EMPLOYMENT TRIBUNALS

Claimant: **Mr S Ali**

Respondent: **Royal Mail Group Ltd**

Heard at: **Cardiff Employment Tribunal in person and by video**

On: **21, 22, 23, 24, & 25 November 2022 and 9 February 2023 and in chambers on 10 February 2023**

Before: **Employment Judge R Harfield**
Mr S Head
Ms Y Neves

Representation
Claimant: Mr Ali represented himself with assistance at times from Mr Khan
Respondent: Mr Brockley (Counsel)

RESERVED JUDGMENT

The claimant's complaints of direct disability discrimination and victimisation are not well founded and are dismissed.

REASONS

Introduction

1. The claimant presented his ET1 claim form on 24 September 2021 bringing a complaint of disability discrimination. He made specific reference to direct discrimination and victimisation. The claim form was sent by post to the respondent by the Tribunal on 19 November 2021. The respondent filed an ET3 response form denying the claims.

2. On 25 January 2022 the claimant filed further information in respect of his complaint of victimisation. Some of these related to events that post dated his ET1 claim form. A case management hearing took place before EJ Ryan on 9 February 2022, recording EJ Ryan's understanding of the claimant's complaints of direct disability discrimination and victimisation and noting the claimant was seeking to add new matters. The claimant was directed to make a written application to amend which he did on 16

March 2022. The claimant sought to amend his claim to bring 8 allegations, which he described as direct discrimination and victimisation.

3. On 29 March 2022 the respondent confirmed they accepted the claimant was a disabled person from 2014 to that date by virtue of musculoskeletal impairment of the right hand/wrist. As directed by EJ Ryan they confirmed they were seeking time issues to be determined at a preliminary hearing, along with the disputed amendment application.

4. A public preliminary hearing took place before EJ Harfield on 27 May 2022 which resulted in a Judgment dated 23 June 2022. EJ Harfield struck out or did not allow by way of amendment the first 3 complaints the claimant sought to rely upon. Matter 4 was allowed to proceed as it was accepted I that complaint was in the claim form all along. The respondent consented to the amendment application to allow 5, 6, 7 and 8 to proceed. EJ Harfield also distilled the remaining complaints into a list of issues incorporated in the case management order.

5. The claimant has made two reconsideration applications relating to EJ Harfield's decision which have been rejected and he pursues an appeal to the Employment Appeal Tribunal. Neither party suggested the remaining complaints could not be heard in the meantime. On 13 September 2022 the claimant also applied to amend the list of issues to add in new variants of complaints EJ Harfield had previously not permitted to proceed (dating from 2013 to 2015). This was refused on 10 October 2022.

6. On 24 October 2022 the claimant made a further application to amend which came before EJ Howden-Evans on 1 November 2022. After discussion with EJ Howden Evans the claimant decided not to pursue the first three of his latest amendment application, because they were older complaints linked to matters EJ Harfield had not permitted to proceed. He pursued an application to relabel some incidents in the list of issues as indirect disability discrimination. EJ Howden-Evans directed the amendment application be considered at the start of the final hearing. On 6 November 2022 the claimant wrote again to the tribunal applying instead to recast one of his complaints as discrimination arising from disability, rather than indirect disability discrimination. The respondent objected to all the proposed amendments.

7. On 10 November 2022, on the direction of EJ Moore, the tribunal indicated that with consent the amendment application could be dealt with on the papers (due to concerns that if the amendment were granted at the start of the final hearing it could result in the postponement of that hearing). Both parties consented to that changed course of action. Therefore, the latest amendment application was considered by EJ Vernon on the papers on 15 November 2022. EJ Vernon refused the amendment application. He indicated that the list of issues remained as set out by EJ Harfield following the preliminary hearing in June 2022.

8. We had a bundle extending to [390] pages. EJ Sharp had previously rejected the claimant's application to rely on his own bundle. We had a written witness statement from, and heard evidence from, the claimant. For the respondent we heard evidence from and had written witness statements from Ms Maunder (now plant manager but at the time Late

Shift Manager), Mr Walker (Work Area Manager and grievance manager), Mr Singh (Early Shift Manager and grievance appeal manager).

9. The first day of the hearing did not proceed as originally envisaged because unfortunately the respondent's then advocate's father was suddenly admitted to hospital the day before the hearing was due to start. The respondent's solicitor was able to appoint Mr Brockley to take over representation, with the first day being used as reading time. We are grateful to him for picking this case up at short notice and also to the claimant for his understanding about the situation. The tribunal panel were also able to use the time on the first day to complete their reading of the bundle and witness statements. Mr Brockley was not able to attend in person and so he represented the respondent by video. Everyone else, including the respondent's witnesses, attended in person.

