EMPLOYMENT TRIBUNALS

Claimant: **Mr B Sillah**

1st Respondent ("R1"): Manpower (UK) Limited
2nd Respondent ("R2"): Jaguar Land Rover Limited

Heard at: **Birmingham**

On: **2-10 March 2020**

Before: **Employment Judge Flood**
Mr Reeves
Mr Spencer

Representation
Claimant: In person
R1: Ms Donnelly (Solicitor
R2: Mr Santy (Solicitor)

JUDGMENT having been sent to the parties on 20 March 2020 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The Complaints and preliminary matters

1. By claim forms presented on 12 April 2018, the claimant brought complaints of constructive unfair dismissal, unlawful deduction from wages, direct race discrimination and harassment on the grounds of race against R1 and of direct race discrimination and harassment against R2.

2. At a preliminary hearing held on 15 March 2019 before Employment Judge Choudry, the issues were identified and recorded in a case management order which is shown at pages 84-94 of the agreed bundle of documents produced for the hearing ("Bundle").

3. Together with the parties, we have referred to the List of Issues which is also set out below, throughout the hearing.

4. We also had before us the agreed bundle of documents ("Bundle"); a

Chronology and handwritten Cast List produced by R1 and R2; a Skeleton Argument produced by the claimant; additional submissions prepared by the claimant; R1 and R2 written submissions.

5. After the Tribunal had started to hear evidence from the claimant, R2 produced a number of additional documents which were described as the Work Element Sheets ("WES") book and training log applicable to the claimant whilst he was working at R2. The claimant had no objection to the addition of these documents to the bundle and these were numbered as pages 382 to 430 and added to the Bundle.

6. The claimant made reference on occasion to a medical report he had which he wished the Tribunal to read. This appeared to be about the claimant's health and the ongoing problems he was having in relation to the injury he suffered at work and related to the period after his assignment with R2 had ended. I indicated that there may be some relevance to remedy but these documents were not relevant to the issue of liability that was being considered first. These documents were not considered or added to the Bundle.

7. On the final morning of the hearing and just before judgment was given orally, R1 produced copies of an e mail which they say was sent on 24 February 2015. A faint copy of this e mail which was difficult to read was already in the Bundle. However as the Tribunal had already made its findings of facts on the issue this related to (and as the e mail copy itself was not key to these findings) the Tribunal declined to consider it, and went on to deliver the judgment it had reached.

The Issues

8. The issues which feel to be determined between the parties were:

Time limits / limitation issues

(i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") / sections 23(2) to (4), 48(3)(a) & (b) and 111(2)(a) & (b) of the Employment Rights Act 1996 ("ERA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period,; whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred; etc. Any allegation that happened before **14 November 2017** is potentially out of time.

Claims under the Equality Act 2010

(ii) The claimant relies upon the protected characteristic of race, namely Black African.

(iii) The relevant comparators are the claimant's white colleagues working as production operatives in the same section as the claimant.

Direct Discrimination – Race

Claims against the first respondent

(iv) Did the first respondent:

(a) End the claimant's assignment with the second respondent without investigation or proper cause with immediate effect on 21 December 2017?

(b) Fail to support the claimant's return to work on light duties following an accident despite the claimant raising concerns?

(c) Fail to protect the claimant's health and safety?

(d) Fail to investigate the claimant's allegations that his signature had been forged by GL Andy (surname unknown) on 28 November 2017?

(e) Refuse to allow a union member to be present with the claimant at the meeting on 19 December 2017?

(f) Ask the claimant to provide an explanation concerning his medical appointment at the meeting in 19 December 2017?

(g) Refuse the claimant a day off to attend a medical appointment and require him to attend after the appointment when this was not feasible?

(h) Unreasonably delay the outcome of the appeal?

(i) Act outside the band of reasonable responses in issuing the claimant with a written warning?

(j) Fail to follow a fair process before issuing the claimant with a written warning?

(v) If the first respondent did do the alleged acts in a-j above, did each act amount to an act of less favourable treatment?

(vi) If so was the claimant's protected characteristic of race the reason for this less favourable treatment?

(vii) would the first respondent have acted differently if the matter had concerned an employee who was of a different race from the claimant in circumstances that were not materially different?

Claims against the second respondent

(viii) Did the second respondent:

(a) Fail to transfer the claimant's employment and offer him a permanent contract after one year's continuous service?

(b) End the claimant's assignment without proper investigation and cause? And if so is this contrary to their own polices and guidelines?

(c) Ignore his requests to go on toilet breaks?

(d) Safeguard him from ongoing bullying following the raising of concerns in relation to an assault?

(e) Refuse to provide the claimant with the incident report following a work place accident on 13 June 2017?

(f) Force the claimant to continue with normal duties when he was advised to return to work on light duties?

(g) Allow Brian Woodall to pursue false allegations against the claimant resulting in his suspension? Were these allegations later dismissed on 3 October 2017?

(h) Allow Andy to make false allegations about the claimant on 24 and 27 November 2017 and be aggressive and belittling towards the claimant?

(i) Fail to investigate the claimant's allegations that his signature had been forged by Andy on 28 November 2017?

(j) Refuse to allow a Union member to be present with the claimant at the meeting on 19 December 2017?

(k) Ask the claimant to provide an explanation concerning his medical appointment at the meeting in 19 December 2017?

(l) Refuse the claimant, a day off to attend a medical appointment and requiring him to attend after the appointment when this was not feasible?

(ix) If the second respondent did do the alleged acts in a-l above, did each act amount to an act of less favourable treatment?

(x) If so was the claimant's protected characteristic of race the reason for this less favourable treatment?

(xi) Would the second respondent have acted differently if the matter had concerned an employee who was of a different race from the claimant in circumstances that were not materially different?

Harassment

(xii) Did the first respondent force the claimant to continue with normal duties in the awareness that the claimant was advised to return to work on light duties?

(xiii) If so, did the conduct of the employees of the first respondent amount to harassment?

(xiv) Was the alleged conduct related to the claimant's race?

(xv) Was the alleged conduct carried out in the course of his employment?

(xvi) Did the alleged conduct have the purpose or effect of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

(xvii) Was it reasonable in the circumstances for the conduct to have had this effect on the claimant?

(xviii) Did the second respondent:

1. Allow Brian Woodall to refuse to provide the claimant with the incident report following a work place accident on 13 June 2017 and speak to the claimant in an intimidating and aggressive manner?

2. On 20 June 2017 did the second respondent allow Brian Woodall to try to force the claimant to sign a return to work form? When the claimant refused was he escorted off the premises by security?

3. Force the claimant to continue with normal duties when he was advised to return to work on light duties?

4. On 3 October 2017 did the second respondent allow Brian Woodall to be verbally abusive and aggressive towards the claimant and have him escorted off the premises by security?

5. On 3 October 2017 did the second respondent allow Brian Woodall to pursue false allegations against the claimant, which were later dismissed, resulting in his suspension?

6. On 24 & 27 November 2017 did the second respondent allow Andy to make false allegations about the claimant and be aggressive and belittling towards the claimant?

(xix) If any of the behaviours in 1 to 6 above are established, did this conduct of the employees of the second respondent amount to harassment?

(xx) Was the alleged conduct related to the claimant's race?

(xxi) Was the alleged conduct carried out in the course of his employment?

(xxii) Did the alleged conduct have the purpose or effect of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

(xxiii) Was it reasonable in the circumstances for the conduct to have had this effect on the claimant?

CLAIMS UNDER ERA 1996

Constructive Unfair dismissal

(xxiv) Was the claimant constructively dismissed from his employment with the first respondent?

(xxv) Did the first respondent commit a repudiatory breach of the Claimant's contract of employment

(xxvi) If so what was this breach and when did it occur?

(xxvii) When did the claimant affirm the breach?

(xxviii) Did the claimant resign in response to the breach?

(xxix) Could the claimant's silence in relation to his availability for work be construed as his resignation by the first respondent?

(xxx) If the claimant was constructively dismissed from his employment with the first respondent when was the effective date of termination of his employment?

(xxxi) If the claimant was dismissed from his employment did the first respondent follow a fair process to dismiss him?

(xxxii) If the claimant was dismissed, was the first respondent's decision to dismiss him within the band of reasonable responses?

Unlawful deductions from wages

(xxxiii) Has the claimant received all sums properly payable to him?

(xxxiv) If the claimant's employment with the first respondent has not been terminated, has the first respondent failed to pay the claimant wages from 21 December 2017?

Remedy

(xxxv) Constructive unfair dismissal, harassment, discrimination, unlawful deductions from wages:

i. Is the claimant entitled to compensation in respect of unlawfully deducted wages? If so in what amount?

ii. Is the claimant entitled to loss of earnings? If so, in what amount?

iii. Are deductions to any compensation due in accordance with *Polkey v Dayton Services Ltd*?

iv. Is the claimant entitled to an award for injury to feelings and, if so, at what level?

Findings of Fact

9. The claimant attended to give evidence. Ms J Bardell ("JB") (R1 Senior Contract Manager at the relevant time); Ms A Kelly ("AK") (R1 Senior Contract Consultant at the relevant time); and Ms L Casey ("LC"), (R1 Case Management Co-ordinator) gave evidence on behalf of R1. Mr A Lang ("AL") (R2 Group Leader ("GL")) and Mr B Woodall ("BW") (R2 Production Manager) gave evidence on behalf of R2. We considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. We considered the ET1 and the ET3 together with relevant numbered documents referred to below that were pointed out to us in the Bundle.

10. In order to determine the issues set out above, it was not necessary to make detailed findings on all the matters heard in evidence. We have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may be relevant to drawing inferences and conclusions. We made the following findings of fact:

10.1. R1 is an employment business which places its employees on assignments with various clients, including R2, a premium automotive manufacturer. R2 has a number of sites, but the matters arising to this claim related to its Lode Lane, Solihull manufacturing plant. R1 also had an office on R2's site in Solihull and worked very closely with R2 in managing the resourcing of workers.

10.2. R2's workforce at Solihull is made up of directly employed staff and a significant number of agency workers supplied by R1. Before the end of 2014, R2 had an agreement with its recognised trade union, Unite, in respect of agency staff supplied by R1. This was referred to by BW as "*The Walk*". The process was that R1 employees worked for R2 on assignment for one year and if their attendance, conduct and performance were acceptable, at the end of the year, they were given a 3 month rolling contract with R2 for a further year. If conduct, performance and attendance were acceptable at the end of that second year, they would be offered a permanent contract directly employed by R2. BW confirmed that this process has not been used since December 2014. At pages 179 of the Bundle we saw an extract from R2 terms and conditions which confirmed the process for agency worker progression that had been applied from 1 January 2015 onwards. This confirmed that all new hourly rate workers would be recruited via agencies and that only if the number of R2 Core Employees fell between 90% of agreed staffing rates, would fixed term contracts with R2 be offered to R1 employees. JB confirmed that no R1 employees have transferred to being directly employed by R2 since 1 January 2015.

10.3. The claimant is Black African. He commenced employment with R1 on 24 February 2015 and was assigned to work with R2 as a Production Operative at is Lode Lane, Solihull manufacturing plant. The claimant is a qualified mechanic and was in a skilled role on the production line at the plant. There was a broad mix of ethnicities and races working at the Solihull plant. The claimant was the only Black African on the particular section on which he

worked which was Line 7.

Claimant's contract with R1

10.4. The claimant was recruited by R1 at a pre employment day on 11 February 2015. The claimant signed a document headed Specific Employment Details (SED) on this date which we saw at page 104. This contained the following statement:

"I acknowledge receipt of this SED and the Handbook, which together form my contract of employment. If any terms in this SED conflict with those in the handbook, this SED shall take precedence."

