# EMPLOYMENT TRIBUNALS

**BETWEEN**

| **Claimant** | **AND** | **Respondents** |
|---|---|---|
| Mr Christopher Adams | | Royal Mail Group Limited |

**Heard at**: London Central Employment Tribunal

**On**: 18, 19, 23, 24, 29, 30, 31 March, 1 April 2021 (6 April 2021 in chambers)

**Before:** Employment Judge Adkin
Ms C Marsters
Mr D Clay

**Representations**

**For the Claimant:** Claimant in person
**For the Respondent:** Mr I Hartley, Solicitor

# JUDGMENT

(1) The following claims succeed against the Respondent:

a. Unpaid overtime pay pursuant to section 13 of the Employment Rights Act 1996 in the sum of **£1,821.04**;

b. Holiday pay, accrued but unpaid at the time of termination in the sum of **£231.72**.

(2) The remaining claims are not well founded and are dismissed:

a. Automatically unfair dismissal for assertion of a statutory right s104 Employment Rights Act 1996;

b. Unpaid sick pay (section 13 of the Employment Rights Act 1996);

c. Direct race discrimination (section 13 of the Equality Act 2010);

d. Harassment relating to race (section 26 of the Equality Act 2010);

e. Victimisation (section 27 of the Equality Act 2010).

# REASONS

**Procedural matters**

1. This hearing fully remote using video (CVP) technology.

Applications to postpone

2. The Claimant made a number of applications to postpone in the run-up to the hearing. The first was on the basis that he had hoped to instruct a barrister but that this had fallen through. The second was on the basis of a medical procedure he was expecting to undergo on one of his eyes. Third was due to numbering problems with the bundle. Fourth was due to difficulties he seemed to be experiencing getting an appropriate computer with sound so as to access CVP.

3. For reasons that were given at the time none of these applications were successful. In short this is a lengthy fourteen day listing and it had already been postponed once. There was a real risk that postponing into 2022 meant that it was 4 or 5 years from some of the material events.

4. The Tribunal did however, in the interests of attempting to achieve some equality between the parties, provide a generous 2 day reading in period (Thursday 18 & Friday, 19 March 2021) to allow the Claimant to get up to speed, and further agreed not to sit on Monday, 22 March 2021 and Thursday 25, Friday, 26 March 2021 to allow for an outpatient examination and a procedure and recovery period. On Thursday 18 March, one of the tribunal clerks gave several hours' telephone support to the Claimant to try to resolve his technical difficulties, with the result that on Friday 19 March, the Claimant was able to participate in a discussion of over an hour of issues, preliminary matters of a 'housekeeping' nature with both effective video and audio.

5. The Tribunal started later at 11am on 30 March 2021 to reduce the pressure on the Claimant in preparation for cross examination of Ms Wilkinson. Similarly on 31 March 2021 3.40pm we adjourned early at the conclusion of a witness again with the goal of reducing the pressure on the Claimant.

6. The Tribunal was alive to any signs that the Claimant was struggling with reading material. In fact he was able to read material, both in written form and also documents that were "shared" on the screen. He was able to read or quote from them and answer questions. There was some difficulty caused by the fact that he had prepared his cross examination on the basis of an earlier version of the bundle created for a hearing in 2019. The page numbers in it had changed in a subsequent "new" version of the bundle. The Tribunal asked the Claimant to spend some time updating his referencing so that witnesses and

the tribunal were able to follow his questions. On a few occasions he was able to refer to the new version of the bundle. On most occasions, the Claimant continued to refer to the old bundle page numbers and frequently asserted that the document was missing from the new bundle. The Tribunal having been provided with a copy of the "old" index, we were able to cross refer his old page number into the new bundle with only a short delay for each question. On each occasion, notwithstanding the Claimant's concern about missing documents, we were able to identify that the document that the Claimant wish to refer to was in the new bundle, albeit with a different page number.

7. Employment Judge Adkin "shared" his screen on numerous occasions to help the Claimant identify the correct document.

Late witness statement (Ms E Wilkinson)

8. A matter arose in relation to the witness statement of Erica Wilkinson. This statement was not exchanged as part of the general witness exchange and in fact was only received by the Claimant on 9 March 2021 nine days before the hearing was due to take place. This hearing was postponed from June 2020 because of the Covid 19 pandemic. We had not yet started hearing any evidence and because of timetabling issues and the Claimant's need to have some time off for a medical procedure the Claimant would not need to cross examine Miss Wilkinson until the 30 March, i.e. three weeks after he has received the witness statement.

9. We considered whether there was a good reason why this witness statement was not produced before, the explanation that has been put forward by Mr Hartley for the Respondent is that around the time of the original witness statements being exchanged Miss Wilkinson was undergoing the termination of her employment, which made matters difficult and she did not at that stage wish to cooperate with production of a witness statement. Since then she changed her position and was prepared to give a witness statement in response to a request made to her by Mr Hartley who was preparing the matter for the hearing.

10. We considered whether it will help the Tribunal to make its decision. We looked carefully at the list of issues. Erica Wilkinson's name is mentioned three times in the list of issues. It is alleged that she discriminated against the Claimant. We formed the view that her evidence is relevant to the matters in dispute between the parties. Although she is not named as a separate respondent, we consider the fact that Miss Wilkinson is personally named as a discriminator for whom the Respondent would be vicariously liable is a reason in favour of allowing her to defend her conduct. This is not least because if there is any judgment with a finding of discrimination it would be something that appeared in the public realm. If she did not give evidence she would not have had the opportunity to defend herself or at least put forward her side of the case. We found that this weighed heavily in favour of allowing the Ms Wilkinson to give evidence.

11. Balancing up the two competing sides we acknowledge that this is a statement that has been put in late but we consider that it will help the Tribunal to make the decisions we need to make. There is some prejudice to Mr Adams caused by the late production of this statement. We find that this prejudice is ameliorated by the fact that he will not need to cross examine Miss Wilkinson for three weeks after he received her witness statements. In other words he has had a reasonable amount of time to consider that statement and the content of it, so for those reasons we allowed the application for this witness statement.

30 March 2021 – witness order Mr M Hague

12. On the afternoon of 30 March 2021 the Claimant made an application for an witness order that a Mr Martin Hague an employee of the Respondent should to give evidence.

13. There are two elements that the Tribunal must consider in making a witness order. First that the witness would not attend voluntarily. There is no evidence that Mr Hague would not attend if not asked although in fairness to the Claimant we have not been given any evidence that he has been asked.

14. The second element is that the evidence of that witness must be relevant. The Tribunal has spent some time considering this and we do not consider that the evidence from Mr Hague would be relevant to the issues in this case. The reason being that even if the Claimant is right and that Mr Hague has told an untruth in an email dated 7 November 2017 that would not by itself mean that the Claimant's claim or any part of it would succeed. Whether or not Mr Hague was telling the truth would not determine the Claimant's claim.

15. In any event if we are wrong about that we consider that this application has been made too late in the process, it is the sixth day of a hearing, if the Claimant wished to call Mr Hague he should have approached him before this hearing began. We note that the basis for the application which is a document which we have labelled 885a is a document that was only introduced into the bundle today despite being in the Claimant's possession. The Claimant must have been aware that there was a point relating to Mr Hague and could have made this application before today.

16. For all of those reasons this application was refused.

31 March 2021 – reconsideration of decision witness order Mr M Hague

17. The Claimant at the conclusion of yesterday's hearing, 30 March 2021 made an application that we should reconsider our decision to refuse his application that had been made earlier in the day for a witness order in respect of Martin Hague.

18. The Claimant did not put forward any substantively new reason why we should reconsider.

19. The Tribunal considered this but we remain of the opinion for the reasons given in the application yesterday that Mr Hague's evidence is not relevant to the issues that we have to determine on the basis that as we stated yesterday whether or not Mr Hague is right in the allegations that he has made in the email does not resolve the Claimant's claim one way or the other and for those reasons we refuse this application.

**The Claim**

20. The Claimant presented his claim on 18 May 2018, bringing the following claims:

21. Automatically unfair dismissal for assertion of a statutory right s104 Employment Rights Act 1996

22. Unlawful deduction of wages s13 Employment Rights Act

23. Breach of Contract s3 Extension of Jurisdiction Order 1994

24. Direct Race Discrimination s13 Equality Act 2010

25. Harassment s26 Equality Act 2010

26. Victimisation s27 Equality Act 2010

27. An agreed list of issues is attached as an appendix to this claim.

**Evidence**

28. We received a bundle of documents of 1113 pages. Some additional documents were added during the course of the hearing.

29. We heard evidence from the Claimant and Amanda Jane Williams.

30. For the Respondent we heard evidence from the following:

31. Barry Bamford

32. Erica Wilkinson

33. Clare Tebutt

34. David Wheeler

35. Chris Pratt

36. Paul Julian

37. Shawn St Clair

38. Catherine Kitson

39. Andrew Stock

40. Neil Mills

41. Martin Rogers

42. Paul Moffat

43. Latha Montena

44. Tracy Young

45. Beth Pace

46. Khalid Zaman

47. Jennifer Beardshaw

48. Nazam Ali

49. Khalid Zaman.

## Findings of fact

Background

50. The Claimant initially started working for the Respondent as a temporary member of staff through an agency in 2014.

51. On 18 July 2016 the Claimant commenced permanent employment on a 30 hour per week contract directly for the Respondent.

Right to work/immigration status

52. On 1 January 2017 a standard letter was sent to the Claimant by the then Delivery Office Manager at the Luton office Derrick Remington requesting right to work documentation, in relation to his immigration status.

53. On 11 January 2017 Claimant sent in paperwork in response and including a UK Border Agency document dated 26 January 2011 showing that he had Discretionary Leave to remain until 25 January 2014.

Alleged accident at work on 7 Jan 2017

54. On Saturday 7 January 2017, the Claimant contends that he had an accident at work. It has not been necessary for our purposes to determine whether or

not this accident took place. Plainly legal liability for such an accident might have to be determined in other proceedings.

