



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr JP Morley

**Respondent:** Lancashire County Council

**Heard at:** Manchester Employment Tribunal

**On:** 10, 11 and 12 January 2022, and 30, 31 March 2022 and 01 April 2022

**Before:** Employment Judge Mark Butler  
Ms C Bowman  
Mrs JA Beards

## Representation

**Claimant:** Self-representing

**Respondent:** Mr M Mensah (of Counsel)

# JUDGMENT

1. The claimant's claim for victimisation succeeds. However, it is only in relation to allegation 2.2 that the victimisation claim succeeds.
2. The claimant's claim brought under s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 succeeds. However, it is only in relation to allegation 3.1 and 3.11 that this part of his claim succeeds.
3. All other parts of the claim have been found not to succeed and are dismissed.
4. This case will now be listed for remedy.

# REASONS

## Introduction

1. The claimant presented his claim form on 07 June 2020. He brought complaints of victimisation pursuant to s.27 of the Equality Act 2010 and for being subjected to a detriment on grounds related to union

membership or activities pursuant to s.146 of the Trade Union Labour Relations (Consolidation) Act 1992. More specifically, his s.146 complaint was brought as a detriment for the sole or main purpose of preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so (s.146(1)(b)).

2. The tribunal was assisted in this case by a file of documents that ran to 403 electronic pages.
3. The claimant gave evidence and called no further witnesses
4. The respondent called the following witnesses:
  - a. Ms Deborah Barrow
  - b. MS Ruth Lowry
  - c. Mr Neil Kissock
5. In preliminary discussions on the morning of the first day of the hearing, the claimant raised three new allegations which he wanted to bring before the tribunal. It was explained to the claimant that in order to do so he would need to make an application to amend his claim. The claimant made such an application. The claimant's application was partially granted. The claimant requested the written reasons for that decision, and these are provided below.
6. The tribunal tried to ensure that legal jargon was avoided during the hearing. And where it was, explanations were provided, to ensure that the claimant was not put at a disadvantage in the hearing by not being legally represented.
7. The hearing started as a hybrid hearing, with only the claimant and the judge attending in person on the first day of this hearing. However, this was converted fully to a remote hearing using the tribunal's CVP system from day 2 of the hearing. This decision was monitored throughout the hearing to ensure that holding the hearing fully remote did not impede justice in this case.
8. The tribunal was grateful for the way that the case was conducted during these proceedings.

#### Applications to amend

9. On the first day of this hearing, the claimant made an application to amend his claim to include three additional pleadings. These were as follows:
  - a. The claimant was subjected to a detriment either because of a protected act, or to deter him from undertaking Trade Union activities, by having his reputation tarnished through comments made by Ms Karen Jones to Ms Ruth Lowry. Specifically, in an interview of Ms Jones by Ms Lowry, on 11 August 2020, as part of investigating the claimant's grievance, Ms Jones made two specific comments. First, that the claimant 'seems to want to "take things

forward and fight the authority”, and secondly, that ‘At the brewery he took all staff out on strike “always wants to have a fight”’. Nobody else witnessed these comments (see p.272 of bundle).

- b. The claimant alleges that being subjected to a costs warning that was termed without prejudice by Ms Rabia Bapu, the respondent’s legal representative, by letter dated 07 May 2021, was a detriment that he was caused either for having done a protected act or to deter him from his trade union activities.
- c. The claimant further alleges that he was subjected to a detriment for either having done a protected act or to deter him from undertaking trade union activity, when Ms Barrow, when interviewed by Ms Lowry as part of investigating the claimant’s grievance, tarnished the claimant’s reputation through making the following comment: ‘A militant character- like Les Parker- all about him not about the members’. This took place on 03 August 2020 (see p.262 of bundle).

- 10. Having heard, and considered, submissions made by the claimant and from Mr Mensah on behalf of the respondent, the tribunal decided that the first two parts of the application to amend would be refused, but that the third part, that being the comment made by Ms Barrow, would be granted. The tribunal approached each separate amendment in the same way, applying the same legal principles.
- 11. In considering the application, the tribunal applied the balance of injustice and hardship test (**Selkent**), and took account of relevant case law in this area, in particular consideration was given to the recent EAT guidance from **Vaughan v Modality Partnership UKEAT/0147/20/BA**.
- 12. The tribunal assessed and balanced the prejudice that would be caused to the claimant in not allowing the amendment application to succeed against the prejudice that would be caused to the respondent in allowing the application to succeed.
- 13. There is the obvious prejudice to the claimant if the amendments were not granted in that he would not be able to rely on and have determined some allegations which he wishes to have before the tribunal. And that he would not be able to seek redress for those issues, which may be important matters to the claimant.
- 14. Similarly, there is the equally obvious prejudice caused to the respondent should the amendments be granted, that being that they would have to defend additional claims that were not originally part of this case.
- 15. The claimant did not identify any further specific prejudices that he wished to draw the tribunal’s attention to should his application not succeed.
- 16. The claimant is an experienced trade union official. And yet, despite being familiar with the possibility of bringing claims before the employment tribunal as part of his professional role, this application has not been made before the final hearing commenced.

17. Each of these new headings introduces a need for substantial new enquiry. None of them have been raised before day of this hearing, and the respondent was not aware of these as potential alleged detriments. These are new factual matters that would need to be investigated and interrogated by the respondents, as it would require the respondents to consider the evidence and its position in relation to each of them. In relation to the first and second parts of the amendment, the respondent would need to consider whether it would need to call additional witnesses, namely Ms Jones and Ms Bapu. Whilst, the third part of the amendment involves Ms Barrow, who is due to give evidence for the respondent during these proceedings.
18. Inevitably, allowing the application in relation to the first two parts of the amendment would require this hearing to be adjourned whilst such enquiries be undertaken. This would waste tribunal time, and necessitate more time be allocated to this case. This would be quite significant prejudice to the respondent, in terms of the additional time and costs that this would inevitably require them to incur. The same would not be required in relation the third part of the amendment, as Ms Barrow was already present and called as a witness, she could give instructions to Mr Mensah, she could give evidence in chief on this matter and then be cross examined. The document recording the comment in question is already in the tribunal bundle.
19. The timing of the application is also important. This application is made on 10 January 2022. This is some 18 months after the comments in the first and third part of the amendment were made, and some 8 months after the costs warning letter that is the subject of the second part of the amendment. In terms of the first and third part of the amendment, memory will inevitably be fading on this matter, as it has not been revisited like the other issues in this case have. And will fade further as further time passes, which would be inevitable if the application was to succeed.
20. The claimant accepted that he likely saw the hand written comments that were then typed up as the p.272 (first part of amendment) and p.262 document (third part of amendment) when documents were initially disclosed to him, which was in line with the Case Management Order, and therefore he knew of these comments on 07 May 2021. The tribunal concluded that the claimant must have been able to read these documents otherwise he would have raised this as an issue with the respondent soon after receiving these documents.
21. Turning to time limits. The date of bringing this application is the date of day 1 in this hearing, which is 10 January 2022. In terms of the primary time limits, the alleged detriments must be read from the date at which he was subjected to the treatment he now wishes to complain about:
  - a. In relation to the first amendment, this must be read from the 11 August 2020. The primary time limit in relation to this alleged detriment therefore expired on 10 November 2020. And is therefore significantly out of time.