The claimant says he never received a handbook from R1. It is agreed by R1 that a physical copy was not handed over when the claimant signed the SED. JB and AK both described the process that applied which was after an employee was taken on; namely that their contact details were inputted on to the system and an e mail attaching the handbook and an employee number was generated and this employee number was not activated on the system until the handbook was e mailed to the individual. We were shown a copy of an e mail at page 313 which R1 says is a forwarded copy of the e mail sent to the claimant with the handbook. It is very faint, we could not read the dates or email addresses on it. We could make out that it was an email with the claimant's name on it. Nonetheless we accepted the evidence of JB and AK that this was the process followed and that accordingly the claimant was sent an automatically generated copy of the handbook by e mail. We accept that the claimant may not have seen or read this handbook. Nonetheless, this handbook and SED contained the terms and conditions of his employment and these were the terms and conditions that applied once he started his employment on 24 February 2015. He signed to indicate his acceptance of these terms and conditions (including the handbook) when he signed the document at page 104. The handbook contained the following provisions

1.2 Terms of employment

..

Unless you are ill or there are other reasons agreed by Manpower you will be expected, while working on assignment to devote your full time, attention and abilities to the Company and its Clients' business.

Although it is important for you to remember that you are a Manpower employee, while on assignment you will be subject to instruction from anyone authorised by the Client whether this is necessary for you to carry out the work. By reason of the relationship between Manpower and its Clients, the Client may, of its own volition, ask at any time that you be removed from an assignment. This may not necessarily mean the termination of your employment with Manpower. If you are removed from an assignment because of your conduct or performance, your continued employment is likely to be reviewed, which will usually involve the disciplinary procedure.

Manpower also reserves the right to move you from one assignment to

another where the needs of the business may require it, or remove you from your assignment, should this be necessary for any reason."

3.1 Pay rate
..
You will be paid for hours worked during your assignment as certified by the Client, If you do not work you are not paid and neither are you paid for the time taken off for meals, travelling to and from the Client's premises at the beginning and end of the working day or any other purposed during your assignment other than work.

8.1 End of assignment or termination of employment
Because of the nature of working with Manpower it is important to understand that there is a difference between your assignment with a Client being terminated and your employment with Manpower being terminated. An assignment ending does not mean your employment has come to an end unless there is a fair reason for us to bring your employment to and end under the Employment Rights Act, which will be explained to you.

8.4 Failure to maintain contact with Manpower
If your assignment ends or if you are absent from work for an extended period (other than for reasons of sickness) you have a duty to keep the Company informed of your continued availability for work with Manpower. If you do not contact your Manpower manager for a period of at least three weeks, we may assume you no longer wish the Company to find you work. In this case we may write to you to confirm your intentions and if we do and you confirm you no longer wish to work for Manpower or you fail to respond within 14 days (two calendar weeks) we shall accept this as your resignation and forward your P45 in the event that you commenced a first assignment to the last address you gave us."

10.5. The claimant started his assignment with R2 on 24 February and was then issued with a letter confirming his assignment with R2 and employment start date which was shown at page 105. This stated:

"For full details of your terms and conditions of employment please refer to your specific employment details (SED) and Manpower Employee Handbook. "

The claimant was also issued with a copy of an Induction Booklet which dealt with his assignment at JLR. He signed an acknowledgement of receipt of this Induction Booklet at page 106. The Induction Booklet is shown at page 162 -170. Our attention was drawn to extracts of this document as follows:

"*If for any reason, you are unable to get to work, you must call the relevant Manpower contact numbers on page (5)"* and

"Please ensure that any appointments e.g. doctor, dentist etc are arranged outside working hours or first agreed with your Manpower consultant and Jaguar Land Rover Production Leader."

The claimant's duties at work

10.6. The claimant was a production operative on Line 7 of the car assembly track. He was involved in a various assembly tasks which required a degree of manual dexterity and strength. He was using hand arm vibration power tools and manual tools such as a lipping tool.

WES Book and Training Log

10.7. We were shown a copy of the claimant's Work Element Sheets (WES) book and Training Log which was produced by the respondent after the first day of the Tribunal (pages 382-430). These documents were referred to many times in evidence. The WES book is a set of separate pages containing specific instructions for each task involved on the line that the worker is assigned to on the assembly track. Each page describes a specific process and has written instructions; photographs of what operatives had to do for each stage of the process; what key indicators were; why the process was carried out and what protection should be used etc. When a new operative started work and during their two week training period, or when a new process was introduced or a new car is worked on, a page is issued or added and the operative is asked to add their initials to indicate that they are aware of that process. All the WES book pages we were referred to had the claimant's initials added, which indicated that each process was one which the claimant was aware of. The Training Log is a record of retraining on individual processes and records training conducted by the group leader (GL) or supervisor for each production operative in the event of an audit failure or a change in process. A failure could be because of individual errors or failures identified generally on the line. The training log was attached to the WES book but was a different document. It had a number of columns showing the reason for retraining (where a brief description of the issue arising was recorded), whether the operator failed the process (with a Y/N answer to be given); the amount of retraining provided (with the time shown in minutes); the date of retraining and then finally a column where the GL and the associate added their initials to confirm the information recorded.

10.8. The claimant described the WES book and training log as being something that R2 used to apportion blame when an problem arose on the track. He said where the operative had signed a column where a "Y" was shown next to the question of whether the operative was at fault, this meant the associate was accepting responsibility and blame for the problem and this could lead to further action being taken against the associate. AL explained that this training log was not where fault was apportioned but was something to record the training that was given to individual associates. AL and BW said that there was a further process that could apply called the Quality Improvement Programme (QIP) which may be put in place if repeated errors over a short period on the same sort of matter took place or if there were a large number of errors (he mentioned 4 or 5 over a week). The QIP had several steps and applied to R2 direct employees and R1 agency staff. The claimant had never been placed on QIP and BW and AL acknowledged that the claimant was in no way close to being placed on QIP during his

assignment. On the documents presented to us, the claimant was shown as being fully competent to the extent he could coach others and there was no criticism in general of his ability to carry out his role. We noted that over the sheets produced, most of the indications showed that the claimant did not fail the process in question indicated by a "N" being shown in the appropriate column. Mostly training required was recorded as being less than 15 minutes and in many cases was just be a reminder of the correct process to follow.

10.9. On balance we preferred the explanation of R2's witnesses as to the way the WES book and training log was intended to be used and was used in practice. This was more consistent with the format of the document itself and made more sense when set in the context of the production line. There was no evidence to suggest that an indication of "Y" would lead to further action being taken in the way the claimant suggested.

Anniversary of the claimant's start of assignment

10.10. The claimant worked on assignment with R2 from February 2015 with no issues or problems arising and on 13 March 2016 was issued with a letter from R1 which confirmed that he had completed a year on his assignment. This letter congratulated him and confirmed his pay had gone up. It was explained to us that a system of pay parity was in operation so that over a 5 year period, agency employees progressed to the same level of pay as directly employed R2 employees.

10.11. The claimant said that around this time he telephoned the office of R1 to ask whether he would be transferred to a R2 contract as he had completed one year. He was not able to tell us who within R1 this issue was raised with. R1's witnesses could not verify or dispute that this had taken place. He said that no-one responded but also indicated that he was told that he would now have to work for a 5 year period. He said to us that other R1 employees who started on assignment at the same time as him (who were not of his race) became R2 employees. He provided no details of individuals and could not give names. He referred to the process of transferring that had previously applied as mentioned above and questioned why this did not apply automatically. We were not able to make any findings that any such employees did transfer and in fact prefer the evidence of the both R1 and R2 witnesses as set out at paragraph 10.2 above that no such transfers had taken place since 1 January 2015 (as this is consistent with the documentation showing the policy having changed on this date). The claimant did not put a complaint in writing at this time nor is there any evidence that he alleged verbally or in writing to anyone that race was behind any decision not to renew his contract.

Toilet breaks and incident with Mr C Knowles-Farrelly ("CKF")

10.12. The claimant alleges that he was prevented from taking toilet breaks by employees of R2 and that his requests for such breaks were ignored. In general employees were expected to use the toilet on official breaks but there was a process in place whereby if someone needed to use the toilet in between these times, there were expected to seek permission by putting

their hand up. At page 168 there is reference to the process for taking breaks outside of official time and the associate is expected to make sure that the GL is aware of it and gives permission. The claimant does not give any detail about the specific times he says he was refused a toilet break, other than one incident which took place in June 2016 with CKF which is addressed below. On this occasion the claimant was permitted to take a toilet break, but he says that this was a long time after he requested it. On balance we do not accept that the claimant had a problem with being able to take toilet breaks at R2, other than the one incident he mentions which he said took place in June 2016. There is no evidence of any complaints being made about the lack of toilet breaks at the time. Even when the claimant does make this complaint when he prepares his written grievance in November/December 2017, this is mentioned with reference to the one specific incident only. If the claimant was having ongoing difficulties with the ability to take such breaks, we believe this would have been mentioned at this time or earlier.

10.13. It is accepted that there was an incident in May/June 2016 when the claimant was looking for cover to take a break and CKF did not provide this when the claimant asked him. The claimant said that CKF was looking at his phone and ignoring his request. The claimant asked again when he became uncomfortable and Mr S Kamara ("SK") (a manager on the line) asked CKF to cover for the claimant. There was a dispute between the claimant and CKF on the claimant's return when the claimant says that CKF pushed a screwdriver on his chest. The claimant complained about this to SK and this was dealt with informally by SK, with the claimant and CKF shaking hands and the matter does not seem to have been taken any further. The claimant did not raise a grievance at that time but this incident is mentioned in his later grievance. He says he did not raise this matter in writing until he raised his grievance in November/December 2017 as he was told that R2 would have a word with CKF and he would be given a verbal warning. He says that by the time he started to put together his grievance, the issues had started to pile up so he decided to complain then about the earlier incident.

Claimant's injury at work on 13 June 2017

10.14. The claimant had an injury at work on 13 June 2017 when a glove he was wearing became entangled in the rotating end of a tool and this damaged two fingers of his left hand. He was given first aid on site and was then sent to hospital. It was acknowledged that he was in some pain that day. He came back to work on the evening of the accident to complete an accident report with BW. BW explained that his would be normally be done on the day of the accident or as close to this as possible. The claimant asked BW for a copy of the accident report but BW refused to give it to him. We accepted BW's evidence that the accident report was a R2 owned document and was something that had to be passed to its Health and Safety department. He said he had never been asked for a copy to be given by an employee before and that the document was not his to share. The claimant said that BW was aggressive and intimidating to him when he refused the request and that he thought it was because of his race. This allegation was not put to BW during the hearing. We do note however that BW brought the

clamant back home in his car after the accident report was completed and his evidence at the hearing was that he felt compassion to the claimant that day as he was in some pain and first aid was administered. We do not therefore accept that when refusing to provide the accident report to the claimant that BW was aggressive and intimidating. The claimant had the next day off work as he was still in pain. He returned to work on 15 June 2017. On his return he was not physically able to carry out any of his duties so it was agreed that he would carry out tasks of stamping vehicle log books.

