



EMPLOYMENT TRIBUNALS

Claimant: Ms M Acheampong
Respondents: Supporting Young Futures Limited
Heard at: East London Hearing Centre
On: 16, 17 and 18 March 2022
Before: Employment Judge W A Allen QC
Members: Mr Rowe
Mr Webb

Representation

Claimant: In person
Respondent: Simon Hoyle

Judgment

1. **The claimant's claims of direct race discrimination, race related harassment and victimisation are dismissed.**

Reasons

1. The correct name of the respondent was clarified as Supporting Young Futures Limited.
2. On 3 August 2020, the claimant presented his claim for race discrimination by ET1 claim form, following a period of early conciliation between 30 June 2020 and 30 July 2020. The parties agreed that any individual act of discrimination prior to 30 March 2020 would be out of time (subject to any argument about a continuing act or a just and equitable extension of time).
3. The Tribunal heard evidence from the claimant and for the respondent from: Peter Brown, Managing Director; Sharron Erinle, Outreach Manager (the Claimant's line manager); and Joseph Desbleds, formerly employed by the respondent as a Support Worker. Mr Desbleds attendance was secured by means of a witness order made on 16 March 2020, on application by the respondent.

4. Case management orders had been made at a case management preliminary hearing on 14 December 2020 heard by EJ Housego. The claimant's claim had not been clearly pleaded and on 21 January 2021, he gave further and better particulars by way of answers to specific question posed by EJ Housego and set out in the record of the 14 December 2020 preliminary hearing. The respondent did not take up the opportunity offered in that record to object to any of the claimant's further and better particulars on the basis that they were not articulated in the original claim form and at the hearing, following discussion, the parties agreed that the issues (as derived from the claimant's document of 21 January 2021) were as follows:

1. Harassment related to race:

- a. In February / March 2020 Peter Brown made a comment to C that a black African service user 'probably eats them back home'
- b. In mid 2019 Selina Broomes saying C likes money too much

Both comments are said to be offensive stereotypical views of black African people

2. Direct discrimination

- a. Selena Broomes complaining of C's use of the toilet prior to December 2019
- b. Selena Broomes wrongly blaming C for not managing an IT incident prior to December 2019
- c. Peter Brown failing to deal with complaints about Selena Broomes after December 2019
- d. Darren Henry removing letters addressed to C from a home in February 2020
- e. Peter Brown failing to deal with complaints about Darren Henry after February 2020
- f. Peter Brown raising a complaint against C from a service user and complaining to C's manager in February 2020
- g. Peter Brown refusing C's request to complete Level 5 training – compared with Darren Henry being supported in relation to similar training
- h. C not being given an opportunity to get a role as a Senior Support Worker / Floating Support Worker ultimately given to Darren Henry in or after April 2019
- i. C's extra shifts were withdrawn in May 2020

All of these matters are said to be less favourable treatment than the treatment that would have been given to a comparable non-black African worker. The treatment is said to have occurred because the Claimant was a black African worker.

3. Victimisation

- a. The protected act is said to have been the email of 3 March 2020 [97]
- b. The act of victimisation is said to have been Peter Brown raising a complaint against C from a service user and complaining to C's manager in February 2020
- c. The act is victimisation is said to have occurred because of the protect act

4. Time Limits:

- a. The ACAS early conciliation period was 30 June 2020 to 30 July 2020
- b. The claim was presented on 3 August 2020
- c. Any act prior to 30 March 2020 is out of time as an individual act
- d. Were the Respondent's actions part of a continuing act with acts which were in time?
- e. Is it just and equitable to extend time?