- b. In relation to the second amendment, this must be read from when he received the letter in question. Allowing 2 working days to allow the claimant to receive this letter, then this must be read from 11 May 2021. The primary time limit in relation to this alleged detriment therefore expired on 10 August 2021. And is therefore significantly out of time.
  - c. In relation to the third amendment, this must be read from 03 August 2020. The primary time limit in relation to this alleged detriment therefore expired on 02 November 2020. And is therefore significantly out of time.
22. Turning to whether the claimant provided sufficient reason to extend the time limits in relation to any of the three amendments. The claimant's primary position was that he simply did not know that he needed to make an application to amend. And that he considered that he could bring these complaints to tribunal. In addition, in relation to the first and third amendment, the claimant explained that he only received disclosure of documents by the respondent on 07 May 2021, but could only properly read them and understand them when the final hearing bundle was received, which contained typed versions of the written notes, on 10 December 2021. No further reasons were given to convince the tribunal that time should be extended in relation to the second amendment.
23. In short, the tribunal concluded that the claimant provided a sufficient explanation as to why he did not apply to amend his claim in relation to the first and third amendments before 07 May 2021, as he had not been aware of the comments. However, that he provided no reason to explain any further delays beyond that date. And even if the tribunal was wrong on that, no reason was provided by the claimant for delays beyond 10 December 2021, when the claimant received the typed up versions of the written notes. This weighed against allowing these amendments.
24. The claimant provided no reasons to extend time in relation to the second amendment save for ignorance.
25. Applying the balance of injustice and hardship test. We conclude that the first and second amendment do not succeed. But given that there is no practical prejudice to the respondent in respect of the third amendment, balanced alongside the other factors noted above, the third amendment is granted and allowed. This became allegation 3.13 in this case.
26. The claimant sought to make a further application to amend his claim on the third day of this hearing. However, having heard the respondent's submissions in response to his application, the claimant withdrew it. This had the consequence that there was no time to conclude the evidence within the three day listing. The tribunal listed a further three days in this case: 30, 31 March and 01 April 2022
27. The claimant made a third application to amend his claim during the period whilst the case was waiting to reconvene. This application was set out on paper. This was being brought based on the submissions made by Mr Mensah in opposing the claimant's application to amend on the third day

of the hearing. Having discussed some of the difficulties that the claimant would face in making such an application, the claimant opted to withdraw this application rather than pursue it. This was a sensible decision by the claimant.

28. There were no further applications to amend in this case.

### Issues

29. The issues in this case were considered at the outset of the first day of this hearing. Both the claimant and the respondent had produced a list of issues to assist the tribunal.

30. The parties agreed that the two different documents effectively covered the same ground. The tribunal therefore adopted the numbering used in the list of issues prepared by the respondent, given that this document was the clearest of the two. This was ensured that all participants could follow which detriment was being considered at any given time. However, where there was dispute as to the scope of the issues, the tribunal compared the two lists of issues and applied the most generous of the two, to ensure that the claimant was not penalised though focusing on the document prepared by the respondent.

31. I have attached the two versions of the list of issues to the back of this judgment for ease.

32. These lists of issues are subject to one addition. That is the amendment that was granted on day 1 of this hearing. That being that:

- a. Deborah Barrow, on or around 03 August 2020, saying to Ruth Lowry that the claimant was “a militant character- like Les Parker- all about him, not about the members”

### Closing Submissions

33. We were assisted by closing oral submissions made by the Claimant and on behalf of the Respondent. We do not repeat them here, but considered them carefully in reaching this decision.

34. We were also assisted by a skeleton argument produced by both the claimant and on behalf of the respondent. These were read by the tribunal in advance of oral closing submissions.

### Law

35. Protection from victimisation is contained at s.27 of the Equality Act 2010. It provides:

(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.

36. Whilst s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that:

(1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—

(b) preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so.

37. In closing submissions, Mr Mensah introduced the following cases:

- a. MOD v Jeremiah [1979] IRLR 436, [1980] ICR 13
- b. St Helens Metropolitan Borough Council v Derbyshire [2007] UKHL 16
- c. Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11
- d. South London Healthcare NHS Trust v Al-Rubeyi UKEAT/0269/09 (2 March 2010, unreported)
- e. Thompson v Central London Bus Company [2016] IRLR 9, EAT
- f. Nagarajan v London Regional Transport [1999] IRLR 572
- g. Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830,
- h. Cornelius v University College of Swansea [1987] IRLR 141
- i. Chief Constable of West Yorkshire Police v Khan [2001] IRLR 830, [2001] ICR 1065, HL
- j. Martin v Devonshires Solicitors UKEAT/0086/10, [2011] ICR 352, [2011] EqLR 108
- k. HM Prison Service v Ibimidun [2008] IRLR 940, EAT
- l. Owen & Briggs v James [1982] IRLR 502

38. Whilst the claimant cited the following:

- a. Ramphal v Department for Transport UKEAT/0352/14/DA
- b. Cadent Gas Ltd v Singh [2020] IRLR 86 EAT
- c. Chhabra v West London Mental Health NHS Trust [2014]
- d. Bone v North Essex Partnership NHS Foundation Trust [2016] IRLR 295 CA
- e. Bass Taverns Ltd v Burgess 1995 IRLR 596, CA
- f. Morris v Metrolink RATP Dev Ltd 2018 EWCA Civ 1358, CA

39. The tribunal has carefully considered each of the authorities cited in reaching its decision.

40. The tribunal also took into account the following authorities:

- a. University College London v Brown 2021 IRLR 200, EAT
- b. Yewdall v Secretary of State for Work and Pensions EAT 0071/05

### Findings of Fact and discussion

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. Where there is reference to certain aspects of the evidence that have assisted us in making our findings of fact this is not indicative that no other evidence has been considered. Our findings were based on all of the evidence and these are merely indicators of some of the evidence considered in order to try to assist the parties understand why we made the findings that we did.

We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

We have tried to make use of sub-headings at appropriate points of our findings of fact, to try to direct any readers to the relevance of the findings.

#### *(i) General findings*

41. The claimant began working for the Respondent on 01 October 2018. This was initially on a temporary contract as an Employment Officer. He then gained a permanent contract as a Financial Assessment Officer on 28 October 2019. At the outset of this hearing, he was still employed in this role.