10.15. The claimant attended a return to work meeting on 19 June 2017 and was asked to sign a return to work record which is shown at page 200. We saw other similar return to work forms for previous absences on pages 196-199. He refused to sign the document because there was no union representative in attendance, so the meeting was adjourned. On 20 June 2017 the meeting was recommenced, and the claimant again refused to sign because he said that he had not at this stage been to see his GP or had any advice from OH. BW also attended this meeting and it became very heated. The claimant contends that BW tried to force him to sign a return to work form "*to confirm that I was fit to go back to my normal position*" and that when he refused, he was not allowed to return to work and was then escorted off site because he refused to sign the document. BW said that he did not ask the claimant to sign the record to confirm he was fully fit to work but that it was standard practice for attendees at a return to work to sign the document just as a record that the meeting took place. He also said "*it was standard practice that in the event of any dispute on the shop floor, security would be called to protect the equipment on site".* BW also said he recalled that the claimant was going to visit his doctor and OH again. The record of this return to work discussion was shown at page 200 to 201 of the Bundle. This document noted that:

"The area are aware of the incident which occurred on Monday 12th June 2017. They have been supporting Barbah on light/amended duties with a job which he is capable to carry out in his current condition. He is stamping books with his right hand (left hand has the injury). Barbah is still in pain with his fingers and is concerned about back onto his normal process. The area have agreed to keep him on amended duties until he is fully fit to return to his normal process" and

"Barbah was asked to sign his RTW document on the 19/06/2017 but did not want to sign without union representation present, but there was no union available. We returned on the 20/06/17 for Barbah to sign the document with union present, but then he refused to sign again due to wanting to see his doctor again and gaining documentation from them first" and

"Barbah will be going to see occupational health again today (21/06/2017) between 3-4pm"

10.16. We prefer BW's account of this meeting and we do not accept that BW tried to force the claimant to sign this document although he clearly asked the claimant to sign it. We also find that the claimant was asked to leave because he became hostile in the meeting and to allow him to seek further

medical advice. The discussion on that day was clearly heated on both sides but we have not been able to find that BW spoke to the claimant in an intimidating or aggressive manner. The evidence we saw and heard does not support that contention. The contemporaneous note is consistent with BW's version of events as to how this meeting happened. We also note that the claimant visited his doctor the next day on 21 June 2017 (as the meeting notes and BW's evidence record) and was given a fit note from his doctor suggesting that he benefit from amended duties and suggesting that he visit occupational health (page 202). This note covered the period until 28 June 2017. We also note that the claimant's own account of the period after the accident in his accident report (completed on 25 June 2017) on page 212a is more consistent with R2's version of events.

Return to work and claimant's duties

10.17. The claimant attended work again on 21 June 2017 and we note that on this day he signed the return to work documentation. The claimant also visited occupational health that day (see above) although there is no record of this visit in the Bundle. However again we note that the claimant himself states that he saw occupational health on the same day he visited the doctor in his accident report at page 212a.

10.18. The claimant says that when he returned to work, he was expected to carry out normal duties involving heavy labour and that he returned to his role carrying out full duties with pain because he felt he did not have a choice. BW disputes this and says that the claimant's duties were in fact amended from the time he returned to work on 13 June 2017 and he was not in fact carrying out the full role as previously at any time after that. BW says that he agreed with the claimant that there would be some temporary adjustments to his role but that he would return to his station and would do as many of his duties as he could, without causing himself discomfort or exacerbating his injury and that others would fill in on the tasks he was unable to complete. He said that a referral was made to OH at this time and that until he was assessed by OH, he agreed with the claimant what he could and could not do. He insisted that no demands were put on the claimant and that from the first day of his return he was always on light duties and had someone supporting him.

10.19. We prefer the account of BW of what happened during this time and find that R1 did amend the claimant's duties from the time he came back to work. He initially worked stamp books only. He then worked day shifts only and as to the tasks he was able to carry out, this was discussed and agreed with BW. We note the suggestion by BW that the claimant perhaps felt he may become a burden and was trying to do more than he was able to. We accept that this may have been the case, given the claimant's status as an agency employee. The claimant was clearly still in pain and discomfort at this time and found his work tasks difficult. However, we do not find any evidence that the claimant was forced or required to carry out his full duties on his return to work by anyone at either R1 or R2 during this period. The evidence all points to the contrary that in fact R2 were accommodating to his injury during this time and supported him (see note of return to work meeting at page 200 which notes this).

10.20. The claimant attended his GP on 10 July 2017 and the fitness to work note issued at this visit is shown at page 213. This indicated that the claimant was fit to work but again needed amended duties. It also noted:

"Needs to be put on lighter duties and to avoid power tools or heavy lifting until finger injury has completely healed".

This fit note covered the period 28 June 2017 until 6 August 2017. The claimant suggests that during this period he was still being asked to perform his full role. It is clear to us that he was struggling to do this. Again, the claimant may have felt he needed to carry out his full role but there is no suggestion that this was due to any requirements put on him by anyone at R2 or R1.

10.21. Although not directly relevant to this claim, it is worth noting as it came up in evidence that during this period the claimant had commenced a personal injury claim against R2 in respect of the accident at work. At page 203 we see a letter from the claimant's solicitors confirming that R2 had admitted liability for the accident and that only the level of compensation due was not in issue. We noted various comments by BW in evidence that he felt that the claimant was at fault for his accident but this is of no relevance to the claims before us so we have not considered this further. BW does note however that as R2 had admitted liability, this became a work related accident. He said that because of this, the claimant was given more leeway in terms of the support offered than might otherwise have been the case if it was an agency worker suffering from an injury from a non work related accident that R2 was not liable for. We accept that this admission of liability played a part in the level of support offered to the claimant.

10.22. The claimant attended OH on 21 August 2017 and the notes are shown at page 205 to 206 in the duty disposition report (DDR) produced by the OH department at R2. The employees of R1 were given the same access to OH support as R2 employees. We note that the DDR records that:

"*The patient is currently at work, under the advice of occupational health of short term adjustments"* and
Occupational health supports the patient remaining in work on a full shift rotation under the advised temporary works based adjustments for HAVS only" and
The patient has been booked in for a review post shut down"

The claimant was concerned at this time about not being able to perform his full duties. R2 was also in communication with R1 during this time about what the claimant could and could not do. We saw an exchange of e mails between AK of R1 and R2's OH department at 215-216 where AK is seeking further clarification about what the adjustments meant in practice. The e mail confirmed:

"*Mr Sillah has moderate function of his right hand, the only thing he is restricted from using is HAVs (hand arm vibration tools). He is also deemed fit to be re-absorbed back into the rotational shift pattern"*

Up until this point, the claimant had been working days only as this enabled him to attend any medical appointments he was required to. However we accepted the evidence of AK that the claimant did not during this period report or complain to R1 that he was unable to carry out the tasks at work

10.23. As the weeks passed from the accident in June, the claimant's recovery was not going well and it is clear to us that both the claimant and R2's managers became frustrated with this. BW said that he would have expected to see signs of recovery but this did not appear to be happening and the claimant remained unable to fulfil his full role during this period. The claimant visited OH again on 11 and 25 September 2017 when his situation was reviewed (see DDRs at pages 220-222) and the advice remained the same throughout that the claimant was to remain under short term adjustments, could work on a full shift rotation under temporary works based adjustments for HAVs only. There is nothing to suggest that such advice was not being followed during August and September.

10.24. The concern from R2 at this time (and we heard evidence from BW about this) was that the claimant appeared to be deviating from the DDR advice and was doing tasks he was not able to do and saying different things to OH than he was telling R2 managers about what he was and was not able to do. BW described a mismatch between what the OH advice appeared to be and what he was observing.

Matters arising on or around 3 October 2017

10.25. The issue appears to have come to a head on or around 3 October. Both the claimant and BW describe an incident around this date when there were some problems with the line and the production line came to a stop. BW observed the claimant balancing the hose he was using on his arm or wrist rather than grasping it as was required. Shortly after this incident the claimant attended a meeting with BW to discuss the problems that were arising. BW describes the claimant becoming very heated during this meeting and was shouting and being obstructive. The claimant says that he was subjected to a "*barrage of verbal abuse and aggression*" during this meeting. We find that this meeting was clearly a difficult one and perhaps frustrations of both BW and R2 and the claimant reached their conclusion during this meeting. We cannot find that BW subjected the claimant to verbal abuse and aggression and no specifics of what is alleged to have been said were provided by the claimant. The claimant was escorted off site on this occasion and we accepted the evidence of BW that this was because he had become obstructive and combative during the meeting. The claimant says that after this meeting he went to visit the Manpower office to report what had happened. He says he met with AK but she does not recall the claimant attending to meet her on this day. We conclude that the claimant did go to the Manpower office to discuss the issues around the workplace at this time, although he may not have spoken to AK directly. The claimant also had discussions with his union representative at this time.

10.26. BW sent an e mail to R1 on 9 October 2017 which was at pages 227-228 of the Bundle. This e mail confirms:

This associate has been supported with his recovery over a number of weeks. He caused an injury to his finger by not adhering to his standardised work process. His attempt to do the right thing instead of pulling the Andon is the reason he had an accident. Since the accident he has been on restrictions from our OHD and more recently has attended work on a straight day shift pattern, to allow him the time to recover while attending OHS, his GP and other related appointments. However Mr Sillah continues to operate to a lesser capability than identified within his DDR and has shown no sign of improvement over this 16 week period. He has repeatedly frustrated the process and continues to say one thing and do another in terms of his DDR and what he does. I'd like Mr Sillah taken off his JLR assignment with immediate effect, until he is fully fit to return to work and to provide you with a fitness to work note from his GP to confirm this, on his return."

This e mail is instructive as to the frustrations being felt at R2 regarding the length of time the claimant's recovery was taking and its impact in the workplace. BW explained that the situation was different with those employees on agency terms than R2 employees, in that if there were difficulties with ability to perform the role, it would be usual for a period of two weeks to be given to the agency worker to recover. If the role could not be performed fully at the end of this time, R2 would generally terminate the assignment. However, much longer had been given to the claimant to get back to full capacity, in recognition of the fact that the claimant had been involved in a work related accident.

10.27. Following this e mail, AK got in touch with the claimant to discuss what was happening. She said this was the first time she was aware of any difficulties that the claimant was having with his duties. She tried to call the claimant and as she could not reach him, sent an e mail inviting to a meeting to discuss his DDR. There was then a meeting between the claimant and AK and the claimant's union representative on 11 October and A then e mailed BW on 11 October at page 227. This e mail confirms that there was an issue raised by the union that the claimant should not be released from his assignment as R2 had admitted liability for his accident and should be supported. This supports the evidence given by BW on this matter about the impact of the claimant having had a work related injury as set out above. She also states that a request was made for OH to assess the claimant's job again. The claimant states that at this time he was suspended from work and says allegations were made against him which he sets out at paragraph 26 of his witness statement. He then says that an investigation was carried out and the "*false allegations*" made against him were dismissed. We do not accept the claimant's understanding of what was happening during this period is correct, even though he may have believed this to be the case. The claimant had been sent home from work on 3 October 2017 and remained off work whilst discussions were ongoing about his role and what could be performed. There were no formal allegations made or investigations conducted. We do accept that there was some issue about whether the claimant should be paid during this period and this may be what the claimant was referring to. This was ultimately resolved and the claimant was paid for the whole period he was not working.

10.28. The claimant returned to work on 18 October 2017 and went to see OH the next day on 19 October 2017. The return to work documentation recording the discussion on 18 October 2017 is shown at page 229-230. The relationship was difficult by this time, but the claimant was still at work and carrying out work for R2 and his duties remained amended during this time. He was being supported by someone else on the line to carry out the parts of the job he could not do and he was still prevented from using HAVs.

Incident involving the stop of the Process Line – 24 November 2017

10.29. On or around 24 November, there was an incident on the line which occurred at 11am where there was a fluid leak and the line was stopped. This is a significant issue at R2 as downtime when production stops is a huge cost to the business. The claimant had been working on the fuel line connection on Line 7 that day but it was not clear where the problem arose. AL had to investigate the problem as all parties acknowledge he is required to do during evidence. He spoke to the claimant that morning about the problem and asked him to sign the training log to record the discussion. We were shown the extract from the training log at page 430 which appears to be the incident referred to. AL's evidence was that he was not asking the claimant to confirm he was responsible for the problem. He says in fact the claimant was not responsible as the incident had occurred further up the line at line 8. He spoke to a number of associates that day as well as the claimant to remind them of the process with discussions being recorded in individual training logs. We did not accept the claimant's version of events where he suggests that AL accused him of being to blame and was being aggressive and belittling. This was not the impression we received of AL's evidence on this matter and found him to be entirely credible and convincing on this point.