5. The respondent failed to comply with the tribunal's order that it send a digital copy of the hearing bundle to the tribunal at least 2 working days before the hearing. The respondent did not ever supply the tribunal with a digital copy of the bundle despite being chased by the tribunal shortly before the hearing date. The tribunal had to rely on the claimant for a copy of the bundle. The 226 page bundle in the possession of the claimant (which was the only version of the bundle sent to him by the respondent) was sent by the claimant on the first day of the hearing to the respondent's representative at the request of the tribunal and the respondent indicated that it would rely on that bundle. Even that bundle contained the wrong ET1 and the wrong ACAS early conciliation certificate and the tribunal had to send to the parties the correct ET1 on the first day of the hearing. On the 2nd day of the hearing, the tribunal, with the agreement of the claimant, permitted the respondent to produce a further 12-page bundle of documents, labelled A1 to A12.

6. The respondent failed to comply with the tribunal's orders that it provide the tribunal with a chronology and a list of key people and a list of key documents. These failures were not rectified even after it was pointed out to the Respondent's representative at the hearing. This was a case in which a chronology in particular, would have been very useful to the tribunal.

7. The respondent failed to comply with the order to send digital copies of its witness statements to the tribunal at least 2 days before the hearing.

8. The respondent was sent a notice of hearing that stated that the hearing was to take place by CVP but instead turned up in person at the hearing, which caused delay to the start of the hearing.

9. The tribunal heard evidence and submissions until the morning of day three (18 March 2022) and then reserved its decision.

Relevant findings of fact

10. The respondent, Supporting Young Futures Limited, is a private limited company which provides housing and outreach support to young people referred to it by the London Boroughs of Waltham Forest, Islington, Reading, Newham, Lewisham, Greenwich and Havering. Some of those young people are asylum seekers from a range of backgrounds. Peter Brown is the Director and principal shareholder of the respondent. Mr Brown told the tribunal that each local authority was responsible for regulation, monitoring and inspection of the Respondent and its facilities. The respondent's representative additionally told the tribunal in submissions that the respondent was regulated by Ofsted – although we were not presented with any evidence to that effect.

11. Mr Brown told the tribunal that there were about 36 people working for the Respondent, of whom all but two were employed: the claimant, engaged as a contractor; and the Outreach Manager, who was engaged via a personal service company. Mr Brown told the tribunal that 'under HMRC rules, he [the Claimant] is an employee'.

12. The claimant started working at the respondent on 12 February 2016 as a support worker. From some point in 2017, by agreement, the claimant was paid as a contractor, responsible for his own tax and national insurance. However, Mr Brown's evidence was that he was uncertain as to the claimant's employment status and in particular whether or not he was an employee. During cross examination of the claimant, the respondent's representative raised a query as to the claimant's employment status, however upon reflection the respondent's representative accepted that the claimant was an 'employee' within the extended definition in s83(2) Equality Act 2010 and that no jurisdictional issue arose on that basis.

13. The respondent went through a wide-ranging organisational change in 2017. That was the only occasion on which internal vacancies at the respondent were internally advertised within the relevant period. When asked by the tribunal as to why vacancies were not at least internally advertised at other times, Mr Brown responded that 'maybe I could have done that, we've never internally advertised like that, it's not something that I'd thought of'.

14. The claimant's work as a support worker was well regarded and we have seen a number of examples of praise for his work from external agencies.

15. During his oral evidence, the claimant said clearly that he had not previously brought an employment tribunal claim. However, the next day, he accepted that that evidence was not true. The members of the tribunal were unimpressed with the claimant's behaviour in telling them something that was not true. They did not accept that his explanation (that he thought that a confidentiality agreement meant that he could not tell us about it) was a good explanation. The tribunal took this into account when considering the credibility of the claimant in general.

16. Although not one of the issues in the case, the claimant alleged in his witness statement that in 2017, Mr Brown made a comment about the consumption of rodents in that, after the claimant reported finding a dead rodent in the basement of one of the respondent's residential homes, Mr Brown allegedly told the claimant to tell a black African female former employee to 'get the dead rodent, season it, cook it and then eat it.' The respondent's representative did not challenge the claimant on that part of his witness statement. However, when the claimant put the accusation to Mr Brown in cross examination, Mr Brown denied that he had said that. Given it had not been put to the claimant, the tribunal found it impossible to make a finding of fact as to whether or not this incident had occurred as recounted in detail in the claimant's witness statement.

