2015." The claimant was obliged to sign the application form for the expenses, and that required him to accept that the place of work to whose location he claimed additional mileage costs was Stockley. There could have been no detriment to him (objectively speaking) in signing that form, no matter what he thought about the impact of doing so.

110 Equally, the allegation in paragraph 2.1.1 of the claimant's letter of 13 August

2018 (at page 28ii) that he was "forced to commute on behalf of NR, between NR offices, in my personal time" was not true. He was not at all so forced. He could have driven from his home via the M25 to Stockley and it would have taken him no extra time in practice than to drive from his home via the A406 to Craven House.

The allegation of a lack of managerial supervision

111 I concluded that the claimant had not in reality received "contradicting actions" which confused him "around the identity of a presumed line manager", as he claimed in paragraph 2.1.2 on page 28ii. In the circumstances described in paragraphs 31-43, 82 and 85-86 above, the claimant can have been in no reasonable doubt about who was his line manager at any particular time.

112 The allegation made in paragraph 5.2(c) and (d)(i) on page 28D that Mr Morrison had "failed to reply to complaints about inadequate resourcing, complexities making it impossible to meet targets, unrealistic workload, inadequate handovers, lack of guidance/feedback/121s" and "was setting up the claimant to fail by requiring him to achieve objectives but not giving him the tools or resources or knowledge to do so" was, given my conclusion in paragraph 52 above that the content of paragraphs 30-33 of Mr Morrison's witness statement was accurate, not well-founded. I accepted, however, that, as Mr Fenn found (as recorded in paragraph 75 above), the claimant's line management was less than optimal and there was a clear need for an improvement in it.

113 As for the allegation that it was either in itself a breach of the implied term of trust and confidence to require the claimant to report to Mr Morrison in the circumstances described in paragraphs 82 and 85-86 above or conduct which contributed to such a breach, the claimant could have suggested that Mr Miles Wilkinson became his line manager, but he did not do so. In addition, the claimant's grievance was in substance about the performance grading that he had received and not Mr Morrison personally. Furthermore, there was in my view ample justification, i.e. reasonable cause, for instigating a disciplinary investigation into the circumstances in which the claimant was absent from work and, as he claimed, working at home on 20-24 March 2017. Moreover, the allegations in paragraph 2.1.2(d) on page 28ii about Mr Morrison's management were made by reference to what had (according to the claimant) been said by a representative (whose name was not given) of the RMT union. It was also clear that the only person who could have been the "independent investigator" referred to in paragraph 2.1.2(c) on that page was Mr Fenn, and nowhere in his report at pages 425-428 did he say (as was apparently alleged in paragraph 2.1.2(c)) that Mr Morrison had "failed in managing people". Thus there was in my judgment no objectively good reason why Mr Morrison should not have been imposed on the claimant as the claimant's line manager in September 2017.

114 As for the contention in paragraph 5.2(d)(iii) on page 28D, namely that "HR [responded] to concerns raised about the appointment of Mr Morrison as the claimant's line manager by threatening to stop sick pay", that was wrong if only because the reference to the possibility of stopping sick pay was (see paragraph 82 above) made in the email in which the claimant was informed about the change in his line management. In any event, in my judgment the disciplinary investigation was (for the reasons stated in paragraph 123 below) objectively fully justified. As a result, referring to the fact that the respondent was entitled to stop the claimant's sick pay because he was under a disciplinary investigation was in the circumstances (including the words used by Ms Stewart as set out in paragraph 82 above) not conduct which was likely to damage (let alone seriously) the relationship of trust and confidence, or, if it could have done that, then there was reasonable and proper cause for it.

The management of performance reviews

115 I could see nothing in the way in which Mr Morrison managed the claimant's performance reviews which was likely seriously to damage the relationship of trust and confidence. While the claimant did not like the way in which Mr Morrison judged him to have only partly achieved his objectives, as I say in paragraph 52 above, I accepted Mr Morrison's evidence in paragraphs 30-33 of his witness statement, which amply justified the giving of a grade of only "partially achieved". In fact, paragraph 2.1.3 of the claimant's letter at page 28ii focused in this regard also on the impact on his employability internally, and since (as stated in paragraph 84 above)

115.1 I accepted Ms Stewart's evidence that it was highly unlikely that any recruiting manager would look at an individual applicant's personnel records, and

115.2 the claimant put no evidence before me to show that any such manager had done so,

there was in my judgment nothing arising from the manner in which Mr Morrison gave the claimant the grade of "Partially Achieved" which could contribute to conduct which was a breach of the implied term of trust and confidence.

Paragraph 2.1.4 of the claimant's letter of 13 August 2018

116 Paragraph 2.1.4 on page 28ii was in these terms:

> "NR failed to respond on a timely manner to my request for career development forcing me to commit to the first year of academic studies, later to decline my sponsorship application, without providing any reasons or potential remedies for re-applying."