Incident on 27 November 2017

10.30. There was a further incident on the line on 27 November 2017 at around 8.30 pm when it was discovered that the was a brake cap connector on a vehicle was missing. This was spotted by snaggers further up the line from where the claimant was working. This did not cause the line to stop but AL investigated where the problem had occurred and found that the task that was likely to be related to the problem was the brake fill process that the claimant had been carried out. He spoke to the claimant about this and again this was recorded on the training log and shown at page 430. AL said he was not accusing the claimant of acting inappropriately but just recorded where an issue had been observed and he was carrying out retraining in accordance with the process described at paragraphs 10.7 and 10.8 above. AL said claimant became very hostile and refused to sign his training log and that he demanded to see photographic evidence of the problem which showed that he was to blame. AL admits that he told the claimant to shut up and listen to what he had to say. He says that this was not in an aggressive or bullying fashion. He just wanted the claimant to hear what he was telling him and understand the issue. We accepted entirely AL's version of events and found that it had the ring of truth and accorded with the contemporaneous notes made on the training log at the time. We

understand that the claimant's impression may have been that he was being blamed for the problem, but this was not the case and we find that AL asking him to sign the training log was standard procedure. The claimant was clearly feeling that things were difficult at work at the time and this may have caused him to react the way he did. However we did not find that AL acted in any way inappropriately or aggressively towards the claimant on this occasion.

Allegation of forged signature

10.31. There was also another incident around this time when the claimant accused AL of forging his signature. The account of exactly what the claimant says this related to was not clear. However we note from the training log on page 430 that a record is made on 7/12/17 relating to the affixing of a China label and that the claimant was given training reminding him of this process. It appears that the claimant then said he had not been told how to do this process. AL then got the WES sheets relevant to this process and showed these to the claimant. This was at page 384 and we note that the claimant's initials are shown on this WES sheet indicating that these instructions had been given to him. It is at this point that the claimant accused AL of adding his signature which AL denied. We do not need to determine whether this accusation was correct for this claim but we do note that the initials shown on the various WES sheets and training log records do vary considerably. The claimant raised this matter with his PL, Mr T Elson ("TE") and there does appear to have been an investigation involving the union into this allegation although no evidence was provided about what this was. AL says that the claimant then dropped the allegation after the union investigated. The claimant says that this was never investigated. We find that there was some investigation by R2 into the allegation at this time. The claimant did not raise any further concerns about this until 21 December 2017 when he raised a grievance (see below). It is clear that the claimant started to record in writing his concerns about what was taking place at work at this time and started to prepare a complaint which we saw at pages 235-236 as the date on this complaint document is shown as 28/11/17. However this was not submitted to anyone on 28 November 2017 as this might suggest. The claimant explained that the date on this document is the from when the claimant started to put his complaint together.

10.32. The claimant was also sent an invitation on 7 December 2017 to attend a medical appointment on 20 December 2017 at external healthcare providers to do with his personal injury claim against R2. We saw a letter at page 241 of the Bundle. The claimant says he did not receive this until 15 December.

Claimant's accident on the ice and absence from work

10.33. The claimant had an accident falling on the ice on 11 December 2017 and was off work until 18 December. There was some communication between the claimant and R1 at this time about reporting his absence and whether this had been complied with by the claimant sending a text message rather than phoning (see pages 243-249). However no further action was taken in this regard and it is not directly relevant to the issues we needed to consider.

The claimant was sent a further letter reminding him of his appointment with the medical team on 13 December 2017 and this is shown at page 251. The claimant says he telephoned TE on 15 December 2017 and advised him about the appointment and that TE told him to bring the appointment letter in to work. He later said in response to cross examination that TE gave him consent to attend the appointment over the phone. We do not accept this and prefer the original version of events as set out in the claimant's witness statements that he was told to bring the letter in when he returned to work.

Return to work and meeting on 19 December 2017

10.34. The claimant returned to work on the 18 December 2017 and as requested, he showed the letter to TE who asked the claimant to change the appointment. The claimant said he could not do this as the appointment was too close and he also informed TE that was not sure whether he would be able to attend work after the meeting. The claimant was then invited to attend a further meeting on 19 December 2017 to discuss how he would attend his appointment the following day and the arrangements about this. This was to be a meeting between the claimant and TE and with a R1 representative who in this case was CJ. As the claimant had shown some indication the day before that this might be a contentious issue, TE and CJ also arranged for a union representative to attend to accompany the claimant. This union representative was Gary Jones ("GJ").

10.35. The accounts of the meeting are set out in the witness statements of the claimant and BW but also statements taken during a subsequent investigation from TE and CJ (pages 267 and 268) and also an e mail from BW at page 269. We note that neither CJ or TE were in attendance to give evidence at the hearing nor did we have witness statements from them. There are some inconsistencies between all the attendees as to precisely how the meeting unfolded (CJ says in her statement taken during the investigation that BW was there from the beginning and BW suggests he attended after the meeting had already started) but the gist of the meeting is that when the claimant arrived he objected to GJ acting as his union representative. The claimant explained that he felt GJ was biased towards management and the employees on his line had indicated that they did not want GJ to act as their representative. BW explained that there were several union reps in place at any time and each union rep was allocated to a particular line and this was agreed on by a vote of the members of the line. It was correct that GJ had not been approved by the members of the line the claimant worked on. We accept that notwithstanding this he still remained at all times an official trade union representative of R2.

10.36. After the claimant had indicated that he was unhappy with GJ attending, GJ then left the meeting and called BW and asked him to attend the meeting as it was becoming difficult. BW then joined the meeting. This was clearly a difficult meeting and tempers became frayed. The claimant describes the meeting in his witness statement at paras 39-44. He says he was refused the whole day off to attend his appointment and that his explanations as to the circumstances as to why this was were not listened to. He said he felt like he was being ganged up on by the 3 managers and felt intimidated. He said he was reasonable throughout the meeting and at no time was he

aggressive or disrespectful to any person. The statements of GE, CJ and BW taken at the time as part of the investigation all consistently describe the claimant being aggressive during the meeting and that he was shouting. They all refer to the claimant making a statement that "*I am a man, I speak loud*" during the meeting. The claimant denied that he made any statement of this nature. However we note that during later minutes of the meeting held with the claimant on page 275, comments made by the claimant do seem to acknowledge discussions about him speaking in a loud manner.

10.37. On balance we prefer the version of events of both respondents in terms of what took place during this meeting. The claimant perhaps understandably felt defensive, but we accept that his behaviour was aggressive and that he made the comments alleged.

10.38. CJ stated that she felt intimidated by the claimant shouting in her face in her statement taken as part of the investigation at page 267. This is backed up by the evidence of both JB and LC who saw CJ after this meeting and described her as being hysterical. We also note an e mail shown at page 260 of the Bundle sent by AK on 20 December 2017 at 08.30. This states as follows:

"*Cheryl has informed me of an incident yesterday where Barbah Sillah became quite aggressive during a conversation. Would you both be able to provide me with a written statement of what happened and what was said so I can put a case together as this behaviour will not be tolerated."*

This is an important e mail and is contemporaneous evidence that there was an issue reported by CJ to AK which was actioned the next morning by her sending this e mail. We did not hear from CJ at the hearing itself but we have placed weight on the contemporaneous evidence of what took place which we refer to above.

10.39. The claimant suggests that all the people attending the meeting had conspired to make up these allegations against him and that JB and LC were also adding to this. He says that CCTV would show that he did not behave in an aggressive manner (we accept that no such CCTV was available). We do not believe it is plausible that all 3 attendees of the meeting would conspire together to fabricate the claimant's conduct during the meeting. There is no rational basis for suggesting that this would be the case. We accept that the claimant behaved in an aggressive and intimidating way during the meeting. It is also clear that at the end of the meeting R2 was very concerned about his behaviour and had reached the conclusion that the claimant had no intention of returning to work after his medical appointment the next day.

10.40. At the end of the meeting BW gave the claimant a handwritten note with instructions as to what he must do the next day which was the day of his medical appointment. This was shown at page 270. His shift that day was due to start at 2 pm. He was given the option to attend work first and leave at 3pm or in the alternative that as his appointment was at 4.20, then assuming it finished at 6 pm, he should come straight back to work at 6.30-7pm. He was instructed to call his manager when he left the appointment to

let them know he was on his way back.

Decision to terminate the claimant's assignment

10.41. The day after this meeting the claimant did not attend work as he had his appointment. The claimant sent a text message at 18.37 this day which is set out below:

"Dear Tom and manpower I have just left my appointment because there was a que I met and try to go home and dropped my documents but has I told is a pick time lot of traffic on the road. by the time I get home and back to Solihull is will be 9pm. So there is no point for me to come to work, thanks Barbah Sillah."

TE replied to him at 18.59 with a message which is the last text message. This said "*Barbah as discussed yesterday you need to come to work, We discussed why yesterday*"

The claimant gave various explanations at the hearing as to why he was unable to come back to work after his meeting. He mentions the fact that he relies on public transport to travel and that there was traffic on the roads which would add to his travelling time. He also said he has his passport with him to the medical appointment and that he wanted to bring this back to his home before attending for work. He also said he wanted to change after the appointment into his work clothes at home and collect food for work. When asked why he could not bring a change of clothes with him and go straight from the appointment to work, the claimant said that he did not want his passport and did not want them to be mixed up with the food he needed to take to work.

10.42. We saw two e mails sent around this time which deal with the decision of R2 to terminate the assignment. Firstly there is the e mail of BW which was sent to AK with his version of events. This was in response to an e mail sent by AK to BW and others on 20 December (page 260 referred to at paragraph 10.38 above). BW's reply is shown at page 269. He sets out his account of events and then asks R1 to consider removing him from the assignment. He says:

"*Amy, this associate's conduct towards Cheryl, his PL and myself during an informal discussion regarding a planned medical appointment, planned for 20/12/17 @4.20pm, was un-acceptable.*
His lack of respect for others and his "loud" conduct was obviously very un-comfortable for Cheryl, to the point that I intervened to tell him to "not to shout at Cheryl" and to listen to other people. His response was "I am a man" I speak loud, but Cheryl explained she felt her undermined her (being a woman)
His demeanour appeared quite intimidating and his attitude towards making every effort to attend work around his appointment was also not acceptable.
Based on that I'd like you to seriously consider removing him from assignment.
He takes up too much of our time and has become a constant problem.
His accident now has no bearing on this.

JLR have settled a pay-out regarding his claim and we have continued to be supportive of him, but now for him to expect to take a full shift off to attend an appointment in central Birmingham, is not acceptable, He refuses to comply and has no intention of attending work.
This along with his conduct is not in line with company policy and I'd be happy to let you release him. I do not want this type of character on my area."

10.43. BW deals with the decision he made to terminate the assignment at paragraph 17 of his witness statement. This is consistent with the e mail he sent at the time. It is clear to us that BW of R2 decided to end the assignment because of the incident that took place on 19 December 2017 both in terms of his behaviour and because of BW's perception that the claimant did not intend to come to work the following day. The background of the claimant's accident and BW's perception that the claimant was taking up too much time clearly also played a part. BW referred to the latest incident with the claimant as being "the final straw" which led to the termination of his assignment.

10.44. There is a further e mail at page 264 which is sent by Paul Gardiner who is the contact for R1 at R2. This reads:

"Amy
It would appear that FA2 management have reached the end of the line with Babah Sillah.
Given his behaviour and performance the management team have requested he is released from assignment as of Friday.
We need to ensure this happens as the request has been endorsed by the Lead PAM Steve Calvin."