17. Again, although not a direct issue in the case, the claimant sought to rely on background evidence relating to Greg Williams, who the claimant says was of Caribbean background, who was promoted to Senior Worker at Woodlands in September 2018. The claimant said that this appointment of Mr Williams was made without any internal advertising of the position. Mr Brown accepted that there had been no internal notification of the position given to Mr Williams but stated that Mr Williams had, prior to the 2017 reorganisation, been in a more senior position and therefore when this position arose, he was considered the best fit.

18. In April 2019, Darren Henry, who is of a black Caribbean background, was promoted from support worker to senior support worker (issues 2(h)). There was no internal advertisement of the post. In cross examination of the claimant, the respondent's representative suggested that the reason for the preferment of Mr Henry was that he was an employee and the claimant was a contractor. However, in the oral evidence of Mr Brown, he told the tribunal that the reason that Mr Henry got the job was that he was good at dealing one to one with young people, he had a good record and reputation and was flexible and quick to learn, he had volunteered for responsibility above his previous pay scale, he was a team player who had shown that he could deal with challenging situations and he worked well with people, and he was open to criticism. Mr Brown contrasted his view of Mr Henry with his view of the claimant, who he considered to be someone who created a disruptive atmosphere, who spent a lot of time challenging others, who could be hostile towards colleagues and in relation to whom he could not see how he could transfer to a position where he was managing staff, which would require him to mentor and bring out the best in them. The tribunal accepted the evidence of Mr Brown in this regard. It was detailed and came across as his truthful assessment of the relative merits of Mr Henry and the claimant.

19. In mid-2019, the claimant's evidence in his witness statement was that the Service Manager, Selena Broomes had made a comment that he had been using the staff toilet (issue 2(a)); and also, that she had said that he liked money too much (issue 1(b)). Selena Broomes was not called to give evidence by the Respondent and it was not suggested to the claimant in cross examination that these comments had not been made. On balance the tribunal therefore concluded that the comments had been made. However, the tribunal could not conclude that the comment about the toilet was made because of race or that the comment about liking money was related to race. There was no contextual evidence before the tribunal that would have enabled the tribunal to find that race might have been a factor in relation to either matter.

20. Another issue in the list of issues was that Selena Broomes had wrongly blamed the claimant for not managing an IT incident in 2019 (issue 2(b)). The claimant did not present any evidence to the tribunal about that matter and therefore the tribunal cannot find that it happened.

21. In any event the accusations relating to Selena Broomes were considerably out of time as individual acts.

22. In September 2019, at Mr Brown's request, the claimant faked first aid training certificates for the claimant, Mr Brown and other employees of the respondent, prior to a local authority inspection. Both the claimant and Mr Brown accepted that this had happened. A great deal of emphasis was placed on this matter by the respondent's representative, who suggested that it went to the claimant's credibility. The tribunal considered that the responsibility for making such a request in fact lay primarily with Mr Brown and that it was a factor in the tribunal's assessment of the credibility of the evidence of both the claimant and Mr Brown.

23. It was alleged that Mr Brown had failed to deal with the claimant's complaint about Selena Broomes (issue 2(c)). A complaint or complaints had clearly been made by the claimant and Mr Brown was attempting to find a solution (albeit not as swiftly as the claimant would have wished). On 23 December 2019, the claimant emailed Mr Brown stating:

Thank you for your email. I feel that this matter was not dealt with as quickly as expected as the feelings of being "singled out" and "bullied" by Selena Broomes have dragged on for too long without being resolved.

Therefore, I would like to leave this matter for now and should the past issues resurface then I will raise all necessary points including past issues that were not dealt with in the initial stages.

24. Mr Brown responded later on the same day, stating:

I have noted that you have decided not to pursue any grievance but if you feel the need to in the future then you will do so.