42. The claimant has not been subject to any disciplinary action during his employment with the Respondent.

43. On 11 April, the Claimant was elected as a UNISON stop steward.

#### *(ii) Supporting a trade union member (Protected Act?)*

### Findings

44. On 12 August 2019, the claimant was asked by the union branch to support a member, who was alleging bullying and harassment in the workplace. The complaint submitted by the member concerned differential treatment in the workplace by a particular person, and believed that that was underpinned by racism (see p.152).



45. The complaint was considered by Ms Sales, who determined that the complaint should not be registered as a bullying and harassment complaint as it did not satisfy the respondent's definition of bullying and harassment contained within the relevant policy. This decision was communicated to the complainant by Ms McIntyre, by letter dated 23 August 2019 (see p.110).
46. The complainant did not appeal this decision, despite it being an available route to her.
47. In response to the decision, on 03 September 2019, the complainant instead raised a separate grievance that concerned the process that was followed in reaching the decision not to deal with the complaint under the bullying and harassment policy (p.112). This included raising concerns about the accuracy of notes that were produced after the claimant had met with Mr Hothersall to discuss the outcome (pp.114-118).
48. Ms McIntyre provided further explanation behind the decision not to record the complainant's complaints as one of bullying and harassment by email dated 06 September 2019 (pp.121-122).
49. On or around 13 September 2019, a formal grievance (p.141) was lodged by the complainant through the claimant as her trade union representative (p.143).
50. Mr Kissock arranged for a grievance hearing to take place, and he chaired this meeting. Having considered relevant documents and evidence, Mr Kissock reached the decision not to uphold the grievance.
51. The complainant appealed the grievance decision (see pp.154-155). Mr Kirby was appointed as the Appeal Manager for this appeal. The complainant and the claimant were informed that a meeting was to take place on 14 January 2020 to discuss the grievance appeal further. This was to be the first meeting in relation to the grievance appeal.
52. The claimant supported this member during her complaints, and provided trade union support during the process of the member's complaints being considered.

## Discussion

53. Although whether this was a protected act remained a live matter, at least so far as the list of issues was concerned, Mr Mensah accepted in his closing submissions that the above could constitute a protected act. And given the context of the grievance, that being a complaint of bullying and harassment related to the race of the complainant, this was a sensible position to adopt
54. The claimant having represented and assisted a complainant in this complaint, and subsequent grievance, was undertaking a protected act.

The protected act covered the entire period during which the claimant was providing support and representation to a Trade Union member.

*(iii) Email correspondence between the claimant and Ms Barrow (Allegations 2.2, 3.1 and 3.11)*

Findings

55. On 23 December 2019, the claimant contacted Ms Barrow by email (see p.164). In this email the Claimant expressed concerns over Mr Mike Kirby hearing the member's appeal, which was expanded upon to be a general concern in an email of 31 December 2019 (see p.163).

56. The email of 31 December 2019 sent by the claimant to Ms Barrow, to which Ms Louise Melling was copied in to, also included that the claimant would like to interview Ms Laura Sales during the grievance hearing, and asked whether this could be arranged.

57. Ms Melling replied to the claimant, with Ms Barrow copied in, on 03 January 2020 at 12.16. This explained that the purpose of the appeal meeting was so that Mr Kirby could understand the member's grounds of appeal, as the appeal letter only stated that the grounds for her appeal were numerous and extensive, without providing the specifics.

58. The claimant responded by email at 12.34 on 03 January 2020. The claimant asked whether his understanding that he was not being allowed the opportunity to speak to Ms Sales during the hearing was correct. Before expressing that he believed it to be wholly reasonable to interview people who can bring clarity to the issues raised.

59. Ms Melling replied to the Claimant at 15.34 on 03 January 2020. She explained the following:

The purpose of the meeting on 14 January 2020 is for Mike to meet with [REDACTED] and yourself, so he fully understand the grounds of your appeal; therefore it isn't proposed that Neil Kissock or Laura Sales will be in attendance.

At the meeting it is important that you set out your grounds of appeal in detail, and if you have any specific questions that you want to ask of Laura, may I suggest that you also share these with Mike at the meeting.

Depending on the issues you raise, Mike will then determine what further enquiries he needs to make, to help him clarify matters and reach his outcome.

60. The claimant responded to Ms Melling at 15.55 on 03 January 2020 (see p.161). He disagreed with the position that Ms Melling was explaining to him, and questioned whether as a result the process was fair and transparent.

61. Ms Barrow replied to this exchange between the Claimant and Ms Melling at 09.10 on 06 January 2020 (pp160-161). She wrote the following:

Hi Paul

Thanks for your e-mails. I think e-mail, in the first instance, sometimes isn't the best way of responding to enquiries, having a conversation usually helps understanding. So we are happy for you to ring us to discuss.

I know you have mentioned to me in the past that you are still learning about our procedures and processes and I notice from your e-mails you refer to the meeting as a 'hearing' and seeking 'evidence'. As Louise has explained, the grievance procedure is essentially a meeting for [REDACTED] to explain her issues to Mike who can then gather further information if needed to understand others perspective before he determines his conclusions. The purpose is not for you to ask staff to attend because you want to 'question' them as though they were under investigation at a hearing. The procedure is for Mike to manage the process and it is for him to decide what further information he needs.

[REDACTED] and you, as her trade union representative, should explain to Mike the reason you are appealing the outcome of the grievance and allow him the opportunity to talk with [REDACTED] about this so he can be fully clear on the issues. That is how the meeting will be take place.

I hope that clarifies the position and I'm happy to explain the procedure in more detail if that helps your understanding.

Regards  
Deborah

62. The claimant responded to Ms Barrow by email at 08.48 on 09 January 2020. In the final paragraph of that email the claimant wrote:

Clearly, we cannot insist that Laura attends but we think it would be reasonable and would assist in resolving the issue. If attendance is not possible we would at least like the opportunity to gain evidence from Laura. I trust we are ok to approach her directly, if we see fit.

63. Ms Barrow replied to the claimant at 10.25 on 09 January 2020. In relation to contacting Ms Sales she wrote the following:

The appropriate route to contact Laura, if needed, is as I have set out in my earlier e-mail. [REDACTED] should raise all the issues she wishes to at the meeting and Mike will decide what other information he needs, which will of course be a view about other staff he needs to talk with. So it is not appropriate for you to contact Laura separately. I hope that clarifies the position for you.

64. At 10.33 on 09 January 2020, the claimant responded to Ms Barrow by stating:

With respect, I don't think you can stop us contacting anyone we see fit. If this is within any policies please let me have sight of it ASAP.

65. Ms Barrow responded to the claimant at 11.09 on 09 January 2020 (see p.159), and stated:

Hi Paul

I'm advising you not to do so, and ask you to accept my advice. You cannot expect Laura Sales to provide you with a response, and she will likely speak with Mike to find out why you have contacted her, in your capacity as a trade union representative. It is not your role as a trade union representative to initiate your own investigation. Mike is the chair of the meeting and therefore he is directing it, and that is the correct route.