10.45. R1 then went on to action the end of the assignment because R2 had instructed it to do so. The e mail from Mr Gardiner refers to the behaviour and performance of the claimant but ultimately this e mail indicates that R1 decided to end the assignment because R2 requested that it do this. AK gave evidence on the process of how this request was actioned at paragraphs 19-23 of her witness statement. She said she discussed the request she received with JB and another member of HR and it was internally authorised by JB her line manager.

Meetings on 21 December 2017

10.46. The claimant was invited in to attend a meeting on 21 December 2017 and the minutes are shown at page 271-272. It was chaired by AK and the claimant attended with his union representative Mark Trappet. The claimant does not accept the minutes and indeed disputed the content of all the minutes shown in the bundle. Our view on this point was that the meeting minutes were generally an accurate record of what was discussed in the various meetings. They were internally consistent with witness statements and with the documents produced around the time which talk about what was said in meetings. We were satisfied that broadly speaking these and other minutes shown in the bundle represented an accurate record of what was discussed in the meeting. The claimant was informed that he was

being released from the assignment due to unacceptable behaviour but that he was still employed by Manpower. He was also told that R1 would be pursuing an investigation into his conduct separately and he would be invited into a meeting to discuss this in the new year. The minutes then record that the claimant said:

"What is the justifiable reason for this? This is due to my injury isn't it?"

10.47. The claimant was then asked to leave the premises. The claimant says that during this meeting he was told by AK that his employment was being terminated by R1 as well as his assignment ending. He also said that he communicated to AK during this meeting that he was resigning his employment with R1 and no longer considered himself employed. These are highly contradictory pieces of evidence even on their own and we do not accept that the claimant made any of the statements he now said he did during the meeting of 21 December. There is no record of any such or similar comments in the minutes of this meeting. The claimant does not mention any of these matters in his witness statement but in fact refers to the minutes of the meeting (which he now disputes) in the witness statement (at paragraph 48). The letter sent to the claimant straight after the meeting which is shown at page 273 and referred to below (which he accepts he received) states again (in bold text) that his employment is continuing. For these reasons we do not find that the claimant communicated to R1 at any time on 21 December that he considered his employment to be at an end. We also find that R1 did not dismiss him during this meeting. The claimant's evidence was unreliable on this particular issue and we were persuaded by the evidence of AK and the contemporaneous documents.

Grievance

10.48. By this time the claimant had prepared and completed his grievance which he started on 28 November 2017 and he submitted this at the meeting. There were 3 separate documents in the bundle which appeared to be a grievance (at pages 235-236, 237-238 and 261-263). However the claimant was clear in his evidence that the document or documents which amounted to his grievance were submitted at this meeting on 21 December 2017 and not before this date. AK gave evidence that where a grievance is submitted by an employee of R1 in relation to R2 employees, that R1 pass the complaint to R2 to investigate as R1 cannot investigate R2's employees.

10.49. After the meeting, AK then sent the claimant a letter confirming what was discussed which was shown at page 273. This letter stated that

"at our client's request as a result of your alleged conduct, your assignment has been ended with immediate effect, in line with your Terms and Conditions of employment"
This does NOT mean that your employment with Manpower has been or is being terminated."

10.50. The claimant was also sent a letter on 21 December 2017 (page 274) inviting him to an investigation hearing.

Investigation meeting held on 5 January 2018

This hearing was held on 5 January 2018 and the minutes were shown at page 275-278. Again the claimant objects to the accuracy of the minutes but we accept that these represent a broadly true account of what was discussed having heard and accepted the evidence of LC in this regard. During this meeting LC read out the statements that had been provided by CJ and TE about the meeting on 19 December. He had not been provided with copies of the statements in advance of this meeting but was asked to provide his response during this meeting. The claimant then raised the complaint that he was refused a union representative. He went on to explain what he said took place in the meeting and also said to LC:
"I was the only coloured person there"
LC replied to this comment by stating:
"*Its not about that though is it Barbah*" and the claimant replied:
"No but I'm just saying. I was trying to explain…"
The claimant suggested to LC during the investigation that R1 needed CCTV evidence "to prove beyond reasonable doubt" he was aggressive.

10.51. The claimant was asked why he attended this investigation meeting if he had already been dismissed or resigned as he suggested in evidence. He said he wanted to make it clear that he did not understand the investigation as he already considered his employment at an end due to a breach of trust and confidence. We do not accept that the claimant believed this to be so nor that the claimant said anything of this nature at the meeting. There is no evidence of this anywhere and the first time this was raised was during the hearing itself.

Disciplinary hearing on 18 January 2018 and decision to issue a first written warning

10.52. The disciplinary hearing was held on 18 January 2018 and was again chaired by LC. The minutes were shown at page 280-281a. We accepted that these minutes together with the evidence of LC represented a broadly accurate account of the meeting. The claimant was issued with a first written warning at the start of the meeting. LC gave evidence that she felt that although the conduct was serious and was serious enough to go beyond a verbal warning, she did not consider it to be serious enough to amount to a dismissible offence. The claimant again alleged that he had been refused union representation and he raised again whether there was CCTV footage to prove his aggressive behaviour. LC informed the claimant that there was no CCTV in the office. The issue of whether there was any CCTV evidence came up several times during the evidence and cross examination. BL also confirmed that there was no CCTV camera in place which would have shown the events in question. We accepted that this was the case. The decision to issue the claimant with a written warning was confirmed in writing on 18 January (letter at page 282).

Claimant's Appeal

10.53. The claimant appealed against the decision on 22 January 2018 (page 284-300). This was a detailed document. The claimant was invited to attend an

appeal hearing to take place on 9 February 2018 by letter dated 5 Feb 2018 (page 301). The claimant attended his appeal hearing on 9 February and the minutes are shown at page 303. This was conducted by JB and we heard and accepted JB's account of this meeting.

Grievance hearing

10.54. By another letter of 5 February, the claimant was also invited by AK to a meeting to discuss his grievance (page 302) that meeting to be held on 14 February 2018 and to be conducted by R2 managers. The claimant attended a grievance hearing on 14 February 2018 and the minutes of this meeting were shown at page 310-316. This was largely conducted by managers of R2 with Mr M Amos chairing the meeting. Following the meeting Mr Amos met with AL and BW to discuss the allegations made by the claimant on 19 March and the notes of those meetings were shown at pages 315 to 320. It appears that Mr Amos then produced a summary outcome of his investigations which is shown at page 321. It is not clear what then happened to this outcome document. We accepted the claimant's evidence that he never received an outcome letter from either R1 or R2 to his grievance.

Appeal Outcome

10.55. Following the appeal meeting held between the claimant and JB on 9 February 2018, JB had to undertake further investigations. We heard and accepted entirely the evidence of JB as to what steps were taken around the appeal and this does not appear to particularly in dispute factually. The appeal was ultimately turned down and the outcome letter was sent to the claimant on 13 September 2018. This is almost 9 months later. JB concedes that this was a long time for the outcome of the appeal to be provided. She sets out in her witness statement an explanation for this in that she was involved in the release of 1000 R1 employees at R2 between March and June 2018 which took up substantial elements of her time. She also referred to delays in R2 employees getting back to her. She then mentions a period of unexpected sick leave between June and mid August. We have accepted her evidence on all these matters.

The Relevant Law

Unfair dismissal and unlawful deduction from wages complaints

11. The relevant sections of the ERA we considered were as follows:

13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—
(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—
(a)in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b)in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

94. The right
(1) An employee has the right not to be unfairly dismissed by his employer.

95. Circumstances in which an employee is dismissed.
(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only if)—
(a) the contract under which he is employed is terminated by the employer (whether with or without notice),
(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]
(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

98 General
(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it—
(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

……

(4) Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

12. The relevant authorities which we have considered are as follow:
Western Excavating (ECC) Limited v Sharp [1978] IRLR 27 - the employer's conduct which can give rise to a constructive dismissal must involve a "significant breach of contract going to the root of the contract of employment", sometimes referred to as a repudiatory breach.

Omilaju v Waltham Forest London Borough Council ([2004] EWCA Civ 1493, [2005] IRLR 35, [2005] 1 All ER 75) -if the act of the employer that caused resignation was not by itself a fundamental breach of contract, the employee may on a course of conduct considered as a whole in establishing constructive dismissal. The 'last straw' must contribute, however slightly, to the breach of trust and confidence.

Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, [2018] IRLR 833 - in an ordinary case of constructive dismissal tribunals should ask themselves the following questions:
What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
Has he or she affirmed the contract since that act?
If not, was that act (or omission) by itself a repudiatory breach of contract?
If not, was it nevertheless a part…of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term?
Did the employee resign in response (or partly in response) to that breach?

Direct discrimination and harassment complaints (ss 13 and 26 EQA)

13. The relevant sections of the EQA applicable to this claim are as follows:

4 The protected characteristics
The following characteristics are protected characteristics: …
…race;"

13 Direct discrimination
(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".

23 Comparison by reference to circumstances
(1) On a comparison of cases for the purposes of section 13....there must be no material difference between the circumstances relating to each case."

26 Harassment

(1)A person (A) harasses another (B) if—
(a)A engages in unwanted conduct related to a relevant protected characteristic, and
(b)the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a)the perception of B;
(b)the other circumstances of the case;
(c)whether it is reasonable for the conduct to have that effect."

123 Time limits
(1) [Subject to [sections 140A and 140B],] proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) failure to do something is to be treated as occurring when the person in question decided on it.

136 Burden of proof
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

14. The relevant authorities which we have considered are as follows:

Anya v University of Oxford & Another [2001] IRLR 377 **-** it is necessary for the employment tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer's judgment. This is particularly so when establishing unconscious factors.

Igen v Wong and Others [2005] IRLR 258 and Madarassy v Nomura International PLC [2007] IRLR 246.
The employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

Nagarajan v London Regional Transport [1999] IRLR 572, HL,-The crucial question in every case was, *'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?*'

Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL, - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for …'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: *'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.*'

Bahl v Law Society [2003] IRLR 640 – "*where the alleged discriminator acts unreasonably then a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, then that is likely to be a full answer to any discrimination claim. It need not be, because it is possible that he is subconsciously influenced by unlawful discriminatory considerations. But again, there should be proper evidence from which such an inference can be drawn. It cannot be enough merely that the victim is a member of a minority group. This would be to commit the error identified above in connection with the Zafar case: the inference of discrimination would be based on no more than the fact that others sometimes discriminate unlawfully against minority groups*."

Richmond Pharmacology V Miss A Dhalliwell [2009] ICR 724. There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so. A respondent should not be held liable merely because his conduct has had the effect of producing the prescribed consequence. It should be reasonable that the consequence has occurred and that the alleged victim of the conduct must feel that their dignity has been violated or that an adverse environment has been created. Therefore, it must be objectively decided whether or not a reasonable person would have felt, as the claimant felt, about the treatment in question, and the claimant must, additionally, subjectively feel that their dignity has been violated, etc.

Pemberton v Inwood [2018] EWCA Civ 564. Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).
Time issues

Section 33(3) of the Limitation Act 1980 (power to extend time in personal injury

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

British Coal Corporation v Keeble [1997] IRLR 336, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion' (Southwark London Borough v Afolabi [2003] IRLR 220).

Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA - there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640 - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent".

Submissions

15. The claimant produced a written skeleton argument and submitted this as his closing submission together with a document headed "Additional of claimant Submission". We have considered these submissions fully.