I would like to reassure you that all grievances and complaints are taken seriously by SYF and will be managed with care and sensitivity. This I hope will put your mind at rest and encourage you to speak freely if you feel there is a need to do so.

25. The claimant changed his position by 14 January 2020 when he emailed Mr Brown:

Thank you for your email. After yesterday's attempt to behave in a more professional manner after your encouraging request, I now believe that a formal meeting will be needed to move forward and the issues I had with the Service Manager now need to be addressed formally. If this cannot be done, then I would like to raise a grievance with the Service Manager and if I do not feel the matter is settled then, I will seek further advice to get the matter resolved as I do not want any more tension in the working environment.

26. However, there was a further shift in that by 29 April 2020, the claimant stated by email:

Thank you for your email and clarification as it was verbally discussed to not pursue my grievance with the Service Manager and let things go.

27. And yet further in an email dated 9 June 2020, the claimant was indicating that he was still unhappy with the treatment of his concerns about Selena Broomes.

28. There had been a history of a poor relationship between the claimant and Mr Henry. In October 2019 there was an attempt at a mediation meeting involving Mr Brown.

29. By email on 10 December 2019, the claimant emailed Mr Brown, copied to his supervisor, Ms Erinle, with the subject line 'Level 5 Diploma in Leadership for Health & Social Care' and stating as follows:

I would like to express my interest for enrolment on the above course and hopefully begin the course after the New Year.

30. Mr Brown replied to the claimant on 29 December 2019, again copied to Ms Erinle, as follows:

This will need to be discussed with your Supervisor and if agreed then your supervisor will present the case to me. The management course requires you to be involved in management task, duties and responsibilities which your current role does not, therefore, this maybe a significant issue.

31. Ms Erinle's evidence to the tribunal was that the claimant did not subsequently approach her to discuss the Level 5 accreditation.

32. As stated above, Mr Henry has been promoted to senior support worker in or about April 2019 and Mr Henry was awarded a Level 5 BTEC Diploma in December 2021.

33. The claimant contrasted his treatment in relation to training with that which he believed to have been offered to Mr Henry (issue 2(g)).

34. The Tribunal accepted Mr Brown's evidence that Mr Henry was managing people and that therefore a Level 5 qualification was a useful qualification for him to obtain for the benefit of the organisation. The claimant was not in a supervisory role and therefore he would have needed to persuade his line manager that supporting him to obtain such a qualification would have been beneficial for the organisation. The Tribunal accepted Ms Erinle's evidence that the claimant did not discuss it with her.

35. In mid-February 2020, the claimant was sent some photographs of a mouse that a young resident of African origin had killed with a broom. The claimant forwarded the photographs to Mr Brown who responded: "He probably eats them back home". The claimant responded to this comment with a 'crying with laughter' emoji. There are two versions of the exchange of messages in the bundle. In the one provided by the claimant, the emoji is not present. However, the claimant accepted that he had sent the emoji. Mr Brown accepted that he had made the comment and stated that it was not related to any particular nationality but meant to be a joke.

36. In late February 2020, Mr Henry removed some letters sent to the workplace addressed to the claimant. These letters were work related and not personal correspondence. They concerned services that were being provided to the property operated by the respondent. The claimant wrote to Mr Henry complaining about this by email dated 3 March 2020, copied to Mr Brown, Ms Broomes and Ms Erinle. That email is the alleged protected act that the claimant relies upon for his victimisation claim. The tribunal found that the email does not expressly or implicitly reference race or discrimination or a breach of the Equality Act.