Many thanks  
Deborah

66. The claimant responded to Ms Barrow at 12.41 on 10 January 2020, and stated the following:

Hi Deborah

I think we will have to agree to disagree. We would be looking to contact Laura for more of an explanation around her decision re the complaint. This is very reasonable under the circumstances.

Regards  
Paul

67. At 07.38 on 13 January 2020, Ms Barrow replied to the claimant with the following (see p9.158-159):

Hi Paul

I have not copied [REDACTED] into my reply as I don't think this would be helpful to support her.

I'm afraid you have misunderstood my previous e-mails. I have made the offer to meet with you to help you understand our policies, procedures and practice and your role as a trade union representative. Regrettably you have not taken this up. Your role is to support your member but you appear to be taking control of these issues in an adversarial manner and I am concerned that this is not the right support for [REDACTED]. This is not what I would expect from Unison as a well-respected trade union within the council.

You should not contact Laura Sales for the reasons I have already explained but you appear to refuse to accept this.

The council provides the recognised trade unions with reasonable time off for trade union duties and activities. Clearly this is a legal requirement but it also has reflected a long history of good employee relations with our recognised trade unions and is underpinned with an agreed understanding of what time off to do this means. My view on your conduct in this case falls short of this and you leave me no option but to raise this with the Unison branch secretary, Elaine Cotterell.

Elaine or I will contact you again when we have discussed the issues.

Regards  
Deborah

68. Ms Barrow, in her email (above), has linked reasonable time off for the claimant to undertake trade union activities with the claimant's conduct. This includes a suggestion of potential action being taken, where the claimant's conduct falls short of how Ms Barrow expects a trade union to use their time off. Ms Barrow in her evidence suggests that these are just factual statements, and should not be linked together and that her email solely concerned the conduct of the claimant. However, that is implausible. Ms Barrow has made the decision to put all of these matters in a single paragraph. This draws the statements together. If Ms Barrow was not intending on linking the claimant's conduct to time off for union duties, then she could simply have omitted any reference to the provision of time off, and the email would still have focused on what she now says was the intention of that email: to highlight the claimant's conduct as an issue.

69. At some point between 13 January 2020 and 23 January 2020, Ms Barrow met with Ms Cotterell and discussed the claimant, with focus on the conduct of the claimant during the email exchange noted above.

70. On 23 January 2020, the claimant met with Ms Cotterell. Ms Cotterell discussed with the claimant issues raised by Ms Barrow concerning her perception of his conduct in discharging his trade union activities.

71. Despite the above exchange, the claimant did make contact with Ms Sales. There was no conduct issue raised with respect the claimant despite the claimant having done this (see.p.236).

#### Discussion

72. There was clearly some frustration on the part of both the claimant and Ms Barrow during this matter. The claimant was seeking answers on behalf of his member and considered the respondent to be obstructing this. Whilst Ms Barrow had her well-reasoned/explained position questioned by the claimant on numerous occasions, despite it being a reasonable position to hold and one that was in line with the respondent's policies.

73. Turning first to this allegation as part of the claim brought under s.146 of the TULR(C)A. Had this been a purely conduct matter, and one that would be separable from the claimant's trade union activities, then Ms Barrow surely would have either addressed this matter herself (as part of her HR role) or would have involved the claimant's line manager. And further, would have taken action once her instruction was ignored, and the claimant made contact with Ms Sales. Instead, she emailed the claimant and introduced in that email the arrangement between Unison and the respondent for time off, linked this to what she considered to be positive conduct with trade unions in the past, before then raising the claimant's conduct, which she describes as falling short of the previous good employee relations that the respondent had had with the union. Before then explaining that she was going to raise this with his Union branch secretary. She concluded her email by explaining that one of either herself or Ms Cotterell would be in contact once they had discussed things. This is clearly suggestive of some potential consequences for the claimant. And this must have been in terms of time off to undertake union duties, given the overall context of that email.

74. Ms Barrow taking the steps of including the implicit threat to time off for union duties in her email, making the claimant aware that the way he was conducting himself in representing a member was unacceptable, making the claimant aware that she was going to speak to the claimant's branch secretary and that following that meeting they would decide if any further action would be taken, is inconsistent with this being a purely conduct matter in the workplace that is separable from the claimant's representation role, that has led the tribunal to infer that there is an improper purpose behind the email and content within it.

75. Bearing in mind that all of this is occurring whilst the claimant is representing a member, the clear inference from all of the above is that if Ms Barrow considers that the claimant does not conduct himself in an

appropriate manner whilst providing representation, then there will be potential consequences in terms of time off given to undertake those duties. This tribunal concludes that the contents of this email, insofar as the link between conduct and time off for union duties was a detriment to which the claimant was being subjected. And that he was subjected to this detriment for the sole or main purpose of preventing or deterring him from taking part in trade union activities, or at the very least, is penalising him for doing so.

76. This matter is also brought as part of the claimant's victimisation claim. Given that the claimant was being subjected to this detriment because of the perceived manner in the way that he was representing a member of the trade union, this tribunal concludes that the claimant was also being subjected to this detriment for having done a protected act. Although we do conclude the manner of his approach was also in question, the significant weight, from a causative point of view, rests with the representation that he was providing and the way in which he was providing that representation. And therefore, in respect of this issue, his victimisation claim also succeeds.

77. Given the above, allegations 2.2, 3.1 and 3.11 succeed. These matters will proceed to a remedy hearing.

*(iv) Secondment issue (Allegations 3.2 and 3.9)*

Findings

78. At the material time, the respondent maintained two routes through which an employee could be seconded into an alternative role:

- a. First, there is a route concerning internal secondment. This could be either manager-led or led by an individual, (that is if an individual identified a role for which they wanted to be seconded to, they could seek permission from their line manager). It is made clear that to be seconded under this route the employee will require permission from their line manager. The process for this route is at p.89-90.
- b. And, secondly, a trade union could propose a funded secondment opportunity (para 8.1 on p.83) pursuant to the respondent's Facilities Agreement (pp.78-84). Such a request will be made by the trade union, and consideration of this request will be by Head of Service of Human Resources.

79. The respondent previously had a route to secondment whereby the council would second individuals into a trade union role, without the need for the post to be funded by the union. However, this arrangement came to an end on 31 March 2018.



80. The claimant applied for a temporary role within the Trade Union, for which he was interviewed on 18 January 2020. During this interview, the claimant expressed that if he was successful he would like it to be on a secondment basis. The claimant was unsuccessful in this application.
81. The role went unfilled, and was re-advertised. The advert is at p.182 of the bundle and it included the following:

**If applicants are considering this as a secondment opportunity they must seek permission from their Line Manager prior to applying**

82. The claimant contacted Ms Stevens on 20 February 2020 to seek permission to be granted the opportunity to be seconded to this role should he be successful (p.181). The claimant wrote the following:

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**From:** Morley, Paul <[Paul.Morley@lancashire.gov.uk](mailto:Paul.Morley@lancashire.gov.uk)>  
**Sent:** 20 February 2020 09:57  
**To:** Stevens, Janice <[Janice.Stevens@lancashire.gov.uk](mailto:Janice.Stevens@lancashire.gov.uk)>  
**Subject:** Secondment Opportunity

Hi Janice

A temporary position has become available within the Union branch – please see attached. I am interested in applying.