16. Ms Donnelly for R1 produced a closing note and relied on this as her submissions**.** Mr Santy for R2 also produced a written skeleton argument and supplemented this with oral submissions and we have considered all of these carefully

Conclusions

Constructive Unfair dismissal claim against R1

17. The issues between the parties which fell to be determined by the Tribunal were set out above. We have approached this issue firstly by looking at whether the various required elements for a successful unfair dismissal claim were in place. The first step for any unfair dismissal claim is that a dismissal has taken place.

The claimant made contradictory and confused assertions about how he says he was dismissed from R1. Firstly he now says that he was expressly dismissed from his employment by AK in the meeting on 21 December 2017 (not in fact constructively dismissed as his claim suggests). We refer to our findings of fact at paragraph 10.47 above where we conclude that this did not take place. We therefore conclude for completeness that there was no express dismissal of the claimant by R1 on 21 December 2017 or at any other time.

18. We then considered the issues around whether a constructive dismissal has taken place which are, broadly, whether the claimant resigned in response to a repudiatory breach of contract by R1. Before even looking at the question of repudiatory breach, it is necessary for there to have been a resignation or indication of acceptance by the claimant of the repudiatory breach of R1. This was very much in dispute and we refer to our findings of fact above. The claimant firstly tried to suggest that he had communicated to R1 on 21 December 2017 that he was no longer prepared to work for them because of their breach of trust and confidence. We found that no such discussion took place (see paragraph 10.47 above).

19. The claimant then tried to suggest that his resignation was actually effected by his silence in relation to providing R1 with his availability for work. He made reference to section 8.4 of the handbook which contains the terms and conditions of his employment (which we set out at paragraph 10.4 above). This clause states that if an employee does not contact the employer for a period of at least three weeks, the employer will assume that he or she no longer wishes the employer to find work for them. It goes on to set out a process where the employer may then write to the employee to ask them to confirm his or her intentions. If that letter is sent and the employee relies to confirm they no longer wish to work or if there is no response to the employer within 14 days, this is treated by the employer as a resignation and a p45 will be sent. However this contention does not add up when we look to our findings of fact. It does appear to be correct that the claimant did not contact R1 about his availability to work for a period of 3 weeks once his assignment with R2 ended. No letter was then sent to the claimant by R2 to confirm his intention (as would be required by the clause 8.4 that the claimant now relies on) and therefore nothing further was actioned in this regard. The claimant did not confirm his intentions or fail to respond. No P45 was ever forwarded to the claimant. The process set out at clause 8.4 was never in operation at all.

20. On the contrary, both the claimant and R1 behaved in a fashion consistent with ongoing employment from 21 December 2017 and well beyond. The claimant attended a disciplinary, grievance and appeal hearing and was provided with various letters setting out in express terms that his employment continued (paragraphs 10.50 - 10.54 above). Whilst there was no active contract for some time in relation to the offer of work or seeking work, and the claimant neither worked nor was paid during this period, in other aspects both parties continued to operate as if the contract of employment was still in place.

21. For these reasons we conclude that there was no resignation or communication of acceptance of repudiatory breach by the claimant at any time. This means the claim for constructive dismissal must fail. We do add, although not required to do so, that given our conclusions on the acts of discrimination relied upon

below, we could see no real basis for suggesting that R1 had committed a repudiatory breach prior to 21 December 2017 in any event.

22. That means that it is not necessary for us to determine what the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the ERA, nor whether any such dismissal fair or unfair in accordance with ERA section 98(4).

23. The claim against R1 for unfair dismissal is therefore dismissed. We do not find that the claimant was dismissed by R1 it cannot be an unfair dismissal and the claimant's complaint of constructive unfair dismissal is accordingly dismissed.

EQA, section 13: direct discrimination because of race

24. It is clear from the claimant's evidence at the Tribunal hearing that he believes he has been discriminated against because of his race. For us to reach the conclusion that the claimant has been subjected to race discrimination, there must be evidence, although it is of course possible for that evidence to be by way of inferences drawn from the relevant circumstances. A belief, that there has been unlawful discrimination, however strongly held is not enough.

25. In order to decide the complaints of direct race discrimination, we had to determine whether the particular respondent complained of subjected the claimant to the treatment complained of and then go on to decide whether any of this was "less favourable treatment", (i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances). We must them go on to decide whether this was because of the claimant's race or because of race more generally, deciding whether the respondent in question did or would have acted differently if the matter had concerned an employee who was of a different race from the claimant in circumstances that were not materially different.

26. We applied the provisions of the two stage burden of proof test referred to above. We first considered whether the claimant had proved facts from which, if unexplained, we could conclude that the treatment was because of race. This would shift the burden of proof over to the respondent. The next stage was to consider whether the respondent in question had proved that the treatment was in no sense whatsoever because of race. We also had to determine whether the allegations against R1 and R2 were presented within the time limits set out in 123(1)(a) & (b) of the EQA and if they weren't whether time should be extended on a "just and equitable" basis. We have considered first the substance of the complaints, before returning to the issue of time limits and whether we have jurisdiction to consider the complaints which we deal with globally at the end. We set out below our conclusions on each of these questions for each allegation listed in the List of Issues above with reference to each paragraph number where the allegation is listed:

Claims against R1

Paragraph (iv) (a) - The ending of the claimant's assignment with R2 without investigation or proper cause with immediate effect

27. It is not in dispute that R1 terminated the claimant's assignment with R2 with immediate effect on 21 December 2017. The claimant contends that this was without investigation or proper cause. We firstly refer to our findings of fact above on the terms and conditions that applied to the claimant's assignment with R1 (see paragraph 10.4 above). R2 had the right at any time to require R1 to remove the claimant and accordingly R1 was able to terminate the assignment the claimant was working on at R2 with immediate effect. There was no procedure that was required to be followed regarding the ending of an assignment in the contractual documents and no evidence of such a procedure applying in practice was heard. The only procedure that any of the witnesses or evidence referred to related to correct internal authority being received from the appropriate R1 and R2 employees to end an assignment (see paragraph 10.45 above). R1 does appear to have carried out some investigation into the incident that took place on 19 December 2017 (see findings of fact relating to e mails sent by AK at paragraphs 10.38 and 10.42). In terms of whether the claimant's assignment was terminated without proper cause we conclude firstly that the terms and conditions of employment as they applied to assignment referred to above make it clear that employees of R1 can be removed from assignments for "*any reason*". There is no requirement for a reason or "proper cause" to be shown.

28. However we have considered what we understand the thrust of the allegation is here and that is whether the decision by R1 to terminate the claimant's assignment with R2 was on the grounds of the claimant's race. We conclude on this question that the claimant has not shown a prima facie case that his assignment was because of his race to even shift the burden of proof to R1 to explain that it was not. We conclude this several reasons. We note that the e mail referred from Mr Gardiner and our findings of fact about this to at paragraph 10.44 above provide a clear reason for the assignment being terminated by R1. The explanation of AK referred to at paragraph 10.45 as to why the claimant's assignment was terminated was also convincing and eminently plausible and was consistent with the contemporaneous documents. The reasons for the decision of R2 to ask R1 to remove the claimant were also clear and are set out in the e mails sent at the time. These are consistent with the evidence given by BW at the hearing. See paragraphs 10.42 and 10.43 above. There is no evidence to suggest that any other production operative in the same situation who was not black would not have had his or her assignment terminated by R1 following a request from R2 to do this. The claimant does not assert that the decision to terminate his assignment was due to his race at the time but in fact attributes the decision to the fact he had an injury (see paragraph 10.46 above).

29. Therefore, as the claimant has not proved primary facts from which the Tribunal could conclude that the treatment was because of race, we do not find that this shifts the burden of proof to explain the reason for the treatment. It is clear from the bare facts found above what the reason for the complaint was. Even if the burden had shifted it, R1 has clearly discharged that burden. We conclude

that the termination of the claimant's assignment on 21 December 2017 was not because of the claimant's race or race more generally. This allegation of direct race discrimination against R1 fails.

Paragraph (iv) (b) - fail to support the claimant's return to work on light duties following an accident despite the claimant raising concerns

30. We firstly conclude that R1 did not fail to support the claimant's return to work so the claimant has not been able to show that the treatment relied upon took place at all. R1 did take steps to support the claimant returning to work and as and when issues arose around his ability to carry out his duties did take steps to resolve these. We refer particularly to our findings of fact above and the involvement of AK after the events of 3 October 2017 (see paragraph 10.27 above). In any event, there was no evidence that the actions taken by R1 in respect of the claimant's return to work and how it was handled was related to his race. There were no findings of fact above from which we were able to make any such inference. We have concluded that the claimant has not shown a prima facie case of discrimination which would shift the burden of proof in this regard. This allegation of direct race discrimination against R1 fails.

Paragraph (iv) (c) a failure to protect the claimant's health and safety

31. It is not clear precisely what this allegation relates to and no particulars are provided by the claimant about what this is about. This allegation was not put to any of R1's witnesses. We have considered whether there were any such failures of R1 from the findings of fact above and have concluded that there were not. We appreciate that the claimant had an ongoing claim for personal injury against R2 (in respect of his injury at work) but it is not the function of this Tribunal to examine what caused the accident that took place and whether health and safety failures arose. No direct evidence regarding of this was heard or considered as is correct. Moreover, this part of the claim is made against R1, not R2.

32. In any event, we conclude that even if the claimant were able to show that the treatment complained of took place, the claimant has proved any facts from which we could conclude that any issues around the way health and safety was addressed was because of his race. There is no evidence from which we could draw inferences to reach such a conclusion. This allegation of direct race discrimination against R1 also fails.

Paragraph (iv) (d) Fail to investigate the claimant's allegations that his signature had been forged by GL Andy (surname unknown) on 28 November 2017?

33. This allegation of forgery was made to R1 on 21 December 2017 when the grievance was presented on 21 December 2017 (see findings of fact at paragraph 10.48 above). We refer to paragraphs 10.48 and 10.54 as to what was done to investigate this grievance by R1. R1 set up a grievance hearing and then passed the matter over to R2 to investigate as it related to employees of R2 (it says R1 did not have the authority to deal with the matter). There was an investigation by R2 and a decision reached (page 321), but no outcome was

delivered or sent to the claimant. There was some investigation into this complaint albeit that R1 were not actively involved in it. There the conduct alleged by the claimant has not been shown to have taken place. In any event, we have concluded that the claimant has not produced sufficient evidence to suggest that the way R1 managed this complaint could be connected to his race so as to shift the burden of proof. No facts have been proved by the claimant and we are unable to draw any adverse inferences from the surrounding factual matrix to suggest that the reason for what happened on the investigation of his grievance was in any connected to race or would have been handled in any way differently if had involved an employee of another race. Therefore this allegation of direct race discrimination fails.

Paragraph (iv) (e) Refuse to allow a union member to be present with the claimant at the meeting on 19 December 2017?

34. We refer to our findings of fact at paragraphs 10.34 – 10.40. In the first instance we note that the meeting held on 19 December 2017 was not a disciplinary or grievance or even an investigation meeting. It was an informal meeting. There was no statutory right for the claimant to ask for a trade union representative to attend and accompany him. In any event, our finding of fact at paragraph 10.36 above was that the claimant was permitted to have a union representative attend this meeting. This was GJ, who attended at the start. The claimant refused this union representative as he was not happy with GJ as an individual. This does not amount to refusing to allow a union member to be present with the claimant. Therefore the factual allegation of less favourable treatment is not made out. This allegation of direct race discrimination fails without having to consider any further questions. We also go on to conclude that the claimant has not been able to prove any facts to suggest that the reason anything concerning the attendance of a union representative at this meeting was because of his race. The burden of proof would not have passed to the R1 to explain its conduct and the allegation would fail.

Paragraph (iv) (f) Ask the claimant to provide an explanation concerning his medical appointment at the meeting on 19 December 2017?