117 That allegation could not succeed given the fact that the words set out in paragraph 45 above were on the sponsorship application form. In any event, the claimant put before me no documentary evidence relating to the terms of the offer on the course which he said he had accepted, or of the fact of payment by him of any course fees. As for the allegation of a delay by Mr Morrison in processing the claimant's application for sponsorship, I concluded that in the circumstances described in paragraphs 46-49 above, the first time that Mr Morrison came under any obligation to pass on the claimant's application was 28 July 2016, and that he delayed until 5 September 2016 in doing so. While that was not ideal, it was in my view not in itself conduct which was likely seriously to damage or to destroy the relationship of trust and confidence: far from it.

The claim of a failure to take care in regard to the claimant's "health, welfare, stress and fatigue"

118 The allegation of a failure to take care for the claimant's health was made in paragraphs 2.1.5 and 2.1.9 of the claimant's letter of 13 August 2018, and was expanded by what was said in paragraphs 5.2(f), (g) and (h) of the record of the hearing of 13 November 2018. Ms Tharoo submitted this in regard to this part of the claimant's case (it was paragraph 16 of her written closing submissions):

> "[Although C asserts that his absences prior to 21/8/17 were caused by his long commute, he did not make that clear at the time and it was not unreasonable for R to take the evidence at face value (e.g. [331 and 333)). It is acknowledged that after C was signed off from 21/8/17 the nature of his illness was known, and he asked about support which could be provided [591-592). TG responded within the hour to give C the details of R's employee assistance programme (Validium) [648) and C then updated R as to the reasons for his stress and the advice he had received [647-648). In circumstances where the cause of the absence was known, there was nothing to be gained at that time by referring C for a medical report. The focus needed to be (as it was) on dealing with, and attempting to resolve, the issues C had highlighted. R submits that throughout September onwards it was attempting to drive forward all the issues C had complained about in order to assist and alleviate his health issues (and made that clear to him, for example in DW requesting C to continue with the investigation process [729))."

119 I accepted that part of Ms Tharoo's submissions. In addition, in my judgment, the respondent cannot reasonably be criticised for the manner in which it acted in regard to the claimant's health as far as his journey time to work was concerned, not only for the reasons given by Ms Tharoo but also because if the claimant's health was affected by him driving past Craven House in order to get to Stockley, then (for the reasons stated in paragraphs 107-110 above) that was not the result of anything done or not done by the respondent.

The allegation of a breach of contract regarding the management of leave

120 The claimant was unable to put before me any concrete evidence of an impact on him of a failure to process via Oracle any request made by him for annual leave or time off to go to a medical or dental appointment. Accordingly in my judgment the allegation in paragraph 2.1.6 on page 28iii was not made out.

The allegation of a breach of contract regarding the management of timesheet applications

121 Having accepted Mr Morrison's evidence to the effect that a failure to process a timesheet had no detrimental impact on the claimant (see paragraph 25 above), I was bound to reject the allegation in paragraph 2.1.7 on page 28iii that there was, in the respondent's conduct concerning the approval or otherwise of timesheets, anything which could contribute to an accumulation of conduct which was likely seriously to damage the relationship of trust and confidence.

The allegation of a diminution in the claimant's employability because of (1) the giving of a rating of "Partially Achieved" in his performance review, (2) the fact that the claimant had raised a grievance, and (3) the fact that a misconduct investigation had been commenced

122 The allegation in paragraph 2.1.8, as summarised immediately above, had to be rejected in the light of my findings in paragraphs 84 and 115 above.

The allegation of harassment through the "orchestration of a spurious investigation"

123 In my view there was ample justification on the facts as found by me in paragraphs 62-66 above for the instigation of the disciplinary investigation. In the circumstances described in paragraphs 67-74 above, in my judgment there was in the conduct of the disciplinary investigation nothing on which the claimant could rely as part of an accumulation of conduct which was a breach of the implied term of trust and confidence. Therefore, I rejected the assertion of the claimant that there was a "spurious investigation" into his conduct on 20-24 March 2017. As a result, I concluded that there was as a result of that investigation no conduct of the respondent which (whether taken on its own or in conjunction with any other conduct of the respondent) was likely seriously to damage the relationship of trust and confidence. Alternatively, if there was anything which could be regarded as such conduct, then there was reasonable and proper cause for it.

Other allegations

124 In paragraph 5.2(e) of the record of the hearing of 13 November 2018, the

claimant is recorded to have added as part of his claim the allegation that not upholding his grievance initially and then taking five months to process his grievance was conduct which contributed to a breach of the implied term of trust and confidence, but only on the basis that during that five-month period his employability within the respondent's organisation was diminished by reason of the fact that he had stated the grievance. Despite the fact that the delays were not in themselves relied on by the claimant except to the extent that he claimed that they affected his employability within the respondent's organisation, the claimant made repeated references in his witness statement to the grievance procedure. As a result, I took into account paragraph 4 of the grievance procedure, at pages 33-35, in considering the element of the claim stated in paragraph 5.2(e) of the record of the hearing of 13 November 2018. Given the circumstances to which I refer in paragraphs 69, 70, 75, 76, 88 and 89 above, I concluded that either such delays as occurred in the investigation of the claimant's grievance were (given that Mr Fenn and Mr Davies had many other ongoing and heavy responsibilities) not such as were likely seriously to damage the relationship of trust and confidence, or there was reasonable and proper cause for those delays.