55. On 13 January 2017 the Claimant went off on sick leave.

56. On 18 January 2017 the Claimant's GP requested an x-ray of the Claimant's spine.

57. On 19 January 2017 Mr Khalid Zaman a Delivery Manager emailed Mr Barry Bamford:

> "Chris Adams approached me on Monday 16th January at around 8.30 and showed me a picture from his phone of a grass verge with two slip marks. There was no time any injury reported to me Chris performed his duty on Monday and overtime."

58. While the Claimant appears to believe that this accident was officially reported, Mr Zaman's evidence was that no accident report or near miss report was made as no accident or injury was reported. We have not been shown any accident or near-miss report.

59. On 20 January 2017 the Claimant provided a fit note from his GP for back pain.

60. On 25 January 2017 Claimant provided a further fit note for back pain.

61. On 2 February 2017 the Claimant's GP sent a letter stating that he fell and injured his back and knees and he could not travel due to the pain he would be in from prolonged sitting

62. On 21 February 2017 the Claimant provided fit note from his GP for 3 weeks citing a compression fracture.

Right to work (continued)

63. On 13 January 2017 the Claimant provided further paperwork in relation to his immigration status. In the view of the Respondent's specialist immigration vetting team, this did not show an up to date right to work.

64. On 22 January 2017 Mr Remington sent another standard letter to Claimant regarding his right to work documentation and continued employment with the respondent. This highlighted that it would be a criminal offence for the Respondent to continue to employ the Claimant if he did not have the correct immigration status to continue to work.

65. On 24 January 2017 Mr Zaman invited Claimant into a fact finding interview to discuss his current right to work on 27 January. The Claimant failed to attend this meeting, although his union representative Mr Andy Stock of the Communication Workers' Union (CWU) did attend. Confusingly given this non-attendance a follow-up letter (obviously based on a template) was written to the Claimant referring to meeting the Claimant at the meeting today, highlighting that evidence of continuing right to work needed to be provided within 7 days.

66. On 7 February 2017 the Claimant provided a fit note for lower back pain.

Grievance

67. On 27 January 2017 the Claimant submitted grievance against two Delivery Managers, namely Chris Pratt and Khalid Zaman, alleging "harassment and intimidating behaviour at work", and "bullying and victimisation" which have been going on for over two months, referring to 136 hours which he said he had not been paid for, alleging discrimination (unspecified). Victimisation here is not used in the technical sense of section 27 of the Equality Act 2010. He alleged that Mr Pratt had tried to intimidate him with a letter signed by someone who no longer worked in the office and said that the police would investigate the matter.

68. Following on from this on 2 February 2017 the Claimant was invited to a Bullying and Harassment meeting with Clare Tebbutt following his complaint.

Other correspondence

69. Meanwhile on 30 January 2017 Barry Bamford invited Claimant to a meeting to discuss his ongoing absence.

70. On 30 January 2017 a letter "pp'd" on behalf of Barry Bamford was sent to the Claimant explaining that if he did not provide right to work documentation the respondent could not employ him after 1 February 2017.

71. On 30 January 2017 the Respondent's Occupational Health contacted Claimant to book in an initial appointment. The Claimant declined on basis he wished to take his GP's advice.

72. On 3 February 2017 Barry Bamford made a photocopy of a letter of instruction from "French & Co" a firm of solicitors, dated 22 November 2016 in relation to the Claimant's immigration matter.

Bullying & harassment interview – first protected disclosure 8.2.17

73. On 8 February 2017 the Claimant attended a Bullying and Harassment interview with Clare Tebbutt. The notes of that interview run to some 13 pages of close type.

74. The first protected act relied upon by the Claimant is contained in an answer that he gave to Ms Tebbutt in the course of the interview [574 at item 38]. He described Khalid Zaman asking about the immigration paperwork and complained that he had been required to sit down with him four times, when there was an ongoing immigration process in which his solicitor was involved. He said:

> "My suspicion on this is that maybe people like me, as a black man, how many people have a similar situation as me, how many have you investigated like this. I have felt so much pressure from

> Khalid. I feel like either they are trying to get rid of me or is something to do with the money they owe me."

75. On 9 February 2017 Ms Tebbutt wrote to the Claimant enclosing a typed copy of the meeting notes asking him to initial any amendments and add his signature and date by a deadline of 16 February. The Claimant did not do this.

Investigation outcome 17.2.17

76. The outcome of the investigation was sent to the Claimant by a letter dated 17 February 2017. In this letter Ms Tebbutt concluded that the question of 136 hours of overtime had been resolved locally with the help of Barry Bamford and would not therefore be investigated. She confirmed that the three letters sent recently regarding absence from work were no more than standard attendance process letters. With regard to letters concerning the expiry of his Visa and right to work, she dismissed his query about a letter apparently signed by Mr Remington but sent after his departure and in any event concluded that it was right that letters should have been sent to the Claimant given the importance of compliance with immigration legislation. She corrected his misunderstanding that he could not be contacted for 28 days while on sick absence after having an accident. She said that he had failed to explain why the circumstances were different to a comparator, Neil. Finally she listened to voicemails from Mr Zalman and Mr Pratt which the Claimant claimed amounted to harassment. She found that there was nothing inappropriate.

77. In conclusion she found that there was nothing that could go forward for a further investigation and indicated that she would be closing down the complaint.

Further correspondence on immigration status

78. On 9 February 2017 Beth Pace of the Security Vetting team, wrote to Mr Bamford that the solicitor's letter of instruction document provided was not sufficient.

79. On 11 February 2017 Latha Mantena of the Security Vetting team confirmed to Barry Bamford that the Claimant's right to work expired on 11 February 2017 and that he has no statutory excuse to remain after that date.

80. On 12 February 2017 the Claimant wrote to HR raising issues with Clare Tebbutt's investigation.

81. On 16 February 2017 a letter from the Claimant's solicitors confirmed that Claimant's application for indefinite leave to remain was submitted on 1 February 2017 and accordingly his stay was automatically extended until the Home Office have made a decision.

82. On 17 February 2017 Beth Pace confirmed that in light of correspondence form Claimant's solicitors Claimant should have an in time application and that the security Vetting team would contact Home Office Checking service to attain a PVN (Positive Verification Notice) to get statutory excuse for 6 months.

83. On 1 March 2017 notification was received from the Home Office certifying that Claimant had a 6-month statutory excuse.

Injury & effect on sick pay

84. On 9 March 2017 the Claimant provided fit note citing fractured spine.

85. On 27 March 2017 Claimant provides fit note referring to a fracture L5. A further fit note citing the same was provided on 25 April 2017.

86. On 15 May 2017 Claimant attended a telephone OH appointment.

87. On 23 May 2017 Mr Bamford wrote to the Claimant's GP to request details on what Claimant is capable of doing in terms of roles due to injury.

88. On 8 June 2017 the Claimant provided a fit note citing back pain.

89. On 23 June 2017 the Respondent's Pay Services department wrote to the Claimant regarding his entitlement to SSP. They reminded him that his SSP was due to expire after 28 July 2017.

90. On 14 July 2017 the Claimant provided a fit note which cited back pain.

Home visit

91. On 11 April 2017 Mr Pratt spoke to the Claimant by telephone, and agreed that they would have a telephone conversation the following day. That conversation did not take place, but the Claimant sent Mr Pratt a text message saying that they would speak on 13 April. This did not happen. Mr Pratt tried to follow up telephone by 19 April 2017 but the Claimant did not answer. Mr Pratt wrote to the Claimant by letter, providing him with an alternative way of making contact with him. Mr Pratt informed Mr Bamford and Ms Kidson of this in an email dated 19 April (page 641).

92. On 25 April 2017 Barry Bamford and Ms Kidson attended the Claimant's home address. We accept they did so because the Claimant was failing to keep in touch with his managers during his sickness absence. During the visit, they were met by Chris who said that his housing welfare officer Donna McGaw would attend. The Claimant explained he was on lots of medication and some that made him feel drowsy. Mr Bamford and Ms Kidson emphasised the importance of staying in touch.

More on right to work/immigration

93. On 6 June 2017 Mr Bamford to wrote to the Claimant requesting his right to work documentation.

94. On 4 July 2017 Mr Bamford wrote again to Claimant requesting his right to work documentation

95. On 19 July 2017 Chris Pratt wrote to the Claimant raising a concern about the level of contact that there had been from him, explaining what was expected of him in terms of contact.

96. On 25 July 2017 Mr Pratt again wrote to the Claimant for an informal meeting to discuss ongoing absence on 27 July 2017. The Claimant did not attend this meeting.

97. On 4 August 2017 Catherine Kidson spoke to Claimant and organised meeting between Claimant and Chris Pratt on 11 August 2017.

Protected acts

98. On 5 August 2017 the Claimant emailed Catherine Kidson [725-726]

> "It is criminal offence that I have sent you email on the 4 August 2017 I didn't receive reply… … You need to responds to my questions I have asked you today 5 August 2017. This is your strategic I have sent you an email 27 July declined to reply to my email… … The fact of the matter is whenever I raised the issue regarding my overtime money no one seems to give me the answer. Because you're part of the book room staff. Until you provide me the evidence of any payment record and outstanding. I have no choice but to seek legal advice on this matter. I also retained the transcript evidence against you I remember that you contact me on March 2017 to talk about request for consent for Home Office Check? What did you say about that?
>
> This is Harassment and Bullying you think I am a Black man and so what? I am stupid? I have no idea about Royal Mail employment guard lines or policy so, you are taking advantage? To resolve this matter you need to comply my request ASAP. But don't put words in my mouth for your own self-rigorousness". (*sic*)

99. In an email dated 7 August 2017 the Claimant wrote to Ms Tebbutt in relation to an interview which had taken place on 8 February 2017 "during the interview I have doubt that this investigation is going to be a whitewash". He alleged that whatever he had told her at that meeting she had recorded the opposite [727]. This email was rude and disrespectful in tone. It did not contain any allegation of race discrimination.