35. R1 accepts that claimant was asked to provide an explanation about his medical appointment in a meeting on 19 December 2017 so this clearly took place. The claimant suggested that he was the only person he was aware of that was asked to attend a meeting to discuss taking time off work for a medical appointment and that people who were not black were permitted to do this without having to attend a meeting. The claimant was not able to produce any evidence to show that this was the case. We were not able to draw any inferences to suggest that this might be the case. There is nothing to suggest that the situation would have been handled any differently if he were not black African. Therefore we do not find that the claimant has satisfied the burden of proof of showing that the reason this happened could be related to his race. In any event R1 has provided an adequate explanation as to why this meeting was held. We record this at paragraph 10.34 above. The claimant was asked for an explanation as to why he was not able to come to work before or after the appointment. The Induction Booklet issued to the claimant on starting the assignment (which refer to in our findings of fact at paragraph 10.5 above) sets out the normal processes for time of for medical appointments. It is therefore

entirely understandable and within this normal protocol for a meeting to take place to discuss this (especially as the claimant had already indicated at this point he was planning to be absent the whole day – see paragraph 10.34 above). This allegation of direct race discrimination fails.

Paragraph (iv) (g) Refuse the claimant a day off to attend a medical appointment and require him to attend after the appointment when this was not feasible?

36. To unpick this allegation the claimant firstly says that the claimant was refused a day off to attend a medical appoint which is correct. Our findings of fact above confirm that the claimant was permitted to attend the appointment but was required to attend for work after it. The claimant goes on to suggest that this was not feasible. Having considered the explanation of the claimant for why he was unable to come back to work (at paragraph 10.41 above) we do not accept that it was not feasible for the claimant to have attended for work in any event. We have therefore considered whether the wider question of whether refusing the claimant a day off and requiring him to attend work after his appointment was less favourable treatment on the grounds of race. The claimant has not produced any evidence at all to show that anybody else in the same position with an appointment at the time he had and otherwise in the same circumstances would have been treated any differently. He asserts that this is the case but cannot provide any specific examples. There are no facts from which we are able to draw any inferences that this was the case. He has not satisfied the burden of proof in suggesting that race could be the reason why he was refused a full day off and asked to return to work. In any event it is clear from the evidence we heard and the findings of fact we made above, that R1 has explained very clearly why this was done. The claimant was required to get the agreement of R2 to take time off work for medical appointments and R1 and R2 were entitled to require that employees attended work around the medical appointments R2 agreed to release them for. We consider that requiring the claimant to return to work before or after the appointment was an entirely reasonable management instruction and in no sense whatsoever related to race. This allegation of direct race discrimination fails.

Paragraph (iv) (h) Unreasonably delay the outcome of the appeal?

37. We refer to our findings of fact at paragraph 10.55 above as to the reasons provided by JB for the long delay in providing the claimant with an appeal outcome. We accept that they were the reasons why the appeal was not provided earlier. We are sympathetic to the situation JB found herself in being off sick unexpectedly and that she could not deal with the appeal herself. We are asked to decide on the reasonableness of the delay by the claimant as part of this allegation. We conclude that in any circumstances a period of 9 months is a very long time for an employee (as R1 contends the claimant was at all times during this period) to wait for his appeal outcome to be provided. R1 should have dealt with this matter earlier and if JB was incapable due to sickness of dealing with this, it should have found an alternative manager to pick up the process. This delay was an unreasonable one.

38. However this discrimination complaint is that the unreasonable delay was also an act of direct race discrimination. To that extent we have considered whether the claimant has adduced any evidence to suggest that this would not have occurred to someone who was not black African. He has not done this, and we are unable to draw any adverse inferences from the surrounding facts to support the conclusion that the delay was or could have been due to race. The reasons supplied by JB for the reasons for the delay were accepted in our findings of fact and clearly explain it. The burden of proof has therefore not passed to R1 to explain its conduct. In any event if the burden had passed, it has clearly discharged the burden as we have made specific findings of fact on the causes for the delay above. Whilst we may not agree that those causes were reasonable in the circumstances, we accept that they were the causes of the delay, and the delay was not in any way because of the claimant's race. In short the delays would have occurred whatever the claimant's race was. This allegation of direct race discrimination therefore also fails.

Paragraph (iv) (i) Act outside the band of reasonable responses in issuing the claimant with a written warning?

39. We refer to our findings of fact at paragraph 10.52 above about the decision by LC to issue the claimant with a written warning. At this time, we are not considering a standard unfair dismissal claim where the Tribunal is required to assess whether a dismissal (or sanction) falls within the range of reasonable responses. Nonetheless we have considered the decision of R1 to issue the claimant with a written warning and whether it was a sanction that a reasonable employer might have issued in the circumstances. We conclude that it was. In light of the evidence produced by the other attendees of the meeting in question that LC considered in deciding what sanction was appropriate, the sanction appears to be fair and reasonable and within the range of responses one might expect an employer to have. Another employer might have chosen to treat the claimant in a harsher fashion by imposing a final written warning or indeed dismissing the claimant. All these sanctions we consider to be within the range of reasonable responses to this particular conduct that an employer finds has taken place. Therefore the less favourable treatment is not made out and this complaint is dismissed. We have considered whether the issuing of the warning was because of the claimant's race and conclude that the claimant has not proved facts to show that this could have been the case so as to transfer the burden of proof. Our conclusions above support this as it is clear to us that the warning was issued as a result of the conduct that R1 found the claimant to have carried out. This would have discharged the burden of showing that the conduct was not related to race even if the burden had passed. This allegation of direct race discrimination therefore fails.

Paragraph (iv) (j) Fail to follow a fair process before issuing the claimant with a written warning?

40. We again refer to our findings of fact at paragraph 10.50 - 10.52 about the process that was followed. An investigation was conducted by R1 into what had taken place and statements were taken from those present. The claimant points to the lack of CCTV evidence but we accepted the evidence of various witnesses that this was not available. We were, however, slightly surprised at the process followed by R1 in dealing with the disciplinary matter. The claimant

appears to have initially been invited to an investigatory meeting on 5 January 2018. At this meeting the claimant was provided with a verbal account of the statements given by the various other witnesses and asked for his account of events. He was then invited to a further meeting on 18 January 2018 which was described as a disciplinary meeting. At this meeting, without further discussion or opportunity for the claimant to put his point across he was issued with a written warning right at the start of the meeting. Had we been looking at a dismissal outcome and considering whether a fair process had been followed, we would not have been so satisfied by the fairness of this process. However once again we come back to the key question on these complaints which relates to whether the way this was conducted was on the grounds of the claimant's race. The claimant presents no evidence that this was a procedure that was not operated for non black African employees of R1. He simply points out its apparent unfairness and nothing more. Our findings of fact do not support the making of any inferences adverse to R1 in this regard. The burden of proof has therefore not shifted to R1 to explain why this process was carried out the way it was and therefore this allegation of direct race discrimination fails.

Claims against R2

Paragraph (viii) (a) Fail to transfer the claimant's employment and offer him a permanent contract after one year's continuous service?

41. The claimant was not and has never been offered a permanent contract with R2. The next question relates to why this was the case and for the claimant to succeed this would need to be on the grounds of race. In order to consider this question we have in the same way as each of the allegations made against R1, we have we first considered whether the claimant had proved facts from which, if unexplained, we could conclude that the treatment was because of race. The next stage was to consider whether R2 had proved that the treatment was in no sense whatsoever because of race.

42. The claimant suggests that other employees who were not black African who started at the same time as him were offered permanent contracts and therefore he claims that the reason this was not done in his case was due to his race. However we refer to our findings of fact at paragraphs 10.2 above and in particular the acceptance of the evidence of JB and BW that no employees of R1 have been offered permanent contracts of employment with R2 since 2014. We also refer to the document which sets out the policy which the claimant purports to rely on. Given that the claimant started his employment in February 2015, there has been no written policy in place that R1 employees can progress to R2 employment in the way that previously applied for the whole of the claimant's employment with R1. This is clearly the reason that the claimant was not offered a permanent contract. We do not find that the claimant's bare assertions amount to sufficient evidence to shift the burden of proof to R2 to explain that the treatment was in no sense related to race. Even if this did, the explanation for the treatment was clear - it is because no R1 employees were offered such a contract from 1 January 2015 onwards irrespective of race. This allegation of direct race discrimination therefore fails.

Paragraph (viii) (b) End the claimant's assignment without proper investigation and cause? And if so is this contrary to their own polices and guidelines?

43. The only issue that is directly relevant to the claim of direct race discrimination is whether the decision to end the claimant's assignment by R2 was made (whether without investigations or contrary to policy or otherwise) was because of his race. We refer to our findings of fact and conclusions above on the terms and conditions that applied to the claimant's employment with R1 at paragraph 10.4 above. This refers to the right that R2 had to terminate an assignment for any reason. We have not been shown or heard any evidence that there were any policies or guidelines applied by R2 for the termination of assignments. We conclude that the claimant has not shown a prima facie case that the decision to terminate his contract, nor indeed provided any credible evidence, that this decision was race related. On the contrary, our findings of fact at paragraph 10.42 and 10.43 above are that the reason for the decision of R2 to ask R1 to remove the claimant were clear. We place particular reliance on the various contemporaneous e mails sent at the time as referred to above. These are consistent with the evidence given by BW at the hearing. There is no evidence to suggest that any other production operative in the same situation who was not black African would not have had his or her assignment terminated. The claimant does not even assert his race as being the reason for the treatment at the time but in fact attributes the decision to the fact he had an accident at work (see page 271 and our findings of fact at paragraph 10.46 above). We conclude that R2 had reached the end of the line with the claimant after supporting him for a period of time after his accident at work in June 2017. We conclude that the primary reason related to the meeting on 19 December 2017 and his conduct at that meeting and the fact that the claimant failed to come back to work on 20 December 2017 despite express instructions to do so. This clearly explains the decision to terminate the assignment and the claimant has not been able to prove facts nor have we been able to draw adverse inferences from the surrounding factors to suggest that race may have played a part. The burden of proof does not pass to the claimant but even if it had, then we conclude that R2 has satisfied this burden in any event as it has explained and shown clearly what the reasons for termination were and we are satisfied that these had nothing whatsoever to do with the claimant's race or race more generally. The allegation of direct race discrimination fails.

Paragraph (viii) (c) Ignore his requests to go on toilet breaks?

44. We refer to our findings of fact at paragraph 10.12 above. We were not able to find that there were any incidents when the claimant was refused a request to go on a toilet break. The only incident on which we made findings related to the taking of toilet breaks related to the incident with CKF and in this case, the claimant was in fact on a toilet break at the time it happened. Therefore the facts around the treatment alleged have not been shown and this allegation is dismissed.

Paragraph (viii) (d) Safeguard him from ongoing bullying following the raising of concerns in relation to an assault?

45. It is not clear what this allegation relates to. We refer to our findings of fact at 10.13 above. We accepted that the claimant complained about the incident

with CKF but this was handled by R2 promptly and the claimant does not make reference to any further incidents or problems with CKF after this. There was no suggestion of R2 failing to prevent ongoing bullying related to this matter or evidence that this was the case. The incident with CKF surfaces again in the claimant's grievance submitted on 21 December 2017 but by this time the claimant's assignment had been terminated and he was not on R2 site or dealing with CKF. Therefore the facts underlying this complaint are not made out and this allegation is therefore dismissed.

Paragraph (viii) (e) Refuse to provide the claimant with the incident report following a work place accident on 13 June 2017?