37. In April 2020 the claimant did some extra shifts at Woodland Garden. On 29 April 2020 he wrote to Mr Brown, copied to Ms Erinle, raising an issue about him not having been put down for these shifts for May 2020 (issue 2(i)). Mr Brown responded on the same day that there had been nothing in writing about those shifts and the claimant. In his response to Mr Brown, the claimant seems to suggest that his agreement to let things go in relation to his grievance about the Service Manager, Ms Broomes, was in some way connected to him being given those shifts. The claimant also asserted this in his response to specific questions which had been posed in the record of EJ Housego's case management hearing. The tribunal concluded that the claimant had repeatedly indicated that he wished to complain about Ms Broomes, then that he wishes to withdraw his complaints and then that he had changed his mind about the withdrawal.

38. Ms Erinle's compelling evidence was that there had been no agreement that the claimant would have any ongoing right to such extra shifts and that they were not taken away from him as he now asserts but that there were a number of bank workers who needed to be given shifts from time to time if their allegiance to the respondent was to be maintained and that the respondent would have ensured that they were given any extra work available on a fair basis. She contrasted the claimant's position, where he was already on a 40-hour contract, with that of the bank workers and the tribunal accepted her evidence that she considered that it would not have been fair to give the claimant extra shifts when bank workers without guaranteed hours were looking for work. Ms Erinle was clearly horrified when she was asked whether race was a factor in the allocation of such shifts to different

workers. The tribunal was impressed by her and accepted that the evidence that she gave to the tribunal was truthful.

39. The claimant alleges that Mr Brown failed to deal with his complaints about Darren Henry after February 2020 (issue 2(e)). However, following an email from the claimant about Mr Henry on 18 May 2020, Mr Brown did organise for a grievance to be investigated by a consultant from Peninsula, the respondent's externally contracted HR support. The claimant was informed by letter dated 21 May 2020 from Mr Brown which stated:

I write further to our recent correspondence and acknowledge that you have outlined several concerns that you have and I feel it would be appropriate to address these matters through the Company's formal grievance procedure.

I am therefore writing to inform you that an impartial Face2Face Consultant from Peninsula will hear your grievance on Wednesday 27th May 2020 at 11:00am by video conference. The hearing will be audio-recorded and a copy of the transcript will be made available to you.

For ease of reference, I have briefly summarised your issues/concerns below:

1. You feel that your concerns are not treated fairly and with the same level of importance as other members of staff
2. You have raised queries regarding annual leave payments for this and previous years and also queries about employment status and contract

These matters will be discussed and considered at the hearing and it is important that you contact me 24 hours in advance of the hearing if you deem the above information to be incorrect, or if you wish to add anything further to the above points.

I enclose for your information a copy of the Company's grievance procedures to which the Face2Face Consultant will be making reference.

During this hearing the Face2Face Consultant will listen carefully to what you have to say and ensure that if any further investigations seem necessary, a note is made for these to be undertaken afterwards. It is therefore important that you inform the Face2Face Consultant if there is any paperwork or other evidence you would like them to consider as they will only be able to base their recommendations on the information available to them.

You are entitled, if you so wish, to be accompanied by a fellow employee. If you wish to exercise this right then it is your responsibility to make the arrangements.

As this is your grievance you are expected to make every effort to attend this hearing because if you fail to attend the hearing without good reason, or fail to notify us of the good reason for your non-attendance in advance of the hearing, the Face2Face Consultant will proceed with the investigation of your grievance in your absence. In such circumstances, the Face2Face Consultant will make their recommendations based upon the information available to them at the time of the hearing. However, in this event, you may provide written submissions to the Face2Face Consultant by 5pm on the scheduled date of the hearing should you wish to do so.

We urge you to attend the hearing to avoid the Face2Face Consultant having to make findings without having had the benefit of speaking to you.

Please contact me if you have any queries regarding the contents of this letter.

40. The claimant responded on 22 May 2020 that he did not see any point in a meeting if the two individuals that he had complained about were not present and by email dated 26 May 2020 the claimant told the Face2Face Consultant that he had not agreed to a meeting with him. On 27 May 2020 the claimant was informed that the investigation would

go ahead in any event and gave the claimant the opportunity to submit written representations.