As can be seen in the advert in order for this to be considered as a secondment I need to inform you prior to applying. Please can you let me know if a secondment from my current role would be ok?

If you need any further info please let me know.

Thanks  
Paul

83. Ms Stevens forwarded the claimant's request to Ms Jones, who was the claimant's line manager (p.180).
84. Having discussed this matter with Mr Saeed, Head of Service, Ms Jones refused the claimant permission to be seconded to the advertised role should he be successful. The reasons for this refusal were due to the impact on the service and the impact on backlogs in the service losing a member of staff would have.
85. The claimant expressed his disappointment in the decision but explained that although he considered the business rationale to be debatable, he was not seeking to challenge it. He further asked whether his request had been directed to HR, in line with his understanding of how such trade union related requested should be dealt with (p.179).
86. Enquiries were made within the respondent. Ms Jones emailed Ms Melling, a HR Business Partner, who in turn entered discussions with Ms Barrow (pp.205-210). These conversations concluded, that it was the

respondent's understanding that this post was a post required by Unison, not the council, and that it was not a funded opportunity as per the Facilities Agreement, and that as a consequence, given that his line manager would not release him on secondment, if the claimant did want to take up the role then he would have to resign from his substantive post

87. Ms Barrow contacted Ms Cotterell on 17 March 2020, and received a reply that same day (see p.205). Ms Barrow wrote the following:

**From:** Egress Web Access <send@reader.egress.com> on behalf of Elaine Cotterell <elaine.cotterell@lancsunison.co.uk>  
**Sent:** 17 March 2020 14:14  
**To:** Barrow, Deborah  
**Subject:** Re: FW: Secondment Opportunity



Hi Deborah, you are right. Paul knows perfectly well that the post is Branch employed and I have explained this (more than once). It was not advertised as a secondment opportunity and only advertised through the TUC website deliberately. Paul raised the issue of a secondment at the last interview and I said that if he wanted to seek a secondment it was not a matter for the Branch to consider (and I would be against it anyway). I hope this clarifies from a Branch perspective! Thanks Elaine

88. Despite the above, the claimant re-applied for this post, and was invited for interview, under cover of email dated 10 March 2020 (pp.198-199). His interview was arranged to take place on 18 March 2020.
89. The claimant knew throughout the application process that the role he was applying for was a branch role. And that it was not a council role.
90. On 16 March 2020, the claimant emailed Ms Barrow to check whether the secondment post had been run past her (p.214).
91. Ms Barrow explained that this was not a matter that would need to be considered by Human Resources, and that as it was a job in Unison then it would be a matter for the service to determine whether it could be accommodated (p.213).
92. It was explained during this exchange that the respondent considered this to be a role in Unison rather than a County Council role. And that if the claimant was successful in his application then he would have to resign from his substantive post with the respondent. The claimant was invited to contact Ms Cotterell should he need clarification as to how the role was established (pp212-213).
93. On 18 March 2020, Ms Jones responded to the claimant's earlier email (see p.223) to explain the following:



Hi Paul,

Sorry for the delay in responding, I did ask HR whether I needed to speak to them regarding my decision. Whilst I was on leave HR confirmed that I did not need to forward your request for secondment to them as it is a service decision as to whether we agree the secondment.

94. Other than the claimant, no union official approached the respondent with a view to agree this post as a secondment opportunity.

#### Discussion

95. Denial of a secondment opportunity would be a detriment for the purposes of the claimant's s.146 complaint. And therefore the focus in relation to allegation 3.2 is on the causal link between any such detriment and the claimant's trade union activities.
96. In short, the claimant has not adduced any evidence to support that denying him of the opportunity to take up the trade union role as a secondment opportunity was a detriment to deter him from doing, or to penalise him for being involved in trade union activities. The claimant has merely produced evidence of being a trade union representative, and of the denial, without producing any evidence to support that a causal link exists.
97. The evidence supports a conclusion, which this tribunal finds, that there was no causal link between the decision to deny the claimant the opportunity to pursue the role as a secondment opportunity and his involvement in trade union activities. The decision makers on this matter had no knowledge of the claimant's involvement in assisting a member during 2019. And the respondent made its decision purely on a business case basis.
98. Turning to allegation 3.9. This tribunal concludes that, although Ms Barrow made the comment to the effect that the claimant would need to resign from his role with the respondent to take up the paid Unison role, this was not a detriment. In the circumstances whereby the Unison role had not been advertised as a secondment opportunity, where it invited potential secondees to first secure agreement from their line manager before secondment would be considered, where the claimant's application for secondment had been refused by his line manager for business reasons, and in circumstances where it would not be appropriate for Ms Barrow to intervene in a decision that sat with the service managers, the statement in question merely represented the true state of affairs. The claimant may not have liked the suggestion that to take up the role he would need be required to first resign his substantive post, but this does not reach the level of being a detriment.
99. Based on that above, allegations 3.2 and 3.9 are not well-founded and are dismissed.

(v) Claimant's Grievance and grievance appeal (allegations 2.3, 3.3, 3.8 and 3.10)

Findings

100. The UK was significantly affected by the COVID-19 pandemic from around March 2020.

101. Mr Kissock's role changed during the pandemic. Mr Kissock was assigned responsibility to co-ordinate the respondent's emergency response. This was in addition to his other duties.

102. Additionally, March/April is the Finance Department's busy period due to the end of the tax year and the need to allocate budgets.

103. The claimant raised a grievance (see pp.228-229) with the respondent on 10 April 2020. He did this by email sent to Mr Kissock (see p.232).

104. The claimant did not receive a response to his grievance, and so followed this up with an email on 28 April 2020 at 08.59, within which he explained that 'I appreciate these are difficult time', which was a reference to the pandemic.

105. Mr Kissock replied to the claimant on 28 April 2020 at 09.08, explaining the following:

*My apologies for not responding sooner and I do acknowledge receipt of your grievance. I am sure you will appreciate that the council has stood down a number of services and activities to focus its response to the Covid 19 pandemic. The Corporate HR service is now entirely supporting the council to help keep critical services running. Therefore, a response to the matters you have raised and by whom will be delayed until the council can return to a more business as usual footing – I'm sorry that I can't be prescriptive as to when that will be.*

106. The claimant replied to Mr Kissock on 07 May 2020, and identified that he would be open to alternative approaches to addressing his grievance.

107. On 26 June 2020, Mr Kissock emailed the claimant explaining that the pause that had been in place in respect of HR casework due to the pandemic was being lifted, and sought to progress the claimant's grievance.