100. In an email dated 10 August 2017 the Claimant wrote to Ms Tebbutt

> "I believed that your investigation itself is designed to 'turn a blind eye' I call you a racism (sic) and liar. I know the reason why you decided to close my case. Because you know full well that I refuse

> to sign your dodgy statement which you forward to me on the 17 February 2017. I also understand why you may not interest to deal with my case because I Black man.
>
> However, if you understand my frustration bullying and harassment it is direct relate to my money I owed of overtime. This case alone it is serious fraud committed by the room staff. I raised two separate issues with you regarding the money and bullying and harassment but you're not interested none of this matter. So, you writing everything I said opposite you ignore my grievance and my legitimacy base on the colour of my skin.
>
> ..
>
> This is cultural is been going on for years in this organisation. The victims are not getting fair treatment when they raised their concerns and grievance. The investigation team will hide the true under the carpet behind closed doors especially if your Blackman you can't get your message across the channels."

101. On 14 August 2017 the Claimant emailed Mr Bamford chasing up his overtime records, alleging that a fraud had been committed in relation to his overtime. He also wrote as follows:

> "But you did however, raised Catherine Kidson unhappiness email correspondence between her and myself you said my comment is unacceptable. Of course, I use Blackman there is nothing wrong with that. As my comment does not offend anyone it shouldn't be any issue in my view or been criticised for any wrong doing. The fact, of the matter is everybody must be treating fairly it doesn't matter wherever your background or your colour of your skin." (*sic*)

102. Mr Bamford replied later that evening, acknowledging the Claimant's frustration, but highlighting that this was partly due to him not bringing in his diary. He reiterated that if money was owed to the Claimant this would be paid. He confirmed that he had apologised for the Claimant having to "battle" to get money owed. He wrote:

> "the comment you made around yourself using the word Blackman is not quite accurate, you state that it does not offend anyone yet Catherine was offended so as you may be aware dignity and respect is a huge deal Royal Mail and we take it seriously, and if anyone is offended by any comment or language used then that is enough to challenge the behaviour, so appreciate that the comment was your view, but we need to also consider the audience you are writing to or talking in front of."

103. The Tribunal considers that Mr Bamford was flagging up, in a professional and measured way, to the Claimant that his comments were causing offence.

104. On 16 August 2017 Claimant emailed the Respondent's "Just Say it" Team referring to his recent correspondence to Clare Tebbutt, Barry Bamford and Vince Hammond CWU alleging racism. This was captured in the minute of a meeting between Erica Wilkinson and the Claimant on 4 October 2017 and in the report of Ms Wilkinson dated 22 November 2017. The agreed bundle contains the original correspondence to Ms Tebbutt and Mr Bamford and later correspondence to Vince Hammond (below). What we do not seem to have is the original email sent to the Just Say It Team. Nevertheless, based on what is captured in the investigation it is clear that these documents contain protected disclosures.

105. On 17 August 2017 Claimant wrote to Barry Bamford by email declining to bring in his diary. He alleged that there had been fraud and says that the onus is on the Respondent to provide evidence of how much is owed. He alleged that a criminal offence had been committed by Neil Mills, whom he said had opened his payslips without his consent. He signed off this email

> "The nature of this case it is discrimination not racist the "racist is evil" (*sic*).

106. Also on 17 August 2017 the Claimant wrote to Vince Hammond, Branch Chairman of a branch of the CWU twice. In the first letter he wrote:

> "If you have spoken to Barry Bamford regarding my missing overtime payments and he informs you that I need to go to Luton D with my diary and prove these payments are outstanding, they will make arrangements? Did you asked Barry to provide you the evidence of any payment he has made to me? Its simple question this is nonsense and discrimination why do you pretends that your CWU member of Union but you hidden the truth.
>
> How many times I asked Barry Bamford to provide me with five-month start to finish time she he declined to respond my request. Do you think I and stupid because I am Blackman so I don't know my left and right? Don't you know that if this matter goes through to court my solicitors can make request my timesheet start to finish producing by the employer?"

Right to work (continued)

107. On 17 August 2017 the Security Vetting team received Claimant's right to work document (residence permit). It was decided that no further action would be taken regarding the Claimant's right to work Visa. This was communicated to him by Mr Bamford on 18 August.

108. On 24 August 2017 Mr Pratt sent a letter to the Claimant raising a concern about the lack of contact that the Respondent had experienced with the

Claimant since he had been off sick, inviting him to a further meeting on 29 August 2017.

109. On 22 August 2017 the Claimant provided fit note citing back sprain and stress.

110. On 25 August 2017 the Claimant continued the pugnacious tone in his correspondence with Mr Bamford (his second line manager)

> "… I fully understand that you have arrived Luton Office in the wrong time. But that wasn't too late for you to know right or wrong and you could handle this matter differently. But "you turn the blind eye".
>
> Unfortunately you have opportunity to fix the problem and you made a wrong choice you chose to lean towards your fellow wrong side. I am Blackman from Africa and I am Ghanaian and I was born in Ghana."

111. He goes on at some length in this letter to explain what a good worker he is, complaining about the Mr Bamford's predecessor, claiming that he was a target because of the overtime matter and as a result of this he had received a lot of emails, letters, phone calls and voicemails with regard to his Visa. He claims that there was a strategy to frighten him with "dodgy letters" issued on a Sunday.

112. On 18 September 2017 the Claimant provided a fit note citing back sprain.

113. On 29 September 2017 Claimant sends a further email to Barry Bamford in offensive terms alleging race discrimination

> "I want to let you know you are stupid (D.O.M). How do you think about the Blacks people? Your action clearly shows that you are siding with the book room OPG who are stealing people working hours… … No wonder black postal worker who committed suicide because he suffered racial abuse bullying harassment in Birmingham. I will fight for justice outcome my overtime hours five months went missing in your office. See this entire emails correspondence I have sent you several times without received reply from you. Because I am a Blackman you want to treat me like a shit.
>
> I look forward to hearing from you
>
> Regards "

114. In an undated letter [779] Shawn St Clair invited Claimant to a formal conduct meeting to take place on 5 October 2017. This was based on a template but did not have a letterhead. The letter contained the following:

> "Following your emails and refusal to stop abusing people in them, you are now being invited to attend the meeting on Thursday 05th October 2017 concerning alleged unacceptable internal behaviour; you are now being invited to a formal conduct meeting to discuss the numerous emails displaying various examples of a lack of dignity and respect within the workplace."

115. Later in the same letter the allegations are summarised as (1) Unacceptable internal behaviour and (2) Bullying and harassment. Further down it was explained that these were considered [potentially] gross misconduct.

Investigation of Claimant's allegations

116. On 4 October 2017 Erica Wilkinson met with Claimant to hear his complaints under the Respondent's Bullying & Harassment policy, in the presence of Paul Moffat, a CWU representative.

117. On 10 October 2017 the Claimant received an item of post, one recorded delivery and the other ordinary post. He believed that this was a "serious case" and reported the matter to the Police Crime Agency and was given a police crime reference number.

118. On 13 October 2017 the Claimant provides fit note citing back pain.

119. During October 2017 Ms Wilkinson continue to investigate the Claimant's allegations. She interviewed Andrew Stock (806-810), Jamie Clarke (811-813), Alex Barton (814-817), Mo Ayaz (818-821), Neil Mills (822-827), Vince Hammond (828-831), Catherine Kidson (832-837), Khalid Zaman (838-842), Chris Pratt (843-848), John Gilbert (849-852), Neil Kidwell (856-859), Clare Tebbutt (860-867), Barry Bamford (870-878), Martin Rogers (879-882) Jennifer Beardshaw (888-891), Tracy Young (892-894), Latha Mantena (895-898), Peter Jack (900-903).

Telephone call with Jennifer Beardshaw 3.11.17

120. On 3 November 2017 telephone conversation takes place between Claimant and Jennifer Beardshaw. Ms Beardshaw had called the Claimant back after he had left a message for a colleague of hers, Tracy Young. After an ill-tempered tirade from the Claimant, Ms Beardshaw terminated the call due to the his abusive behaviour. She described the conversation 4 days later on 7 November 2017 [890] in the following way:

> "34. …. …He wasn't happy and said the (sic) we and Barry were harassing him and he repeated this quite a few times. He was getting aggressive and shouting. He was very angry as soon as I started speaking he was very angry from the start. I tried to ask him to stop shouting and then he started saying I was racist and I was only contacting him because he was a black person. They (sic) were is exact words. I was also discriminating against him because he was black. He called me several names but I can't

> remember what they were I was quite upset and went to my manager Martin H. The call was so bad and his behaviour s (sic) unacceptable I put the phone down but he called me back about 20/30 minutes later he wanted my name which I gave him and he also wanted my address which I refused. I also asked why he wanted it and he said he was going to give it to his solicitor because he was going to take me to court for harassment."

121. She was asked how the incident made her feel and replied

> "JB Shaken up nervous upset
>
> EW Have you ever experienced this type of behaviour before whilst performing your current role?
>
> JB Not like I was treated by Chris Adam. I have had unhappy and irate people when they don't have a valid visa but nothing as bad as it was on Friday."

Bullying & Harassment report outcome

122. On 22 November 2017 Erica Wilkinson sent her Bullying and Harassment investigation report conclusion to the Claimant. This was a 48 page report. She dismissed his complaints and concluded that there was no evidence to support the Claimant's allegation that he had not been paid his overtime money and other treatment was due to him his race.

123. Ms Wilkinson went further and considered whether the allegations have been made in good faith. While she acknowledged that there had been a difficult period for the Claimant, while he was off sick and his immigration status was being questioned, she nevertheless concluded that it was incredible that he had made the allegations that he had that attributed his treatment to his race. She concluded that he had deliberately made false allegations and had concerns about the behaviour that he had demonstrated. She concluded that Mr Adams knew that the complaints raised relating to his race were not true and concluded that these had been brought in bad faith.

124. She did contemplate recommending a mediation, but decided in view of her conclusion that the appropriate course of action was to refer the matter to be dealt with as a disciplinary matter.

Appeal

125. On 8 December 2017 the Claimant appealed Ms Wilkinson's decision. The appeal was passed to Dave Martin.

126. On 11 January 2018 the Claimant emailed Dave Martin to say he will not participate. Accordingly, Mr Martin responded saying he would close the case.

Absence management

127. On 29 January 2017 Claimant did not attend an absence management meeting.

128. By a letter dated 30 January 2017 Mr Nazim Ali, Delivery Office Manager at the Leighton Buzzard Delivery Office, invited the Claimant into a meeting to discuss ongoing absence on 5 February 2018. The Claimant did not however attend this meeting.