My conclusion on the claim that the claimant had been constructively dismissed

125 Given my above conclusions, in the circumstances as I found them the claimant could rely on only two aspects of the respondent's conduct as part of an accumulation which constituted a breach of the implied term of trust and confidence. Those aspects were:

125.1 the fact that there were some failures in the manner in which the claimant was managed, as found by Mr Fenn and Mr Davies; and

125.2 Mr Morrison's failure to send on the claimant's sponsorship application between 28 July and 5 September 2016.

126 In my judgment, those things fell well short of justifying a finding that the implied term of trust and confidence had been breached: that combination of conduct was not such as was likely seriously to damage the relationship of trust and confidence that exists or should exist between employer and employee as employer and employee.

127 If I had not come to that conclusion then I would have come to the conclusion that the conduct on which the claimant relied as being sufficiently wrongful to constitute a "last straw" was trivial within the meaning of paragraph 16 of *Omilaju*. That is for the following reasons. I rejected the claimant's claim (recorded in paragraph 92 above) that that to which he referred in his resignation letter as the last straw, was not in fact the last straw: I concluded that he had in fact relied on the conduct referred to in that letter as being the last straw. The conduct on which the claimant in fact relied, namely the

cancellation of an interview and the offering of an alternative date for it, was in my view no more than what to a reasonable person would be a minor irritation, and certainly not wrongful.

128 If the claimant had actually relied on (1) the re-assignment of Mr Morrison as his line manager in September 2017, and (2) the failure by Mr Morrison to respond to the claimant's request for Mr Morrison to say how he was going to manage the claimant's sickness, then I would have concluded that that conduct was not capable of being a "last straw" as it was in my view in no way wrongful in the circumstances given my conclusions stated in paragraph 113 above, and that

128.1 the claimant could have, but did not, suggest that instead someone else manage him (and there was the obvious possibility of Mr Miles Wilkinson doing so); and

128.2 an employer cannot sensibly respond to a query about how the manager is going to "manage" an employee's sickness, except to say "via the sickness absence procedure", and the claimant would not have welcomed such a response.

129 In any event, I concluded on the balance of probabilities that the claimant left the respondent's employment in response to the disciplinary investigation which was being continued by Mr White, and since the implementation and continuation of that investigation was (given my conclusion stated in paragraph 123 above) not in breach of the implied term of trust and confidence, for that reason also the claimant was not dismissed within the meaning of section 95(1)(c) of the ERA 1996.

My conclusion on the claim for holiday pay

130 In my judgment, the claim for holiday pay was not well-founded. The claimant was unable, in the absence of any documentary evidence about the number of days of holiday which he had taken in the 2017 holiday year, to prove on the balance of probabilities that accrued holiday pay which he should have been paid had not been paid to him. Alternatively, I was not persuaded by the claimant's evidence, such as it was (it being particularised only as stated in paragraph 100 above) that he had not been paid all of his accrued holiday entitlement on the termination of his employment with the respondent.

My conclusions on the claims of damages for breach of contract and/or unpaid wages

131 Since I concluded that the claimant had not been dismissed constructively, the claimant's claim for damages for wrongful dismissal had to fail.

132 The claim for damages for the impact on the claimant's health of the

respondent's conduct was in the circumstances (given Article 4 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994) outside the jurisdiction of the tribunal and therefore had to fail. Nevertheless, given my conclusions in paragraphs 118 and 119 above, I saw in the circumstances no breach of the contractual obligation to take reasonable care for the health of an employee (or, if different, of the implied term of trust and confidence in so far as it relates to the health of an employee).

133 The claim for unpaid travel costs was in my view not well-founded. That is because I concluded that (1) the claimant had (by his conduct) agreed to Stockley being his normal place of work, (2) in any event the respondent became liable to pay such costs only if the claimant completed an Additional Travel Application Form for such costs, and (3) the claimant had been paid that to which he was entitled in that regard. Any failure to pay the claimant travel costs in respect of the second year from 5 December 2015 onwards was the result of his failure to complete an application for those costs.

134 In my judgment the business travel policy (at pages 118-148) did not apply where an employee's workplace was changed (even if that change was not consensual). Instead, the Additional Travel policy applied.

135 Accordingly, the claim for damages or unpaid wages could not succeed.

<u>In conclusion</u>

136 In conclusion, none of the claimant's claims succeeds.

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Employment Judge Hyams

Date: 2 September 2019

Sent to the parties on:

24 September 2019

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For the Tribunal Office