108. The claimant replied to Mr Kissock on 30 June 2020 thanking Mr Kissock for the update and to indicate that he would be happy for the meeting to be held by Skype meeting.

109. The claimant was informed that Mr Kissock was on leave during the week, that included 30 June 2020, and that a grievance meeting would arranged on his return.

110. By email dated 16 July 2020, Ms Hunt contacted the claimant to inform him that Mr Kissock had allocated his grievance to Ms Lowry, who was a senior officer within the council, and that Ms Lowry would invite him to a meeting that was being held on 24 July 2020 (p.244 and 245).
111. The claimant attended the grievance hearing on 24 July 2020. It was explained in this hearing that due to the claimant being on leave the following week and due to Ms Lowry's workloads that there may be some delay in the outcome being given to him. The claimant accepted under cross examination that this was explained to him, which is consistent with Ms Lowry's notes from the meeting (p.256). And he further accepted that this could explain, at least in part, the reasons behind the delay.
112. The claimant was informed that his grievance was not being upheld, by letter dated 12 August 2020 (pp281-282). As part of the decision letter, the claimant was informed of his right to appeal. This was to be done within five working days, with the appeal to be directed to Mr Kissock.
113. Communication of the grievance outcome was delayed due to the claimant being on leave the following week after the hearing and due to Ms Lowry's workload, which had to be managed alongside determining the grievance.
114. The claimant appealed the grievance outcome by email send on 21 August 2020. This included an attached letter dated 21 August 2020. The claimant did not construct and explain the grounds on which he was appealing in this letter. Instead he expressed that:
- There are a number of grounds for my appeal but fundamentally I do not agree with the outcome. I will formulate my appeal arguments in due course but am conscious of my need to submit the appeal in time.**
115. Mr Kissock sent a letter to the claimant on 01 October 2020 (p.294). This explained his role in the original grievance. Explaining that his role in the grievance was simply to decide who was the appropriate officer to determine the grievance, and then to formally assign it to them. And as such there was no conflict with him hearing the appeal. Secondly, Mr Kissock requested the claimant to provide further details of his grounds of appeal. It was also explained that an appeal meeting had been arranged for 16 October 2020.
116. It was agreed between the parties that the hearing would take place over Skype. On 09 October 2020, Mr Kissock again requested that the claimant supply details grounds of appeal in advance of the meeting (p.298).
117. The claimant, at this time, did not produce the grounds of his appeal. On 14 October 2020, Mr Kissock took the decision to re-arrange

the appeal hearing for a later date. This would give the claimant time to produce his grounds of appeal (see p.305).

118. The appeal hearing was re-arranged to take place on 17 December 2020. On 10 December 2020, the claimant emailed Ms Rimmer to rearrange the 17 December hearing, as he was no longer available on that date (see p.320). Ms Rimmer emailed the claimant on 22 December 2020 giving the claimant a choice of 2 dates (see pp319-320).
119. The claimant replied to Ms Rimmer on 05 January 2021 to confirm that he was available on 27 January 2021, which was the date that the hearing was arranged for (p.319).
120. The claimant provided a set of PowerPoint slides on 26 January 2021, which were to explain his detailed grounds of appeal.
121. The hearing took place on 27 January 2021.
122. The outcome letter for the claimant's appeal was sent to the claimant on 29 April 2021. The decision was not to uphold the claimant's appeal.
123. The reasons for the delay in reaching a decision was the ongoing pandemic, Mr Kisson's involvement in emergency planning for the respondent and the appeal hearing/determination spanning over the period of time when the Finance Department is at its busiest, in the run up to the end of the tax year.
124. There were no agreed notes kept during either the grievance or appeal process. However, the respondent never requires agreed notes to be maintained during any grievance or appeal process.

## Discussion

125. The matters that make up allegation 2.3 are listed at pp.340-345 of the bundle in the claimant's PowerPoint. This includes specific comments made by Ms Barrow and Ms Lowry. These are dealt with separately below. The remaining matters are those that make up allegation 3.3, 3.8, 3.10 and 3.12. Allegation 3.12 is dealt with separately below too, as this also makes up a separate allegation on the list of issues.
126. There were some delays evident in acknowledging the claimant's grievance in this case. However, given our findings above, and taking into account all of the circumstances around this delay, this was not considered to be a detriment, to which the claimant was subjected. It was just unfortunate, given the circumstances of the pandemic and the additional role taken on by Mr Kisson.
127. Likewise, the tribunal accepts that there were delays in his grievance outcome being communicated to him, and this went beyond the five days

prescribed in the respondent's applicable policy at the time. However, again given the circumstances of these delays, and that at the grievance hearing itself it was explained to him that there would likely be a short delay due to his own leave and due to Ms Lowry's workload, the tribunal does not consider the delays present to reach the level of being a detriment for the purposes of the claims brought.

128. Even if we were wrong in finding that those delays were not a detriment to which the claimant was subjected to in this case, and had the tribunal had to consider whether the claimant was subjected to any such detriment either because he did a protected act or for the sole or main purpose of preventing or deterring him from taking part in the activities of an independent trade union, his claim on these matters would still not have succeeded. The tribunal accepted that the delays were innocent delays, and in no way were influenced by either the claimant's protected act or by his union membership/activities. There are no facts from which the tribunal could conclude a causal link to either the protected act or trade union activity. In short, the claimant has simply not brought any evidence. And during cross-examination did not dispute those explanations. To the contrary, the tribunal accepted the innocent reasons behind the delays provided by both Mr Kissock and Ms Lowry, which was supported by the contemporaneous evidence in this case, and the oral evidence that we heard, including that of the claimant.

129. The claimant's case in relation to the independence of the managers hearing his grievance and grievance appeal was somewhat confusing. His evidence, put simply, was that Ms Lowry was not independent as Mr Kissock was her line manager. Whilst Mr Kissock was not independent as the grievance appeal manager as the grievance initially went to him, and he decided who was to chair the grievance investigation. The claimant made no other assertions in terms of the lack of independence of either Ms Lowry as grievance manager or Mr Kissock as the appeal manager. The claimant simply has not adduced the evidence to support that either of these individuals lacked independence during this process. Further supporting this conclusion, in relation to Ms Lowry at least, the claimant under cross-examination accepted that Ms Lowry dealt with his grievance 'professionally and courteously'.

130. Again, there were delays in addressing the appeal hearing. Both the setting up of the hearing and the release of the decision. However, given our findings above, these were primarily attributable to the claimant. And in those circumstances the claimant has not satisfied the tribunal that any such delays were a detriment to which he was being subjected to.

131. There is no evidence that the respondent not maintaining agreed notes of the claimant's grievance or appeal was either because of him having done a protected act, or for the sole or main purpose of preventing or deterring him from taking part in the activities of an independent trade union. Indeed, this was the approach adopted by the respondent in relation to any notes for any such hearing for any person.

132. Based on the above, allegations 2.3, 3.3, 3.8 and 3.10 (save for the specific comments which are addressed below) are not well-founded and are dismissed.