Fact finding meeting

129. In February 2018 Paul Julian, Delivery Office Manager at the Sandy Delivery Office, invited the Claimant into a fact finding meetings on 12 and 16 February 2018.

130. The Claimant did not attend either meeting, but instead on 15 February 2018 made a complaint to the Police Crime Agency and his local police station. A police officer spoke to Mr Shawn St Clair and Paul Julian as a result.

Disciplinary

131. On 26 February 2018 the Claimant was notified that the disciplinary matter was being passed to Dave Wheeler

132. On 8 March 2018 Dave Wheeler invited claimant into formal conduct meeting.

133. On 9 March 2018 the Claimant provided a fit note citing back pain.

134. The Claimant did not attend the formal conduct meeting on 14 March 2018.

135. On 17 March 2018 Mr Wheeler invited the Claimant to a further formal conduct meeting on 22 March 2018 which the Claimant did not attend.

136. On 31 March 2018 Mr Wheeler invited Claimant into a further formal conduct meeting on 12 April 2018 which the Claimant did not attend.

137. On 12 April 2018 the Claimant emailed Mr Wheeler complaining that he was trying to invite him to a meeting facing gross misconduct when he had an injury to his back

> "these shows that Royal MAIL SEEMS TO JUDGE PEOPLE BASED ON THE COLOUR OF THEIR SKIN. IT IS LIKE RACIST COPS INVESTIGATING ANOTHER RACIST COP. YOU ARE A ROYAL MAIL MANAGER AND NOT AN INDEPENDENT CASEWORKER"

138. In the same letter he criticised Claire Tebbutt in the following terms:

> "worst and most corrupt investigator I have never come across in my life. She is a big liar and manipulator evil, she is very poor".

139. He goes on

> "Clare Tebbut investigation is corrupt, FAKE, white wash, deceived, full statement, prejudice, cover-up lies and dishonest."

Further Bullying & Harassment complaint

140. On 13 April 2018Claimant submitted a 'Bullying & Harassment' complaint

> "I am the victim of bullying harassment based on unlawful deduction of wages. I had injury at work (A O D) known as Accident on Duty and I entitled full paid up to 12 months according to the Royal Mail policy. Unfortunately, they only paid me half until 6 months and they stop nobody seemed to want to talk about the issue. Now I and beginning to believe Royal Mail is practising Ethnic Cleansing AND ONLY TIME WILL TELL THE TRUTH WILL SOON COME OUT I SEEK COMPENSATION FOR MY SPINE INJURIES, IF THEY REFUSE TO ACCOMMODATE ME ON THIS, I WILL TAKE THE CASE AS FAR AS I CAN GO. If Royal Mail ensures all employees treated with dignity and respect why ethnic minority are treated differently? MR Dave Wheeler, are you a Royal mail manager OR Not?????"

ACAS

141. On 27 April 2018 ACAS received notification of a dispute.

Dismissal

142. On 10 May 2018 Dave Wheeler's "decision report" justifying his decision to dismiss is complete on this date. This is a lengthy document of some 20 pages, which contains the following:

> "Throughout this case Chris Adams has continually declined invitations to engage in the process. He has failed to attend meetings and instead has continued at in the most unacceptable and appalling manner towards people.
>
> …

> Throughout the whole process Mr Adams has continued to accuse all parties of racism, discrimination and he has displayed behaviours that completely go against our Code of Business Standards being abusive and show no respect for his colleagues.
>
> He had made false complaints that had aimed to damage the integrity of his colleagues, without any genuine belief / basis. He was abusive and showed no remorse and no understanding that his behaviour and actions were wrong in any way.
>
> …
>
> Chris Adams believes he is owed money but his approach has been to accuse everyone he comes into contact with as being racist, which in my view makes any ongoing relationship extremely difficult as well as being unfair in subjecting people to personal slurs, and I have lost trust and confidence in him as a Royal Mail employee.
>
> I feel throughout this case people have tried to help Mr Adams, that having sat with Clare Tebbutt I was satisfied he is fully aware of the procedures being applied and it is simply inconceivable that he could genuinely believe that all those he has named or been involved in the case including the vetting to you are totally independent from the operation at conspired against him because Royal Mail did not want to pay him money because of his race."

143. On 15 May 2018 Mr Wheeler invited Claimant into a decision meeting, which the Claimant did not attend.

144. On 18 May 2018 Mr Wheeler sent out a letter and report notifying the Claimant of the decision to dismiss.

Tribunal claim

145. The Claimant presented his claim form (ET1) to the Tribunal on 18 May 2018.

146. On 22 May 2018 according to Ethos, the Tribunal's computer system, the notice of claim was sent to the Respondent.

## LAW

Discrimination

147. We have considered the guidance set out in *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205, EAT, as approved and revised by

the Court of Appeal in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases* [2005] ICR 931, CA.

148. We have considered guidance on the burden of proof in discrimination cases, in particular as referred to by the Claimant *Nagarajan v London Regional Transport* [1999] IRLR 572, *Madarassy v Nomura International plc* [2007] IRLR 246 CA, *Ayodele v Citylink Ltd* [2017] EWCA Civ 1913. In *Hewage v Grampian Health Board* [2012] ICR 1054, SC in which Lord Hope endorsed the following guidance given by Underhill P in *Martin v Devonshires Solicitors* 2011 ICR 352, EAT:

> "'the burden of proof provisions in discrimination cases… are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination — generally, that is, facts about the respondent's motivation… they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law'.

149. Relevant to *time limits*, section 123 EqA provides:

> 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.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) then P does an act inconsistent with doing it, or

> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

150. *Time limits for omissions* - in the absence of a deliberate failure to act or an act inconsistent with the failure to do something so as to engage section 123(4)(a), section 123(4)(b) requires a Tribunal to consider when the act not done might reasonably be expected to be done (*Kingston upon Hull City Council v Matuszowicz* 2009 ICR 1170, CA).

151. *Harassment* - in *Richmond Pharmacology v Dhaliwal* [2009] ICR 724 the EAT (Underhill, P) emphasised both the subjective and objective elements of a claim of harassment under section 26. There is a minimum threshold and following guidance was given at paragraph 22:

> "it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase"

Victimisation

152. In order for a claim of victimisation dismissal to succeed the protected act need not be the only or even the primary reason for dismissal. A Tribunal must be satisfied that the protected act had a "significant influence" on the decision-making (*Nagarajan v London Regional Transport* [1999] ICR 877).

153. Various appellate decisions have dealt with the circumstances in which a decision to dismiss following on from protected acts may be found to be for a reason separable to the protected act.

154. In *Martin v Devonshires Solicitors* [2011] ICR 352, the employment tribunal found that the reason for a dismissal had nothing to do with the fact, as such, that the claimant had made complaints of discrimination, but rather with the facts that those complaints involved a combination of inter-related features, namely, false allegations of considerable seriousness, that they were repeated and that the claimant refused to accept that they were false; the relevance of those facts being, taken together, that they led to the conclusion that she had a mental illness which was likely to lead to unacceptably disruptive conduct in future.

155. In that case the EAT described the underlying principle thus:

> '22. … …In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. …

> Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.'

156. In *Woodhouse v West North West Homes Leeds Ltd* [2013] IRLR 773, EAT HHJ Hand QC suggested that it would only be in exceptional cases that a series of grievances alleging racial discriminatory conduct leading to dismissal would not be found to be done by reason of the protected act. Lewis J in *Panayiotou v Chief Constable of Hampshire Police* [2014] IRLR 500, EAT doubted the strength of that conclusion at paragraph 54, before referring back to paragraph 22 of the *Martin* case with approval:

> 54. … In my judgment, there is no additional requirement that the case be exceptional. In the context of protected disclosures, the question is whether the factors relied upon by the employer can properly be treated as separable from the making of protected disclosures and if so, whether those factors were, in fact, the reasons why the employer acted as he did.

## CONCLUSIONS

Employment Status / continuous employment

157. [**Issue 3**] Did the Claimant bring proceedings against the Respondent to enforce a statutory right? The Claimant relies upon s13 ERA 1996; s13 EA 2010; s25 EA 2010 and/or s27 EA 2010.

158. [**Issue 4**] Did the Claimant make an assertion had been made that the Respondent has infringed a right which is a relevant statutory right? Under s104(1)(b) it is alleged that the Claimant alleged the employer had infringed the right on:

159. 6 January 2017 – we were not able to identify an allegation that a statutory right had been breached on this date;

160. 10 January 2017 – the Claimant did not know what this related to; we were not able to identify an allegation that a statutory right had been breached on this date;

161. 12 January 2017 – we were not able to identify an allegation that a statutory right had been breached on this date;

162. 11 February 2017 – there is a letter dated 12 February 2017 in which the Claimant appears to be unhappy with Ms Tebbutt's investigation. We cannot see based on the content that this is an assertion that a statutory right had been breached;

163. 3 August 2017 – in a letter dated 4 August 2017 the Claimant requested a list of all overtime payments made and annual leave outstanding. We do not read this to be assertion of a breach of statutory right and

164. 7 November 2017 – a letter sent on this day by the Claimant contains a complaint about the attitude of Jenifer Beard (a reference to Mrs Beardshaw) – we do not find this to be assertion of a breach of statutory right;

165. Brought proceedings via the first Employment Tribunal claim on the 18 May 2018. This is the only one alleged assertion of statutory breaches that we can identify. This plainly did contain allegations of statutory breach.

166. [**Issue 5**] Did the Claimant make the assertions in good faith? We have not found there to be an absence of good faith.

167. Given the findings, it is has not been necessary to make a finding on this point.

168. [**Issue 6**] Whether the reason (or the principal reason) for the dismissal because the Claimant had made an assertion that his statutory right had been infringed and/or had brought proceedings

169. The decision to dismiss, which is contained in a report dated 10 May 2018, sent under cover of a letter dated 18 May postdates the point at which the Respondent became aware of the claim, which must have been after 18 May 2018. In fact the notice of claim was sent on 22 May 2018. We cannot see how the decision-maker in relation to the dismissal Mr Wheeler can have been aware of the claim before he took his decision.