41. In the report of the Face2Face Consultant dated 2 June 2020, he noted that the claimant had not submitted any written representations. The report did not uphold the part of the grievance that related to the claimant's concerns not being treated fairly and with the same level of importance as other members of staff; but the report did uphold the aspect of the grievance relating to annual leave payments and recommended that the company pay to the claimant any outstanding accrued but untaken holiday pay for a maximum of two years. The report also noted that there had been a clear break down in the working relationship between the claimant and the company which was causing disturbance to the workplace and therefore recommended consideration of workplace mediation in order to build a professional workable relationship between the parties.

42. The report was sent to the claimant on 8 June 2020 along with a decision letter from Mr Brown accepting the findings and recommendations of the report. The claimant was offered a right of appeal. In response on 9 June 2020, the claimant challenged the experience and / or qualifications of the consultant who had compiled the report.

43. The list of issues included an allegation that Mr Brown had raised a complaint against the claimant from a service user in February 2020 (issues 2(f) and 3(b)). However, the Claimant did not present any evidence in his witness statement or orally in relation to that matter and he did not pose any question to Mr Brown about it. Therefore, in the absence of any evidence, the tribunal was unable to find that this had happened.

Legal Framework

44. The following provisions of the Equality Act 2010 are relevant:

13 Direct discrimination

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

...

26 Harassment

- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;

- (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.
- (5) The relevant protected characteristics are — age; disability; gender reassignment; race; religion or belief; sex; sexual orientation.

27 Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

83 Interpretation and exceptions

- (1) This section applies for the purposes of this Part.
- (2) “Employment” means—
- (a) employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
 - (b) Crown employment;
 - (c) employment as a relevant member of the House of Commons staff;
 - (d) employment as a relevant member of the House of Lords staff

...

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) when 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.

136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.
- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
- (5) This section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to—
 - (a) an employment tribunal;

...

Conclusions on the Issues

45. Harassment:

- a. (Issue 1(a)) Mr Brown accepted that he did text the comment in mid-February that the resident who had killed a rat “probably eats them back home”. Given the context of resident asylum seekers from around the world, the tribunal were satisfied that the comment related to race. The tribunal were unable to conclude that it was specifically related to the resident being of black African origin (although that is not necessary for a harassment claim to be made out). The tribunal accepted the claimant’s evidence that he was offended by the comment. Much was made by the respondent of the fact that the claimant sent a ‘crying with laughter’ emoji in response but the tribunal took into account that a response to a senior manager in this context does not always indicate true feelings. The tribunal considered that it was reasonable for the claimant to have been offended. A harassment claim is therefore potentially made out. This issue by itself was out of time as a single act of discrimination – which is considered further below.

- b. (Issue 1(b)) as stated above, the tribunal concluded that the comment about the claimant liking money too much had been made. However, the tribunal did not conclude that this comment was related to race. This complaint fails.