(vi) Comments by Ms Barrow? (Allegations 3.4 and 3.5)

#### Findings

133. Whilst investigating the claimant's grievance, Ms Lowry questioned Ms Barrow on 03 August 2020. In responding to a question posed by Ms Lowry concerning the council's policy on secondments, and whether a secondment could have been allowed, Ms Barrow responded by saying that she had understood that the claimant's work for the union had already hindered his work in his substantive post. Although Ms Barrow in her witness statement (paragraph 70) suggests she did not make such a comment, under cross-examination this had changed to not recalling whether she had or not. Whilst Ms Lowry's evidence, supported by her contemporaneous notes of that meeting support that this comment was made.

134. Ms Barrow was not making a positive statement that the claimant's trade union activities had hindered his substantive role, but merely explaining her understanding which had come from somebody in finance. She was simply quoting what somebody in finance had said to her. On balance, we make this finding given the specific record of Ms Lowry's at p.238, p.259 and p.261. It is clearly recorded as information coming from finance. Ms Barrow was simply providing a response to a question, based on her understanding that came from a third party.

135. Ms Barrow at no point investigated the claimant's performance, nor monitored it. Ms Barrow had no direct line management of the claimant and had no understanding of his performance on a daily basis.

136. The claimant had sight of this comment on or around 20 August 2020.

137. Similarly, the comments that make up allegation 3.5, were comments made by Ms Barrow. These are clearly recorded by Ms Lowry (see p.236) These were Ms Barrow's opinion of the claimant following the email exchange in Dec/Jan, noted above. These were given as a response to questions concerning how Ms Barrow viewed the claimant's behaviour.

#### Discussion

138. Put simply, these comments were Ms Barrow's responses to questions during a grievance investigation. That is the circumstances against which the comments must be considered. These were the honest opinions of Ms Barrow. And these are opinions that she is entitled to hold,

and entitled to provide if they are relevant to the questions being asked, which they were. In those circumstances we do not consider that making these comments in the context of a grievance investigation, with which the comments are a valid response to questions posed, reach the level of being a detriment. Further, there is no link between these comments and the claimant having done a protect act or as an attempt to deter him from trade union activities.

139. Based on the above, allegations 3.4 and 3.5 are not well-founded and are dismissed.

(vii) Comment made by Ms Lowry? (Allegation 3.6)

Findings

140. As part of Ms Lowry's investigation into the claimant's grievance, Ms Lowry considered the email chain from December 2019/January 2020. When analysing these mails in the context of the grievance, Ms Lowry annotated the emails to assist with her thought process (the annotated versions of the emails can be seen at pp.166-173, with Ms Lowry's annotations in red).
141. Ms Lowry does not make the comment that the claimant was either presumptuous or antagonistic. Instead she expresses that part of the claimant's email of 10 January 2020 'could therefore be read as presumptuous if not actually antagonistic' (p.167).
142. Ms Lowry interprets the claimant's email of 09 January 2020 as being 'quite adversarial' (p.168).
143. In the context of the email exchange, Ms Lowry expresses that the claimant's email of 09 January 2020 'given Deborah's explanation below and her offer to discuss this with Paul, at this point Paul has overstepped the boundary of reasonable behaviour: he has ignored her direct explanation about why it is not appropriate for him to go ahead unilaterally and gather 'evidence' (p.168).
144. Ms Lowry was analysing the email exchange, which formed part of the claimant's grievance, and reaching her own objective views on it, which would then inform her investigation and determination of the issue.

Discussion

145. Ms Lowry was tasked with investigating the claimant's grievance, and to objectively assess the evidence surrounding it. Part of this required Ms Lowry to assess the email exchange that formed part of the claimant's grievance.

146. As a matter of fact Ms Lowry does not describe the claimant as presumptuous or antagonistic.
147. The annotations were Ms Lowry's interpretation of the email exchange. In these circumstances, where Ms Lowry is simply carrying out the role that she has been tasked to carry out, the annotations do not reach the level of being a detriment.
148. However, even if we are wrong on that, the claimant has failed to adduce any evidence that supports that these annotations were added for the sole or main purpose of deterring him from taking part in trade union activities, or to penalise him for doing so. The claimant has adduced no evidence that any such causal connection exists. Instead, we accept Ms Lowry's explanation that these comments were for her use, and assist her in assessing the email exchange in question.
149. Allegation 3.6 does not succeed and is dismissed.

*(viii) Ms Lowry disclosing to Ms Cotterell? (Allegation 3.7)*

#### Findings

150. As part of her investigations, Ms Lowry interviewed Ms Cotterell on 04 August 2020. However, this was done on an informal basis. It was agreed between the two of them that the conversation would be off the record, but that anything that was recorded would be shared with Ms Cotterell. This was to ensure accuracy and to ensure only matters that Ms Cotterell was comfortable sharing had been recorded.
151. As part of an email sent by Ms Lowry to Ms Cotterell on 06 August 2020, where Ms Lowry collated Ms Cotterell's responses, she explained that although the claimant will not see this underlying document, '...it is possible that it will be necessary to share this with the Employment Tribunal if things continue to progress in that direction'. Ms Lowry was simply informing Ms Cotterell that this document would be disclosable in the event of the claimant pursuing his claim before the tribunal. This was Ms Lowry being transparent to Ms Cotterell given the nature of the conversation that they had had.
152. Ms Lowry at this time did not know whether Ms Cotterell had knowledge that the claimant had presented a claim form before the employment tribunal on 07 June 2020. Although Ms Lowry presumed that Ms Cotterell did know, given that both were part of the same union.
153. Having disclosed this fact to Ms Cotterell, there was no impact on the claimant's relationship with Ms Cotterell.

#### Discussion



154. Ms Lowry simply provided Ms Cotterell with statement of fact. By 04 August 2020, when Ms Lowry met with Ms Cotterell, the claimant had already presented his claim form. Although having agreed that the conversation was off the record, there was a possibility that the conversation would have to be disclosed to an employment tribunal, if the claim proceeded to a final hearing. Assessing that conduct against those circumstances, this comment by Ms Lowry is found not to be a detriment to the claimant.

155. Further, even had it been found to be a detriment, it is unclear how the claimant says that this was for the sole or main purpose of deterring him from taking part in trade union activities, or to penalise him for doing so. The claimant has adduced no evidence that any such causal connection exists.

156. Allegation 3.7 does not succeed and is dismissed.

*(ix) Caused the claimant financial loss as he was unable to secure secondment at a higher rate of pay and received a reduced amount of trade union casework (allegation 3.12)*

#### Findings

157. Findings in relation to the secondment issue will not be repeated here.

158. The claimant has not had a reduced trade union casework. The claimant has adduced no evidence of a reduced amount of trade union casework, and therefore on balance we make this finding. We are also mindful that the claimant under cross examination explained that that it was his choice to refuse casework that had been allocated to him. This suggests that he did not receive a reduced amount of work, but was choosing not to do as much.