<u>Unlawful Deduction of Wages s13 / s23 Employment Rights Act 1996</u>

170. [**Issue 7**] The Claimant's case is that there were unlawful deductions from his wages in breach of s13 ERA 1996 in that he was not properly paid wages in respect of

171. [**Issue 7a**] His 136 hours of alleged overtime up to December 2016 – this has been conceded by the Respondent, and judgment has been given accordingly.

172. [**Issue 7b**] Sick pay from 20 January 2017-May 2018 in respect of 6 months full pay and 6 months half pay

173. The Tribunal had the benefit of the written and oral evidence of Ms Clare Tebbutt on this point, together with an Excel spreadsheet which contained the Claimant's complete payroll data from the Respondent's system.

174. It is clear from the respondent's "Sick Pay and Sick Pay Conditions Policy" which appeared beginning at page 119 of the bundle that employees are only entitled to Statutory Sick Pay (SSP) for first 12 months only. Thereafter they are entitled to full pay for six months followed by half rate sick pay for six months [120]. Note sick pay will be paid when the employee has been absent for a total of 12 months (with or without pay) in any period of four years.

175. There is an exception for "sick absence due to industrial injury or disease", when full rate sick pay will be paid. This is subject to a number of conditions, including that the injury or disease must have been accepted by the DWP (Department of Work & Pensions) as being due to an industrial accident, or classified as an industrial disease [123].

176. The evidence of Mr Zaman at KZ11 was "no accident report or near miss report was made as no accident or injury was reported". We saw no evidence of such an acceptance by the DWP. Accordingly this exception providing for full sick pay did not apply. The finding of the Tribunal is that the "normal" sick pay provision applies. In the Claimant's case, he was not entitled to anything more than SSP until 17 July 2017. Thereafter, we find, he received the contractual sick pay he was entitled to.

177. We accepted Ms Tebbutt's evidence which was that the Claimant was initially on statutory sick pay (SSP) starting on 21 January 2017 and thereafter on full sick pay for the period 21 July 2017, given that he had 12 months' employment history at this stage. By 19 January 2018 he had exhausted his sick pay entitlement, having by this stage been absent for 12 months.

178. It follows that we do not find that there is sick pay outstanding but unpaid.

179. [**Issue 7c**] Annual leave pay accrued on termination. – this has been conceded by the Respondent, and judgment given accordingly.

180. [**Issue 8**] & [**Issue 9**] it has not been necessary to deal with these issues, which were effectively waived by the Respondent.

Breach of Contract -S3 Extension of Jurisdiction Order 1994

181. Has the Respondent breached the Claimant's contract by failing to pay him wages that are outstanding on the termination of the employee's employment;

182. This dealt is with above.

Sick Pay

183. [**Issue 11.2**] Has the Respondent paid all to the Claimant all wages which are properly payable to him in respect of his sick pay for the sick pay absence which commenced on 20 January 2017.

184. [**Issue 11.3**] Is the Claimant's sick absence directly due to an industrial injury sustained or contracted at work.

185. These issues have been dealt with above.

186. The Respondent does not accept the Claimant's absence amounts to an industrial injury within the definition of the sick pay policy.

187. If so, is the Claimant entitled to have the first 26 weeks his absence ignored for the purposes of the maximum limits on sick pay across the 4 year calculation period?

188. If so, has the Claimant met the remaining conditions under which sick pay is paid under the Sick Pay and Sick Pay Conditions Policy? [123] the respondent's policy effective from 28 April 2012 [120] covering sick absence due to industrial injury or disease [123] contains the following:

> "The allowance of full rate sick pay the subject to all of the following conditions:
>
> … The injury or disease must be accepted by the DWP (Department of work & pensions, formerly the DSS) as being due to an industrial accident, or classified as an industrial disease
>
> …" –

189. The Tribunal has not been shown evidence by the Claimant demonstrating that this has been accepted by the DWP as being an industrial accident. We cannot see therefore that this requirement of the policy is fulfilled.

Holiday Pay

190. [**Issue 12**] Has the Respondent paid to the Claimant all wages that are properly payable to him in respect of outstanding holiday pay on termination of employment.

191. The Respondent accepts that the Claimant is owed 18.1 hours pay in respect of outstanding holiday pay. An award of holiday pay has been made to the Claimant as per the Respondent's concession above.

Race Discrimination

192. [**Issue 13**] Does the Tribunal have jurisdiction to hear the Claimant's claims in accordance with s123 Equality Act 2010

> 123 (a) a complaint 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 tribunal thinks just and equitable.
>
> In accordance with s123(3):
>
> a) Conduct extending over a period is to be treated as done at the end of this period
>
> b) Failure to do something is to be treated as occurring when the person in question decided on it.

193. We do not find that there was discriminatory conduct continuing over a period, or discriminatory conduct at all.

194. [**Issue 14**] If not, would it be just and equitable to extend the time limit, within such further period as the tribunal considers reasonable?

195. All but claims 15.14, 15.15, 15.17 and 15.18 are on the face of it out of time. The claim was submitted to the tribunal on 18 May 2018. The ACAS early conciliation notification was on 27 April 2018 and the early conciliation certificate is dated 27 April. Any claim relating to an act or omission prior to 28 January 2018 is out of time in the absence of a continuing act or an extension of time.

196. While there is an onus on the Claimant to show why time should be extended, and such an extension is exception rather than the rule, we have borne in mind that the Tribunal has a wide discretion as to extension of time in discrimination cases.

197. The Claimant has not put forward any reasons why the Tribunal should exercise its discretion under the "just and equitable" jurisdiction to extend time.

198. It might be said on his behalf that he was seeking to exhaust an internal grievance process. This would only apply for the periods 27 January 2017 to 17 February 2017 and 16 August 2017 to 27 November 2017.

199. Ultimately, we do not find that we should extend time in this case.

200. In the alternative however, if we are wrong in the exercise of our discretion, we have considered all allegations substantively below.

Direct Race Discrimination – s13 Equality Act 2010/ Harassments s26 Equality Act 2010

201. There was nothing put by the Claimant in cross examination that came even close to establishing an allegation of race discrimination, or even circumstances from which such an inference could be drawn. The Tribunal has

considered the matter in the round before coming to conclusions. In some cases evidence or conclusions in one allegation may be sufficient to consider that the burden of proof has been satisfied in other allegations. In this case that situation does not arise. What is striking is that there is no evidence from which an inference of race discrimination might reasonably be drawn in any of the allegations. Indeed the scattergun nature of the allegations about a variety of different people and in some instances relating to very trivial matters suggest that the Claimant is inclined to allege race discrimination on the basis of very little, in some cases because he simply did not understand why something had occurred.

202. [**Issue 15**] Whether the Respondent has treated the Claimant less favourably because of his race pursuant to s13 Equality Act 2010. Has the Respondent treated the Claimant less favourably because of his race by:

203. [**Issue 15.1**] failing to accept that the Claimant had been underpaid his overtime or pay the Claimant's wages after it was brought to the Respondent's attention by Barry Bamford in November 2016.

204. The Tribunal accepted that the Respondent drew to the Claimant's attention that he may have been underpaid his overtime (specifically Chris Pratt did this). Various managers and union representatives attempted to resolve how much was owed to the Claimant. It cannot be said that the Respondent failed to accept that the Claimant had been underpaid his overtime.

205. The failure to pay the overtime, ongoing until this hearing, at which an judgment was made in the Claimant's favour based on the Respondent's concession was because of a difficulty in agreeing the precise amount to be paid to the Claimant, and how this should be done.

206. As to the amount to be paid, one of the sticking points in the various attempts to resolve the amount of the unpaid overtime is that the Claimant apparently had a diary which contained information which would help to resolve it, but he refused to release the diary.

207. As to how the payment should be made, the previous Delivery Office Manager Mr Remington suggested that payment should be made in a series of weekly payments rather than one lump sum payment. It has been suggested by Mr Pratt that this was being done by Mr Remington to avoid paying 48 hours in any one week. This strikes the Tribunal as perhaps misguided, but a plausible explanation. We have not heard evidence from Mr Remington. In any event the weekly payments proposal seems not to have found favour with the Claimant who would not agree to it, given that he wanted to receive a lump sum. The position on the part of the Claimant is understandable, given that both sides accepted that he was owed the money.

208. A significant amount of energy seems to have been expended trying to resolve this matter, involving at various stages Derrick Remington, Delivery Officer Manager and his successor Barry Bamford; Andy Stock, a CWU Representative; Neil Mills who worked in the 'Book Room' (where overtime was signed for) and Clare Tebbutt who dealt with the initial grievance, and who

believed the matter had been resolved. It was also considered by Erica Wilkinson who dealt with the second grievance/compliant together with Paul Moffat a senior member of the CWU who represented the Claimant at that stage. The Claimant has made allegations of race discrimination against each of these individuals, save for Mr Remington.

209. The Claimant's attitude to the matter seems to have been suspicious of a variety of people whom the Tribunal finds were genuinely and honestly trying to resolve the matter. He made allegations of fraud, despite the fact that no one personally involved stood to gain by any underpayment and despite the fact that the underpayment arose from his own carelessness in failing to sign for each of the overtime shifts that he performed. This suspicion, together with the Claimant's reluctance to release evidence that might have helped to quantify the sum owed, seems to have made it difficult to resolve it.

210. Ultimately no agreement was reached to the exact amount and the timescale over which it would be paid.

211. The Respondent's solicitor then carried out their own analysis of the amount unpaid. The basis of the Respondent's concession at the Tribunal hearing was a pragmatic one to concede the maximum number hours claimed by the Claimant and at the maximum rate that might be claimed, rather than seeking to dispute these points in the interests of proportionality.

212. The Tribunal did not receive evidence nor any circumstances from which it might be inferred that race was the reason from the Claimant's treatment.

213. [**Issue 15.2**] Making phone calls on 4 October 2017 (two calls) 9.21am and at 6.30pm to the Claimant referring to the expiry of his working immigration visa and leaving messages regarding his immigration status.

214. The Claimant has not established who made these alleged telephone calls, what was said and certainly not established even a *prima facie* case that a discriminatory act occurred.