46. Direct Discrimination:

- a. (Issue 2(a)) as stated above, the tribunal concluded that the complaint about the claimant's use of the toilet had been made. However, the tribunal could not conclude that this comment was because of race. This complaint fails.
- b. (Issue 2(b)) the tribunal were presented with no evidence about this matter and therefore cannot conclude that it happened at all. This complaint fails.
- c. (Issue 2(c)) Mr Brown did attempt to engage with the claimant about his complaints about Ms Broomes. The claimant changed his position back and forth a number of times as to whether he wished a formal process to take place. This detriment is not made out on the facts. This complaint fails.
- d. (Issue 2(d)) Mr Henry did remove the letters. However, Mr Henry was a more senior employee. These were work related letters. The respondent had a right to see them. There was no detriment to the claimant. There is nothing to suggest that this action by Mr Henry could have been because of race. This complaint fails.
- e. (Issue 2(e)) Mr Brown did deal with the claimant's complaints about Mr Henry. It was the claimant that failed to engage in the Face2Face grievance process. This detriment is not made out on the facts. This complaint fails.
- f. (Issue 2(f)) the tribunal were presented with no evidence about this matter and therefore cannot conclude that it happened at all. This complaint fails.
- g. (Issue 2(g)) the claimant was not given support for training to Level 5 and Mr Henry was given such support. The claimant was therefore treated less favourably than Mr Henry. However, Mr Henry is not a good comparator for the claimant. Mr Henry was a more senior employee with supervisory / managerial responsibilities. Therefore, the Level 5 qualification was an appropriate qualification for him to get for the benefit of the organisation. The claimant did not have those responsibilities. He was given an opportunity to persuade his supervisor that the qualification was an appropriate one for the organisation to support for him, but the claimant did not take up that opportunity. The reason for the difference in treatment of Mr Henry was not race. This complaint fails.
- h. (Issue 2(h)) the claimant was not given an opportunity to express an interest in the role as a senior support worker given to Mr Henry. An organisation that does not adopt a transparent process in relation to promotions and vacancies runs the risk of creating the perception of unfairness and / or discrimination. However, the tribunal has accepted Mr Brown's evidence as to his assessment of the abilities and suitability of Mr Henry for that role and the tribunal concluded that Mr Brown's choice of Mr Henry for that role was not because of race. This complaint fails.

- i. (Issue 2(ii)) there was no agreement that the claimant would have certain extra shifts. The shifts were not withdrawn from the claimant. The shifts were fairly distributed in the manner described by Ms Erinle taking into account the need to retain the allegiance of bank workers. This detriment is not made out in the facts. This complaint fails.

47. Victimization (Issue 3)

- a. The tribunal concluded that the claimant's email of 3 March 2020 was not a protected act. It did not explicitly or implicitly refer to race or discrimination or the Equality Act.
- b. In any event as with issue 2(f) above, the alleged act of victimisation was not the subject of any evidence presented to the tribunal and therefore the tribunal cannot conclude that it happened at all. This complaint fails.

48. There is therefore only one act (issue 1(a) which is made out as an act of race related harassment. In light of its finding on that matter, the tribunal reviewed its other findings, but the tribunal was ultimately satisfied that none of the other complaints could be made out.

Time Limits

49. The act of harassment at (Issue 1a) occurred in mid-February 2020. The parties were in agreement that any act prior to 30 March 2020 was out of time.

50. In relation to whether it would be just and equitable to extend time, the claimant indicated to the tribunal that he wished to rely on his response to the question posed in EJ Housego's case management hearing record at page 40 of the bundle:

The claim was delayed possibly due to the prospects that Peter Brown would want to resolve the matter amicably before I felt the need to escalate the matter to ACAS. Peter Brown used Peninsula, an outsourced service to resolve the grievance but I did not participate because the process used was not in my favour at all and this was clearly expressed to Peter Brown and Peninsula advisers via email. Peter Brown did not follow any of the recommendations offered so I felt that it was a baseless exercise, and it was not going to amount to anything fair or outcome.

51. The claimant had previous experience of the employment tribunal. He approached ACAS for early conciliation on 30 June 2020. Reliance on an ongoing internal process is one which can sometimes provide a basis for an extension of time. However, the claimant had clearly indicated that he did not want to engage with the internal process and where he refused to meet the investigator or even provide written representations. Given that situation, the tribunal did not consider that it would be just and equitable to extend time.

52. It follows that the only matter that is made out is out of time and outside of the tribunal's jurisdiction and therefore all of the claimant's complaints are dismissed.

The Respondent's Submissions

53. The tribunal wishes to note that, although the claimant has not succeeded in his claims, one of those claims did not succeed only for jurisdictional time limit reasons. The extraordinary closing submissions from the respondent's representative, which amounted

to a personal attack on the Claimant rather than properly addressing the issues before the tribunal may well have led to an award of aggravated damages against the respondent if any of his claims had succeeded.

Employment Judge Allen QC

26 April 2022