46. The claimant was refused a copy of the incident report by BW as we have found at paragraph 10.14 above. However we also accepted the evidence of BW as to why this was the case. The claimant has not been able to point to any evidence other than a bare assertion that any other employee would have or was treated differently with regards to a request for an incident report than he was or that it was related to race. We are unable to draw any inferences from the surrounding circumstances here that might suggest that race played a part in the decision not to give the claimant the accident report. BW's explanation is plausible and makes sense. The claimant has not satisfied the burden of proof on this matter and R2 is therefore not required to show that the decision was nothing whatsoever related to race. We conclude that they would have been able to do this in any event, given the evidence of BW. This allegation of direct race discrimination is dismissed.

Paragraph (viii) (f) Force the claimant to continue with normal duties when he was advised to return to work on light duties?

47. Our findings of fact above (at paragraphs 10.14 and 10.17-10.20) set out in detail what steps were taken by R2 after the claimant's accident. These were not insignificant. The claimant was permitted to carry out light duties and had his duties amended on several occasions. He was seen by OH on various occasions and there is no credible evidence that the recommendations of OH were not complied with. Therefore we do not find that the underlying facts are proved in this allegation. The claimant was never forced by R2 (or R1) to carry out normal duties. If anything it would appear that because of the claimant's personal injury claim and the acceptance of liability by R2, the claimant was given more adjustments to carry out less than full duties than another R1 employee might have been in similar circumstances. The underlying facts behind this allegation have now been shown so this allegation is dismissed.

Paragraph (viii) (g) Allow Brian Woodall to pursue false allegations against the claimant resulting in his suspension? Were these allegations later dismissed on 3 October 2017?

48. We refer to our findings of fact at 10.25 to 10.27 above. We did not find that any allegations were made against the claimant by BW, let alone that these were false. We also did not find that the claimant had been suspended on or around 3 October 2017. Therefore the facts that make up this allegation have not been shown by the claimant. This allegation is therefore dismissed.

Paragraph (viii) (g) (h) Allow Andy to make false allegations about the claimant on 24 and 27 November 2017 and be aggressive and belittling towards the claimant?

49. Our findings of fact in relation to the two incidents involving AL are set out at paragraphs 10.29 - 10.31. We did not find that AL made any allegations against the claimant on either of these dates. We accepted the evidence that AL was investigating problems with the processes and issues arising and carrying out retraining. This is necessary and understandable in the highly technical and potentially hazardous environment which the claimant was working which is regulated carefully. The claimant was not being accused of anything on these occasions but was being asked to confirm that he had been given the necessary retraining following an issue arising (which he may or may not have been involved in). We also found that AL did not behave in an aggressive or belittling manner on either of these two occasions. Although AL told the claimant to shut up on the second occasion, we accepted his evidence that this was not done in an aggressive way but rather to ensure that the claimant listened to the instructions being given.

50. Moreover whatever the nature of the conversations between AL and the claimant on these dates, the claimant has not been able to adduce any evidence which would suggest that AL may have acted on the grounds of race in the way he interacted with him. We have not been able to draw any inferences of this nature from the surrounding facts. It is clear that AL carried out this process of retraining with all operatives on the site. It was a normal and regular part of his duties on the line. Therefore the claimant has not transferred the burden of proof and even if he had, R2 would have satisfied this entirely. This allegation of direct race discrimination is dismissed.

Paragraph (viii) (g) (i) Fail to investigate the claimant's allegations that his signature had been forged by Andy on 28 November 2017?

51. Our findings of fact at paragraph 10.31 above do not support the allegation that R2 did not investigate the issue of forgery. There was some investigation and the claimant's trade union were involved in the discussions about the allegation made by the claimant. The claimant does not seem to have made any further reference to this matter until the day he raised his grievance on 21 December 2017. As the conduct complained of as being less favourable treatment has not been made out, this complaint is dismissed.

Paragraph (viii) (g) (j) Refuse to allow a Union member to be present with the claimant at the meeting on 19 December 2017?

52. For the same reasons as set out at paragraph 34 above (with regard to the same complaint against R1) this complaint is dismissed.

Paragraph (viii) (g) (k) Ask the claimant to provide an explanation concerning his medical appointment at the meeting in 19 December 2017?

53. For the same reasons as set out at paragraph 35 above (with regard to the same complaint against R1) this complaint is dismissed.

Paragraph (viii) (g) Refuse the claimant, a day off to attend a medical appointment and requiring him to attend after the appointment when this was not feasible?

54. For the same reasons as set out at paragraph 36 above (with regard to the same complaint against R1) this complaint is dismissed.

55. Accordingly, all the claimant's complaints of unlawful race discrimination because of race made against both R1 and R2 under section 13 EQA all fail.

Time limits / limitation issues

56. Although none of the claimant's complaints have been held to be successful, we have also considered the issue of limitation as this was identified on the List of Issues. The claimant presented his claim on 12 April 2018. The early conciliation period was between 13 February and 13 March 2018. Given these dates, all of the allegations referred to above that took place before 14 November 2017 were therefore presented out of time unless they formed part of a continuing act ending with an act of discrimination presented in time. Since we have not found any of the complaints to be well founded on their merits, these cannot form part of a continuing act of discrimination with any later acts.

57. The Tribunal, therefore, would only have had jurisdiction to consider any of the acts taking place before 14 November 2017 it was just and equitable to do so in all the circumstances. Considering the relevant law above, in particular, *British Coal Corporation v Keeble* and *Robertson v Bexley Community Care* above, we conclude that it would not have been just and equitable to extend time in any event. Although the Tribunal has a wider discretion in discrimination cases than in other cases where reasonable practicability is the test, it should consider all relevant factors and that there is no presumption that time should be extended. There does not appear to be any reason at all advanced by the claimant for the delay in bringing such complaints. These particular complaints these would have been dismissed for having been presented out of time.

Harassment claims made against R1 and R2

58. The claimant also makes a number of complaints of harassment on the grounds of race contrary to section 26 EQA which are set out in the list of issues above. He makes one complaint of harassment against R1 and six complaints of harassment against R2.

59. In order to determine these complaints, we need to decide whether the claimant was subject to unwanted conduct of the type described; then determine whether the conduct was related to race. We are then required to consider whether the conduct had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, having regard to: (a) the perception of the claimant; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

Claims against R1

(i) Did the first respondent force the claimant to continue with normal duties in the awareness that the claimant was advised to return to work on light duties?

60. This allegation relates to similar conduct which we have already found was not direct discrimination at paragraph 30 above. Whether it is harassment is a different test, but as set out above we do not find that the underlying facts are proved in this allegation. The claimant was never forced by R1 to carry out normal duties (see findings of fact at paragraph 10.27 above). Therefore as the conduct relied on did not take place, the claim goes no further and this complaint of harassment against R1 is dismissed.

Claims against R2

1. Allow Brian Woodall to refuse to provide the claimant with the incident report following a work place accident on 13 June 2017 and speak to the claimant in an intimidating and aggressive manner?

61. This the same allegation to the conduct also said to be direct discrimination which we deal with at paragraph 46 above save that it also includes an allegation that BW spoke to the claimant in an intimidating and aggressive manner on 13 June 2017. We have found that the claimant was refused his request for an incident report so the conduct in this instance (as above) for direct discrimination is shown. However we refer to our findings of fact at paragraph 10.16 where we have concluded that BW did not speak to the claimant in an intimidating and aggressive manner at this time. Therefore the facts behind this element of the allegation are not proved. We go on to address the remaining questions as to whether this conduct amounts to harassment at paragraph 67 below.

2. On 20 June 2017 did the second respondent allow Brian Woodall to try to force the claimant to sign a return to work form? When the claimant refused was he escorted off the premises by security?

62. Our findings of fact on the events of 20 June 2017 are dealt with at paragraph 10.15 above. We concluded that the claimant was asked to sign a return to work form and he refused to do this. However we did not conclude that there was any suggestion of BW forcing the claimant to do this. We also found that the claimant was escorted off the premises of R2 by security after the meeting this day. Therefore the broad thrust of the factual allegation is made out (save that we did not accept that there was any force involved). Further discussion about whether the remaining elements for a harassment claim are made out are dealt with at paragraph 67 below.

3. Force the claimant to continue with normal duties when he was advised to return to work on light duties?

63. For the same reasons as set out at paragraph 60 above this complaint is dismissed. We do not find that the underlying facts are proved in this allegation. The claimant was never forced by R2 to carry out normal duties (see findings of fact at paragraphs 10.14 and 10.17 – 10.20 and our conclusions on this

factual allegation made in the direct discrimination complaint at paragraph 47 above). Therefore as the conduct relied on did not take place, the claim goes no further and this complaint of harassment against R1 is dismissed.

4. On 3 October 2017 did the second respondent allow Brian Woodall to be verbally abusive and aggressive towards the claimant and have him escorted off the premises by security?

64. Our findings of fact about the events of 3 October 2017 are set out at paragraphs 10.25 above. It is clear to us that emotions became heated during the meeting on this day and the claimant had BW were involved in an argument. We did not find that BW was verbally abusive and aggressive and no specific allegations about what was said were made or put to BW so this part of the allegation is not made out on the facts. We did find that the claimant was escorted off site so this element of the factual allegation is made out. Further discussion about whether the remaining elements for a harassment claim are made out are dealt with at paragraph 67 below.

5. On 3 October 2017 did the second respondent allow Brian Woodall to pursue false allegations against the claimant, which were later dismissed, resulting in his suspension?

65. This allegation relates to the same conduct which we have already found was not direct discrimination at paragraph 48 above. Whether it is harassment is a different test, but as set out above we do not find that the underlying facts are proved in this allegation. See findings of fact at paragraph 10.25 - 10.27. This allegation of harassment is dismissed.

6. On 24 & 27 November 2017 did the second respondent allow Andy to make false allegations about the claimant and be aggressive and belittling towards the claimant?

66. This allegation relates to the same conduct alleged to be direct discrimination which we deal with at paragraphs 49 and 50 above. The facts behind this element of the allegation are not made out (see findings of fact paragraphs 10.29 - 10.31). This allegation is also dismissed.

67. Therefore the facts behind allegations numbered 1, 2, and 4 are found to have been made out (at least in part). The next question for these allegations is whether the conduct is question is related to race. On this point we make the overall conclusion on all of the remaining harassment allegations made that none of the conduct complained of was related to race. It is a key component of harassment under section 26 EQA that it has to relate to the protected characteristic. None of the matters alleged have a racist element or are alleged to involve racist language or behaviour. Our findings of fact above and conclusions on the direct discrimination claim make it clear that none of the actions were related to or on the grounds of race. Therefore the race harassment claim of the claimant must fail on this ground alone. It is not necessary to go on to answer the remaining questions as to whether the conduct was unwanted, what its purpose or effect is. In any event our view is that none of the conduct could be said to have the purpose that is required and we also doubt that given the findings of fact and the evidence of the claimant

even at its highest, none of the allegations could even have said to have had this effect.

68. The complaint of harassment against R2 accordingly fails and is dismissed for the above reasons.

Unlawful deductions from wages

69. The remaining claim brought by the claimant relates to the fact that he has not been paid by R1 since he finished working on R2's site on 21 December 2020. This is of course inconsistent with his other claims as set out above that he was dismissed but these have not been successful and as part of the conclusions we have reached the conclusion that the claimant remains employed by R1. Therefore as identified in the list of issues if the claimant's employment with R1 has not been terminated, has R1 failed to pay the claimant wages from 21 December 2017 in breach of section 13 of the ERA? To address that question we refer to our findings of fact at paragraph 10.4 above and in particular clause 3.1 of the terms and conditions of employment which we concluded applied to the claimant. It is also accepted by all parties that the claimant has not worked on any assignment for R1 since 21 December 2017. Therefore in accordance with clause 3.1, no pay is due to the claimant in respect of wages for this period. No wages were properly payable to the claimant in respect of this period as he has not worked for R1. The claimant's claim for unlawful deduction of wages is therefore dismissed.

Employment Judge Flood
22 May 2020