215. [**Issue 15.3**] The Respondent's employee Barry Bamford's comments regarding the Claimant not having a valid work visa on 14 June 2017 and by Chris Pratt on another date (TBC).

216. Both Mr Bamford and Mr Pratt had legitimate reasons for querying the visa status of the Claimant. In January 2017, when Mr Pratt spoke to the Claimant, his leave to remain and work in the UK was due to end on 11 February 2017. The Respondent was legally obliged to carry out checks and would have to dismiss the Claimant if he did not have the right to work in the UK. Both Mr Pratt and Mr Bamford were instructed by the Respondent's visa section to investigate the Claimant's status relating to working in the UK.

217. The Claimant has not established "less favourable treatment" nor facts from which we might conclude that discrimination had occurred. Failing to highlight to the Claimant that his immigration status was about to expire would have been a detriment. There was nothing in the communication about these

matters by the Respondent's local managers that we found amounted to less favourable treatment nor anything less than professional conduct.

218. [**Issue 15.4**] The Respondents allegedly failing to inform the Claimant of the existence of the P552 forms and how to fill them in on the outset of his training.

219. The Claimant's contention is that no one had explained to him how he should sign for overtime until November 2016 when this was done by Chris Pratt. His case is that the P552 over sign in form had not until this stage been drawn to his attention and that this failure was discrimination.

220. The Tribunal simply does not accept that the Claimant was unaware of the P552 forms until November 2016. He signed for overtime on the following dates: 18 July 2016 [406], 19 July 2016, 20 July 2016, 22 July 2016 (twice – once for "pressure" over time and the other for "absence" overtime), 26 July 2016, 30 July 2016, 2 August 2016, 3 August 2016, 4 August 2016, 5 August 2016, 6 August 2016, 11 August 2016, 16 August 2016, 17 August 2016, 18 August 2016, 26 August 2016 (twice, 30 August 2016, 1 September 2016, 6 September 2016, 10 September 2016, 13 September 2016, 14 September 2016, 15 September 2016, 22 September 2016, 28 September 2016, 29 September 2016, 1 October 2016 (twice), 5 October 2016, 17 October 2016, 21 October 2016, 22 October 2016, 28 October 2016, 2 November 2016, 16 November 2016, 18 December 2016, 19 November 2016, 21 November 2016 (twice), 22 November 2016, 23 November 2016, 25 November 2016, 26 November 2016, 29 November 2016, 2 December 2016 and 28 December 2016.

221. The Claimant did not satisfactorily answer any questions from either the Respondent's representative nor from the Tribunal about (i) how his signature came to be on so many of the overtime forms and (ii) how he claimed to be unaware of the existence of a form that he had signed on so many occasions. There is no basis to believe that anyone else would have benefitted from signing his name on the P552 forms. The only person the signature would be the Claimant himself since he would receive an overtime payment for that shift. The Tribunal considered that the threshold for establishing a fraud or forgery is high. Cogent evidence is required to come to such a conclusion. In fact we have received no evidence from any source suggesting that anyone other than the Claimant had signed these forms. We have found therefore that these were his signatures, which leads us to the conclusion that, contrary to his case, the Claimant was aware of the P552 forms and must therefore have been aware that there was an expectation that he would sign to indicate that he had performed an overtime shift.

222. The Claimant has failed to establish less favourable treatment. In any event, there is no evidence from which we might reasonably conclude that the Claimant's race had anything to do with his treatment.

223. [**Issue 15.5**] Clare Tebbutt failing to deal with the Claimant's grievance on 8 February 2017 by reaching an unfair conclusion and following and inadequate process (failing to properly investigate his grievance and/ or allow a right of accompaniment).

224. It is difficult to understand the Claimant based on an alleged failure to allow a right of accompaniment, given that the invitation letter dated 2 February 2017 [558) expressly set out that the Claimant had the right to be accompanied by a trade union representative or work colleagues, and at the meeting on 8 February Ms Tebbutt asked the Claimant if you wanted to have a companion present and he said he was "ok" to continue without.

225. Ms Tebbutt's interview notes with the Claimant on 8 February 2017 was reasonably detailed. The notes amount to 12 pages of close type. The Claimant was given the opportunity to check these notes, which he did not take up. Ms Tebbutt's reasons given for not pursuing the complaints set out in the two-page letter on 606 – 607 dated 17 February 2017 are cogent and in the opinion of the Tribunal reasonable in the circumstances.

226. We do not consider that the Claimant has established less favourable treatment, but in any event do not find that there is the necessary evidential basis from which we could find or infer that racial discrimination had occurred.

227. [**Issue 15.6**] On 25 April 2017 Barry Bamford and Catherine Kidson making an unnecessary and inappropriate visit to the Claimant's home address without union representative present.

228. The Tribunal accepted Mr Bamford's evidence that managers would make a home visit to check in in the case of any employee who is off sick and not keeping in contact. We accept Ms Kitson's evidence that the usual Respondent process is to agree with an employee whose absent for a long period the way that periodic contact is going to be maintained.

229. Mr Pratt wrote to the Claimant on 19 April 2017 highlighting that after phoning the Claimant on 12 April and 19 April the Claimant had not kept in touch with him and he had not been able to offer any support or discuss the Claimant's absence.

230. Given that this was not a disciplinary matter, we would not expect a trade union representative to be present. Nevertheless we note that in fact the Claimant's housing welfare officer Donna McGaw was present and Mr Bamford and Ms Kitson had no difficulty with this.

231. We do not find that the Claimant experienced less favourable treatment. We do not find that the Claimant's race had any effect on this treatment. Accordingly this claim fails.

232. [**Issue 15.7**] On 18 August 2017 the Claimant requesting signing on sheets from Barry Bamford and Neil Mills. Barry Bamford and Neil Mills not providing these to the Claimant as requested.

233. Mr Bamford and Mr Mills did not provide copies of the signing on sheets. This was because of the inordinate amount of time that would be required to redact the documents, to conceal data about other employees. This was due to concerns about data protection.

234. The Tribunal accepted the evidence of Mr Bamford at paragraph 47 of his witness statement. Mr Bamford suggested that the Claimant came into the office with his records and these could be compared with the time sheets to resolve the matter. The Claimant refused to do this.

235. We do not find that the Claimant's race had any effect on this treatment in this respect. Accordingly this claim fails.

236. [**Issue 15.8**] Andy Stock and Paul Moffat failing to provide the Claimant with signing on sheets on or about [a date to be confirmed].

237. Mr Stock is a local union official. His evidence was clear and we accepted it. He was not in a position to give the Claimant the signing on sheets. He did not have access to the sheets, this was confined to the book room and managers.

238. Mr Moffatt is a senior full time official of the union, based at head office, not the Luton Delivery Office. He did not have access to the signing on sheets and was not in a position to give them to the Claimant.

239. We do not find that there was less favourable treatment, nor did we find that the Claimant's race was the reason for his treatment.

240. [**Issue 15.9**] On 4 October 2017 at 9.21 am the Claimant received a strange/ unnecessary and unusual telephone call.

241. The Claimant has not established who made this alleged telephone call, what was said and certainly not established even a *prima facie* case that a discriminatory act occurred.

242. [**Issue 15.10**] On 5 October 2017 when the Claimant requested sight of his signing on sheets and Erica Wilkinson did not provide these.

243. Ms Wilkinson was an investigator rather than a local manager. At a meeting between the Claimant, Erica Wilkinson and Mr Moffatt (CWU representative), it was agreed that Mrs Wilkinson and Mr Moffatt would meet to go through the available information together and agree a figure for unpaid overtime (page 794). We accept the Respondent's case that the Claimant initially agreed this then subsequently changed his mind and amended the notes accordingly.

244. We find that the reason for the nondisclosure of the documents at this stage was genuinely a concern about data protection relating to other employee's data. The proposal for Ms Wilkinson and Mr Moffatt to go through the evidence rather than redacting a substantial number of documents was, we find, motivated by this concern and a desire to avoid a time-consuming exercise rather than the Claimant's race.

245. [**Issue 15.11**] On 5 October 2017 Mr Shawn St Clair sending the Claimant a false and threatening letter inviting him into a meeting at Luton Delivery Office.

246. We accept that this was based on a standard form template letter. We do not find that this was threatening, although we acknowledge that an invitation to

discuss matters that were being treated by an employer as potential gross misconduct would be extremely unwelcome.

247. The basis for the Claimant alleging that it was "false" seems to be part that it did not have a Royal Mail letterhead, which seems to have been remarked upon during one of Mr Adams' visits to the police station. We do not accept that this means that the content of the letter was false.

248. We have considered the situation of a hypothetical comparator who was sending the kind of correspondence that the Claimant have been sending. We find that such an individual might reasonably expect a disciplinary approach by the employer. We do not find therefore that this was less favourable treatment.

249. We accepted Mr St Clair's oral evidence that he and the Claimant had never met each other. There is no evidence that Mr St Clair knew the Claimant's race. We do not find that the reason for the letter being sent to the Claimant, nor the contents were because of his race.

250. [**Issue 15.12**] On 09 October 2017 at 17.55 pm the Claimant received a strange/ unnecessary and unusual telephone call from the Respondent to be particularised in due course.

251. The Claimant has not established who made this alleged telephone call, what was said and certainly not established even a *prima facie* case that a discriminatory act occurred.

252. [**Issue 15.13**] On 18 October 2017 Jennifer Bradshaw [should be Beardshaw] making comments at paragraph 45 of her interview notes when asked by Erica Wilkinson, "have you ever experienced this type of behaviour before whilst performing your current role". Jennifer Bradshaw responded "not like I was treated by Chris Adam. I have had unhappy and irate people when they don't have a valid visa but nothing as bad as it was on Friday".

253. We have considered the contemporary evidence, in particular paragraphs 34 – 45 of interview carried out on 7 November 2017 [890-891] in which Ms Beardshaw was describing events that took place on 18 October 2017.