#### Discussion

159. The claimant has failed to establish the facts on which this part of his claims relies. Allegation 3.12 does not succeed and is dismissed.

*(x) Deborah Barrow, on or around 03 August 2020, saying to Ruth Lowry that the claimant was "a militant character- like Les Parker- all about him, not about the members" (allegation 3.13)*

#### Findings

160. The claimant did not know who Les Parker was.

161. Ms Barrow made the comment as alleged when being questioned by Ms Lowry as part of the grievance investigation. This was Ms Barrow's

view as to the claimant's style as a trade union representative. And was a comment that flowed from the interview that took place.

162. The claimant was not aware of this comment until 05 November 2021.

#### Discussion

163. This is a comment made by Ms Barrow in responding to questions asked of her by Ms Lowry, as part of the respondent's investigation into the claimant's grievance. In that particular context, the tribunal does not accept that this comment reaches the level of being a detriment. To find otherwise would mean that individuals would not be able to give open and honest accounts when responding to questions, in the fear that it could be deemed to be a detriment. This is simply Ms Barrow's views of the claimant's approach to his trade union representation, and one that she could justifiably hold given the exchange that she had been in with the claimant.

164. The claimant simply being offended by a comment which he discovered some time after, in circumstances where it was an honest account given in a grievance investigation, is not a detriment in the judgment of this tribunal.

165. Further, in any event, the claimant has not adduced any evidence to support that this was for the sole or main purpose of deterring him from taking part in trade union activities, or to penalise him for doing so. The reason for the comment, we find was to assist Ms Lowry in her investigations into the claimant's grievance.

166. Allegation 3.13 does not succeed and is therefore dismissed.

#### Conclusions

167. The claimant's claim partially succeeds. The parts of his claim that succeed are allegations 2.2, 3.1 and 3.11. The remainder of the claim does not succeed and are dismissed.

168. This case will now proceed to a remedy hearing. It will be listed for 1 day, and will be by CVP. In preparation for this, I direct the following:

- a. The parties are to send dates of their unavailability for the remainder of the calendar year within 14 days of receiving this judgment.
- b. 21 days before the remedy hearing, the claimant is to send to the respondent an updated schedule of loss.
- c. 21 days before the remedy hearing, the parties are to send to each other any documents on which they are seeking to rely on at the remedy hearing.
- d. 14 days before the remedy hearing, the respondent must produce an agreed bundle to be used at the remedy hearing.

- e. 7 days before the remedy hearing, any witness evidence (including that from the claimant) that is to be relied on at the remedy hearing must be sent to the other side.
- f. 3 days before the remedy hearing, the respondent must send to the tribunal an electronic copy of the evidence file and any witness evidence being considered at the hearing.

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Employment Judge Mark Butler

Date: 18 May 2022

JUDGMENT SENT TO THE PARTIES ON

30 May 2022

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**

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

**BETWEEN:**

**JOHN PAUL MORLEY**

**Claimant**

**-and-**

**LANCASHIRE COUNTY COUNCIL**

**Respondent**

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**LIST OF ISSUES**

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**Victimisation claim under s.27 Equality Act 2010:**

1. Did the Claimant conduct a protected act?
  - 1.1. The Claimant representing an employee in relation to a bullying and harassment grievance relating to her race (in accordance with s.27(2)(c) or (d) Equality Act 2010); and
  - 1.2. Submitting and pursuing a grievance that was related to the above issues.
2. If so, was the Claimant subjected to a detriment because of the protected act?
  - 2.2 Deborah Barrow sending the email dated 13<sup>th</sup> January 2020 at 0738 (p.158/9) to the Claimant and raising the issue of the Claimants conduct with his Branch Secretary; and
  - 2.3 The conduct of the Respondent when dealing with the Respondents grievance (p.240 to 345 lists the concerns which Claimant has regarding the Respondent's conduct).

**Victimisation claim under s.146 Trade Union and Labour Relations (Consolidation) Act 1992:**

3. The Respondent did the following acts:
  - 3.1 Deborah Barrow sent the email dated 13<sup>th</sup> January 2020 to the Claimant (p.158 to 159);

- 3.2 The Claimant did not obtain a secondment opportunity on 27<sup>th</sup> February 2020 (p.203);
- 3.3 Neil Kissock failed to acknowledge the Claimant's grievance dated 10<sup>th</sup> April 2020 within 10 working days in accordance with the Respondent's old grievance policy (p.46);
- 3.4 A comment was noted by Ruth Lowry (p.238 and p.259) that Deborah Barrow had allegedly stated that the Claimant's '*...work for the union has already hindered his work in his substantive post*';
- 3.5 Comments noted by Ruth Lowry that the Claimant was allegedly '*taking a huge amount of HR Service's, making the issues he raises as a union representative all about him and his agenda rather than the members and their needs, difficult character, appalling, quite belligerent, demanding, disrespectful, rude, unhelpful, challenging, adversarial, time*' (p. 236);
- 3.6 Comments made by Ruth Lowry that the Claimant was '*presumptuous, antagonistic, attacking, adversarial, demanding and overstepping the boundary of reasonable behaviour*' (pages 167 to 168);
- 3.7 Ruth Lowry disclosed to Elaine Cotterell in an email dated 6<sup>th</sup> August 2020 (p.268/9) that it may be necessary to share Elaine's comments '*...with the Employment Tribunal if things continue to progress in that direction*';
- 3.8 The Respondent failed to provide the Claimant with his grievance outcome within the required 5 working days under the Respondent's old grievance policy (p.47); and
- 3.9 Deborah Barrow sending an email dated 17 March 2020 informing the Claimant that he would need to resign from his LCC to undertake a paid role with Unison (page 218).

In addition, did the Respondent do the following acts?

- 3.10 Failing to appoint an independent manager to hear the grievance or appeal, not keeping agreed notes, failure to keep the Claimant updated in relation to the delay for hearing the grievance appeal, and failure to adhere to the Acas Code of Practice;

3.11 Deborah Barrow sending an email dated 13 January 2020 (p.158 to 159) linking the Claimant's conduct as a representative to time off for trade union duties and indicating time off for trade union duties was conditional on her perception of conduct; and

3.12 Caused the Claimant financial loss as he was unable to secure secondment at a higher rate of pay and received reduced amount of trade union work casework.

4. Do any of these actions amount to a detriment?

5. If so, were they afforded to the Claimant for the sole or main purpose of deterring him from taking part in the activities of an independent trade union at an appropriate time or in order to penalise him for doing so contrary to s.146(1)(b) Trade Union and Labour Relations (Consolidation) Act 1992?

6. Were the Claimant's activities undertaken at an appropriate time?

Namely, were they:

6.1 outside the Claimant's working hours, or;

6.2 at a time within his contractual working hours at which, in accordance with arrangements agreed with or consent given by her employer, it was permissible for him to take part in the activities of a trade union?