254. The Tribunal had the benefit of hearing evidence from both the Claimant and Ms Beardshaw. We found the latter to be entirely straightforward as a witness and credible in her oral evidence. She explained the context of the conversation between the two of them was that she had called the Claimant back relating to a voicemail message left by the Claimant for her colleague Tracy Young. This was because Ms Young was not working on that day. We accept Ms Beardshaw's evidence that given the importance and potentially time critical nature of the immigration visa work, it was important to get back to employees promptly. It seems from the Claimant's oral evidence and the content and manner of his questions to Ms Beardshaw that he was particularly irked by the fact that Ms Beardshaw had called him back when he had left a message for Ms Young. He seemed to regard this with some suspicion. It seems to the Tribunal that this set the scene for what became a bad tempered conversation.

255. The Tribunal finds that the comments made by Ms Beardshaw in the interview on 7 November 2017 were no more than her honest recollection of the events of 18 October. We do not find that this is less treatment.

256. In any event, we do not find that the Claimant's race had any bearing on the way that Ms Beardshaw's gave her evidence to the internal investigation.

257. [**Issue 15.14**] On 23 January 2018 Mr Nazim Ali sending the Claimant a false and threatening letter. This letter was a letter inviting the Claimant in to meet with him to discuss the Claimant's ongoing absence.

258. The letter appears at 974. Again the Claimant places great significance on the absence of an official letterhead. As to threatening, this is described as an "informal" meeting to offer support. We cannot see how this could reasonably be thought to be threatening.

259. We accept the evidence of Mr Ali that this is a standard letter written by him based on a template in which he was requesting that the Claimant attend the meeting with him.

260. Mr Ali confirmed during his oral evidence that he was not even aware of the Claimant's race. He did of course know the Claimant's name. Chris Adams as a name does not particularly suggest an African origin or heritage.

261. We do not find that there was less favourable treatment. We do not find that the Claimant's race had any bearing in Mr Ali's treatment of the Claimant.

262. [**Issue 15.15**] On 9 February 2018 Mr Paul Julian sending the Claimant a false and threatening letter. The letter was an invite to a fact finding meeting to establish facts and determine whether any formal action was required under the conduct policy.

263. This letter appears at page 992. Again we do not find the absence of a Respondent letterhead means that this is a false letter. As to threatening, we acknowledge that an invitation to a fact finding meeting was capable of raising some concern in the mind of the recipient.

264. The Claimant has completely failed to establish any prima facie case for this being discriminatory because of race.

265. [**Issue 15.16**] Erica Wilkinson failing to deal with the Claimant's grievance properly.

266. Erica Wilkinson carried out a thorough investigation of the Claimant's bullying and harassment complaint. She interviewed the Claimant and 18 witnesses. She prepared a 48 page report which was sent to the Claimant on 22 November 2017. This covers each of the Claimant's complaints in detail.

267. Although we acknowledge that the Claimant disagreed with them, we find that her findings were permissible based on the evidence. We do not find that a conclusion that was unwelcome to him was in itself less favourable treatment

268. In any event we do not find that Ms Wilkinson treated the Claimant less favourably because of his race.

269. [**Issue 15.17**] The Respondent tampering with the Claimant's mail by opening the mail. On 10 March 2018 the Claimant posted a Special Delivery to his solicitors. This did not arrive until 13 March 2018 when it should have arrived on 12 March 2018

270. The Claimant presented no cogent evidence to support a serious allegation, potentially a criminal offence. Interfering or even delaying the mail can be a criminal offence. He can provide no evidence as to who may have done this. The only evidence is the claimant's assertion that the letter arrived a day late. There is no evidence that the letter may have been opened or otherwise interfered with.

271. We accept the Respondent's submission that special delivery mail should arrive on the day after posting but that it is not unprecedented for it to be late.

272. Even if the Claimant is correct that the letter may have been delivered late there is nothing to suggest that this has anything to do with the Claimant's race. The Tribunal would be required to examine the motivation for processes (conscious or subconscious) of a particular individual or group of individuals. There is no evidential basis for us to do this.

273. [**Issue 15.18**] The dismissal on 18 May 2018.

274. Due to the failure of the Claimant to engage with the disciplinary process at all, despite repeated attempts on the part of the Respondent, the Claimant never met Mr Wheeler as part of the process leading to dismissal.

275. Intriguingly during the Claimant's own oral evidence when asked about Mr Wheeler he said "I don't know if it's the right David Wheeler". It became clear during the evidence of Mr Wheeler that it was the same David Wheeler that the Claimant knew. It was also clear from their interactions, which were cordial, that the two of them had some sort of shared history. Neither the Claimant nor Mr Wheeler, although alluding to it, explain what the shared history was. It was not however suggested that the Claimant had experienced discriminatory conduct from Mr Wheeler on some earlier occasion.

276. The Claimant said of the Mr Wheeler that he knew "we are very good friends" and also "I have been treated very badly – I'm not pointing the finger at David Wheeler for racism". Based on these admissions, as well as the absence of evidence for the Claimant's race being a factor in his dismissal, this claim does not succeed.

277. [**Issue 16**] Do any of these alleged acts amount to less favourable treatment.

278. [**Issue 17**] If yes, whether this less favourable treatment was because of race.

279. We have dealt with these points separately for each allegation above.

280. [**Issue 18**] In accordance with s23 Equality Act 2010 the Claimant needs to show that they have been treated less favourably than a real or hypothetical comparator whose circumstances are not materially different to his.

281. We have considered the circumstances of a hypothetical comparator in our deliberations where this has assisted us.

Harassment s27 Equality Act 2010

282. [**Issue 19.1**] The Claimant seeks to rely on all matters set out at paragraph 15

283. [**Issue 19.2**] Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

284. For similar reasoning to that set out above in respect of "less favourable treatment" in the direct discrimination claim, we do not find that any of the circumstances above were objectively capable of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

285. [**Issue 19.3**] Is so was this harassment because of race?

286. We have reminded ourselves, based on the statutory language of section 26, that the relevant requirement is for the harassment to be related to the protected characteristic, in this case race. This is a looser formulation than "because of".

287. Even taking account of this looser formulation, we do not find that there is the necessary connection to the protected characteristic of race. For similar reasons to those given above with regard to the direct discrimination case, we do not find that any of the conduct related to the Claimant's race.

Victimisation s27 Equality Act 2010

288. Notwithstanding the conclusion in the Respondent's internal investigation by Ms Wilkinson that there was an absence of good faith, the Respondent has not sought to contend that absence of good faith amounts to a defence under section 27(3) Equality Act 2010 to the allegations of victimisation.

289. [**Issue 20**] The Claimant asserts that the protected act is the complaint that he was bullied and harassed and/or subjected to unfavourable treatment because of race.

290. [**Issue 21**] The Claimant seeks to rely on all matters set out at paragraph 15.

291. The Tribunal finds that the only such matter which amounts to a detriment for the purposes of the victimisation claim is the dismissal, which on any view is detrimental treatment.

292. For the similar reasons to those given above in the analysis of less favourable treatment in the context of the direct discrimination claim, we do not find that any of the other allegations at 15.1-15.17 amount to detrimental treatment.

293. [**Issue 22**] The Claimant alleges protected acts were made in the grievances of 8 February 2017 [574] and 4 October 2017 [786] and the first Employment Tribunal claim on 18 May 2018 [1].

294. The comments made by the Claimant on 8 February 2017, during the grievance investigation interview with Mrs Tebbutt, in essence that he had felt pressurised by Khalid and suspected that this related to being a black man, we find did amount to a protected act.

295. As to 4 October 2017 in the agreed list of issues, this date relates to an investigation interview as part of the Claimant's allegation of harassment, being conducted by Erica Wilkinson. At page 786, there is a reference to comments made by the Claimant on 16 August 2017 to the Respondent's "Just Say It" team relating to letters sent to Claire Tebbutt, Barry Bamford and Vince Hammond (CWU branch Chairman). We have taken this to be a reference to the email sent to Ms Tebbutt on 10 August 2017, an email sent to Mr Bamford on 14 August 2017 which were protected acts.

296. We have noted that there were a number of other communications from the Claimant which amounted to protected acts, but which were not relied upon in the claim as distilled into the list of issues. The list of issues was framed at two case management hearings at a time when the Claimant was represented by a solicitor and counsel, and this was the basis on which the evidence had been prepared. In those circumstances we considered but did not think it appropriate to invite the Claimant to apply to amend or expand his claim. It would not have made a difference to our ultimate conclusion in any event.

297. [**Issue 23**] Was the Claimant treated less favourably because he had made such protected acts?

298. We find that the decision to dismiss was made before the Respondent had any notice of the claim, given that the decision to dismiss is to have been made on 10 May 2018 and the claim was not presented until 18 May 2018. In fact according to the Tribunal file the notice of claim was not sent until 22 May 2018. There is no evidence that the dismissing manager Mr Wheeler was aware of the claim to the Employment Tribunal before taking the decision to dismiss.

299. As whether the dismissal in May 2018 was because of the protected acts in February and August 2017 the Tribunal considered whether the Claimant has satisfied the initial burden of proof on him. Is there evidence from which the tribunal could, absence an explanation from the Respondent, conclude that the reason for the dismissal were the protected acts?

300. It is clear that some of the Royal Mail's witnesses were unhappy about the Claimant's allegations of race discrimination, in particular Mr Bamford and Ms Tebbutt.

301. In the circumstances we find that a Tribunal could conclude that the dismissal was an act of victimisation. We considered that the initial burden of proof in respect of this claim was discharged.

302. We have had to consider the Respondent's explanation, and the rationale of Mr Wheeler as dismissing manager.

303. We accept the Respondent's submission that the Claimant's allegations of race discrimination were false. We have come to the same conclusion. We have reminded ourselves in respect of victimisation however that a false allegation made in good faith is nevertheless a protected act.

304. The Claimant's good faith in making these false allegations however have not been challenged in these proceedings. The effect is that these are protected acts.

Whether matters separable from protected act the reason

305. We have concluded that the following matters made the reason for dismissal "separable" from the protected act.

306. First, the Respondent, reasonably, concluded that the bullying & harassment complaint and allegations of racism were made not in good faith against eight separate employees of the respondent.

307. Secondly, the Respondent's finding that Claimant was verbally abusive and disrespectful to Jennifer Beardshaw in the vetting team.

308. Third, that he communicated inappropriately, rudely and disrespectfully with Mr Bamford in the period August 2017 to February 2018, which included inter alia, accused him of lying and making allegations of fraud when the Respondent's own management drew to his attention that he was under-claiming for overtime, and try to work with him to resolve it. This serious allegation was made when in fact the problem arose from his own carelessness.

309. Fourthly, he completely failed to engage with the disciplinary process which was his opportunity to provide an explanation or evidence of discrimination. In the circumstances this failure to engage tended to support the conclusion that he had made allegations not in good faith.

310. We accept the Respondent's submission that this case in one in which his conduct and the reason for dismissal can properly be separable from the protected act.

311. We consider that the Respondent was not simply reacting to intemperate language or inaccurate statements. The Claimant was verbally abusive. The Claimant made serious and false allegations that went outside of allegations of race discrimination. We accept Mr Wheeler's evidence of the reasons why he

took the decision to dismiss, and find that these were properly separable from the protected acts.

312. Accordingly the claim of victimisation fails.

Employment Judge Adkin

Date 10.5.21

WRITTEN REASONS SENT TO THE PARTIES ON

.11/05/2021

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant (s) and respondent(s) in a case.

**SCHEDULE OF ISSUES: ADAMS V ROYAL MAIL GROUP LTD**

**SUMMARY – UPDATED 2 OCTOBER 2019**

1 The Claimant was employed as an Operational Postal Grade (OPG) at Luton Delivery Office. The Claimant commenced his employment on 18 July 2016. The Claimant's contract of employment terminated on 18 May 2018.

2 The Claimant brings claims for;

2.1 Automatically unfair dismissal for assertion of a statutory right s104 Employment Rights Act 1996

2.2 Unlawful deduction of wages s13 Employment Rights Act

2.3 Breach of Contract s3 Extension of Jurisdiction Order 1994

2.4 Direct Race Discrimination s13 Equality Act 2010

2.5 Harassment s26 Equality Act 2010

2.6 Victimisation s27 Equality Act 2010

**A: Unfair Dismissal**

3 Did the Claimant bring proceedings against the Respondent to enforce a statutory right? The Claimant relies upon s13 ERA 1996; s13 EA 2010; s25 EA 2010 and/or s27 EA 2010.

4 Did the Claimant make an assertion had been made that the Respondent has infringed a right which is a relevant statutory right ? Under s104(1)(6) it is alleged that the Claimant alleged the employer had infringed the right on : 6 January 2017; 10 January 2017; 12 January 2017; 11 February 2017; 3 August 2017 and 7 November 2017 and / or brought proceedings via the first Employment Tribunal claim on the 18 May 2018.

5 Did the Claimant make the assertions in good faith?

6 Whether the reason ( or principal reason) for the dismissal because the Claimant had made an assertion that his statutory right had been infringed and/or had brought brought proceedings (The Respondent's case is that the Claimant was dismissed because of his conduct).

**Unlawful Deduction of Wages s13 / s23 Employment Rights Act 1996**

7 The Claimant's case is that there were unlawful deductions from his wages in breach of s13 ERA 1996 in that he was not properly paid wages in respect of ;

a) His 136 hours of alleged overtime up to December 2016
b) Sick pay from 20 January 2017-May 2018 in respect of 6 months full pay and 6 months half pay and/or
c) Annual leave pay accrued on termination.

8 Does the Tribunal have jurisdiction to hear the Claimant's claims for unlawful deduction of wages of his alleged non payment of overtime?

9 Pursuant to s.23(2) was the complaint presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made?

In respect of a series of deductions the date starts to run from the last deduction or payment in series. The Deduction from Wages (Limitation) Regulations 2014 (SI 2014/3322) limits the period for which any claim for deductions can be made to two years.

Is the Tribunal satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of three months and the complaint was presented within such further period as the tribunal considers reasonable?

10 Has the Respondent paid to the Claimant all the wages that are properly payable to him in respect of his a) his overtime b) sick pay and/or c) his annual leave?

**Breach of Contract -S3 Extension of Jurisdiction Order 1994**

11 Has the Respondent breached the Claimant's contract by failing to pay him wages that are outstanding on the termination of the employee's employment;

**Outstanding wages from 18 July 2016- December 2016**

11.1.1 Are wages in respect of unpaid overtime outstanding on termination of his employment?

The Respondent admits that the Claimant is owed 104.63 hours wages and this sum has been offered to the Claimant. Following payment of this sum has the Respondent paid to the Claimant all the wages that are properly payable to him in respect of his overtime.

**Sick Pay**

11.2 Has the Respondent paid all to the Claimant all wages which are properly payable to him in respect of his sick pay for the sick pay absence which commenced on **20 January 2017.** [The Claimant's case is that the absence was due to an industrial injury sustained at work and therefore attracts 12 months full rate sick pay]

11.3 Is the Claimant's sick absence directly due to an industrial injury sustained or contracted at work. The Respondent does not accept the Claimant's absence amounts to an industrial injury.

11.4 If so, is the Claimant entitled to have the first 26 weeks his absence ignored for the purposes of the maximum limits on sick pay across the 4 year calculation period?

11.5 If so, has the Claimant met the remaining conditions under which sick pay is paid under the Sick Pay and Sick Pay Conditions Policy?

12 **Holiday Pay**

12.1 Has the Respondent paid to the Claimant all wages that are properly payable to him in respect of outstanding holiday pay on termination of employment.

The Respondent accepts that the Claimant is owed 18.1 hours pay in respect of outstanding holiday pay. This sum has been offered to the Claimant.

**Race Discrimination**

13 Does the Tribunal have jurisdiction to hear the Claimant's claims In accordance with s123 Equality Act 2010

123 (a) a complaint 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 tribunal thinks just and equitable.

In accordance with s123(3):
a) Conduct extending over a period is to be treated as done at the end of this period
b) Failure to do something is to be treated as occurring when the person in question decided on it.

14 If not, would it be just and equitable to extend the time limit, within such further period as the tribunal considers reasonable?

**Direct Race Discrimination – s13 Equality Act 2010/ Harassments s26 Equality Act 2010**

15 Whether the Respondent has treated the Claimant less favourably because of his race pursuant to s13 Equality Act 2010. Has the Respondent treated the Claimant less favourably because of his race by;

15.1 failing to accept that the Claimant had been underpaid his overtime or pay the Claimant's wages after it was brought to the Respondent's attention by Barry Bamford in November 2016.

15.2 Making phone calls on 4 October 2017 ( two calls) 9.21am and 17.55pm and on 9 October 2017 at 6.30pm to the Claimant referring to the expiry of his working immigration visa and leaving messages regarding his immigration status.

15.3 The Respondent's employee Barry Bamford's comments regarding the Claimant not having a valid work visa on 14 June 2017 and by Chris Pratt on another date (TBC).

15.4 The Respondents allegedly failing to inform the Claimant of the existence of the P552 forms and how to fill them in on the outset of his training.

15.5 Clare Tebbutt failing to deal with the Claimant's grievance on 8 February 2017 by reaching an unfair conclusion and following and inadequate process ( failing to properly investigate his grievance and/ or allow a right of accompaniment).

15.6 On 25 April 2017 Barry Bamford and Catherine Kidson making an unnecessary and inappropriate visit to the Claimant's home address without union representative present.

15.7 On 18 August 2017 the Claimant requesting signing on sheets from Barry Bamford and Neil Mills. Barry Bamford and Neil Mills not providing these to the Claimant as requested.

15.8 Andy Stock and Paul Moffat failing to provide the Claimant with signing on sheets on or about a date to be confirmed.

15.9 On 4 October 2017 at 9.21 am the Claimant received a strange/ unnecessary and unusual telephone call, to be particularised in due course.

15.10 On 5 October 2017 when the Claimant requested sight of his signing on sheets and Erica Wilkinson she did not provide these.

15.11 On 5 October 2017 Mr Shawn St Clair sending the Claimant a false and threatening letter inviting him into a meeting at Luton Delivery Office. This letter was an invitation into a conduct meeting to discuss conduct of unacceptable internal behaviour and bullying and harassment, following the Claimant's emails to RMG employees.

15.12 On 09 October 2017 at 17.55 pm the Claimant received a strange/ unnecessary and unusual telephone call from the Respondent to be particularised in due course.

15.13 On 18 October 2017 Jennifer Bradshaw making comments at paragraph 45 of her interview notes when asked by Erica Wilkinson, "*have you ever experienced this type of behaviour before whilst performing your current role". Jennifer Bradshaw responded " not like I was treated by Chris Adam. I have had unhappy and irate people when they don't have a valid visa but nothing as bad as it was on Friday".*

15.14 On 23 January 2018 Mr Nazim Ali sending the Claimant a false and threatening letter. This letter was a letter inviting the Claimant in to meet with him to discuss the Claimant's ongoing absence.

15.15 On 9 February 2018 Mr Paul Julian sending the Claimant a false and threatening letter. The letter was an invite to a fact finding meeting to establish facts and determine whether any formal action was required under the conduct policy.

15.16 Erica Wilkinson failing to deal with the Claimant's grievance properly.

15.17 The Respondent tampering with the Claimant's mail by opening the mail. On 10 March 2018 the Claimant posted a Special Delivery to his solicitors. This

did not arrive until 13 March 2018 when it should have arrived on 12 March 2018

15.18 The dismissal on 18 May 2018.

16 Do any of these alleged acts amount to less favourable treatment.

17 If yes, whether this less favourable treatment was because of race.

18 In accordance with s23 Equality Act 2010 the Claimant need to show that they have been treated less favourably than a real or hypothetical comparator whose circumstances are not materially different to his.

19 **Harassment s27 Equality Act 2010**

19.1 The Claimant seeks to rely on all matters set out at paragraph 15

19.2 Did the conduct have the purpose or ( taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

19.3 Is so was this harassment because of race?

**Victimisation s27 Equality Act 2010**

20 The Claimant asserts that the protected act is the complaint that he was bullied and harassed and/or subjected to unfavourable treatment because of race.

21 The Claimant seeks to rely on all matters set out at paragraph 15.

22 The Claimant alleges protected acts were made in the grievances of 8 February 2017 and 4 October 2017 and the first Employment Tribunal claim on 18 May 2018.

23 Was the Claimant treated less favourably because he had made such protected acts?