10. By way of adjustments, EJ Howden-Evans had discussed with the claimant bringing two friends/family members with him to assist with page turning and with note taking. The claimant had for large parts of the case a friend or family member with him as note taker. He was not able to bring a second individual to turn pages, but indicated he was able to do so himself having seen the physical bundle. We took breaks approximately every hour and the claimant was able to ask for any other breaks he needed. No other individuals sought adjustments.

11. During the course of the hearing it came to light that two documents relating to the grievance investigation by Mr Walker had not been disclosed. Mr Walker said he had sent them to the respondent's solicitors, Weightmans. Weightmans initially stated they had not received them. We ultimately released Mr Walker so that he could attend site and retrieve the email. Weightmans then accepted that it had been provided to them and an error must have occurred in relation to their handling of the email. The claimant agreed to the admission of one of the documents (the interview notes with two CWU representatives). It was added to the bundle at page 245A. Mr Walker was recalled to give evidence so that the claimant could ask him questions about it. The admission of the second document was objected to by the claimant. Mr Brockley sought its admission. We deliberated and decided not to admit the document. Oral reasons were given at the time relating to the prejudice to the claimant. The claimant was also given the option of a representative from Weightmans giving evidence, but the claimant said he did not require that. The claimant found the whole situation difficult and distressing. We tried to break the process down into stages for him. We also decided, with agreement from the parties, not to have closing submissions on 25 November 2022 but to instead relist the case for a further day. This meant the claimant could have more time to prepare.

12. The claimant was also given the option by the respondent of recalling any further witnesses if he wanted to do so, having had the opportunity for reflection. The claimant ultimately did not wish to do so and so closing submissions were heard on the morning of 9 February 2023 with Judgment then reserved. We undertook deliberations on the afternoon of 9 February 2023. The tribunal panel had earmarked 10 February 2023 as additional deliberation time if needed because we were conscious of the delay in the case. We completed our deliberations on 10 February 2023.

Both parties made oral closing submissions and the claimant (with the consent of Mr Brockley) handed up a printed copy of his. For reasons of expediency, we do not set out a full summary of those submissions in this Judgment but we did take all submissions fully into account in our deliberations and they are incorporated by reference below in our discussion and conclusions.

The Issues

13. The issues to be decided are identified in the case management order found at [121] to [123] and are as follows:

1. ***Direct disability discrimination (Equality Act 2010 section 13)***

1.1 Did the Respondent do the following things:

1.1.1 The claimant's line manager, Ms Maunder, gave the claimant a letter dated 24 June 2021 asserting that the claimant was not entitled to TBR or shift allowance;

1.2 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated.

The Claimant has not named anyone in particular who he says was treated better than he was.

1.3 If so, was it because of disability?

2. ***Victimisation (Equality Act 2010 section 27)***

2.1 Did the Claimant do a protected act as follows:

2.1.1 Submit a grievance in August 2021;
2.1.2 Engage in Acas early conciliation from 24 August 2021 to 13 September 2021;
2.1.3 Present his employment tribunal claim on 24 September 2021 (which was sent by post to the respondent by the Tribunal on 19 November 2021)

2.2 Did the Respondent do the following things:

2.2.1 The grievance stage 2 manager, Mr Walker did not remove himself as the grievance manager when he should have done so because he was a lower grade manager than the manager he was investigating;

2.2.2 In September 2021 Mr Walker did not share his meeting summary notes of his meeting with the claimant for the claimant to approve or correct or comment upon, which he should have done under the grievance policy;

2.2.3 Mr Walker did not share other witness statements or witness interview notes or other evidence he gathered and had before him when making his decision with the claimant;

2.2.4 Mr Walker did not inform the claimant of his right of appeal;

2.2.5 Mr Walker exceeded the 28 days allowed for under policy in conclude the grievance without explanation for the delay until the claimant contacted HR;

2.2.6 Mr Walker did not uphold the claimant's grievance and concluded that an error had been made in reinstating the claimant's TBR and threatened to revoke the claimant's TBR again;

2.2.7 The grievance stage 2 appeal manager, Mr Singh, on 23 November 2021 asked the claimant questions about a different version of the letter given to the claimant by Mr Colclough in December 2014/ January 2015 (about the claimant's working pattern/entitlement to TBR) which the claimant describes as "fraudulent and fictitious". The claimant alleges Mr Singh's questions were pre-loaded, incriminating, were trying to cover up discrimination and make the claimant out to be dishonest by asserting that the claimant had been in receipt of TBR throughout;

2.2.8 Mr Singh at a further meeting on 2 December 2021, then used the original version of Mr Colclough's document and made it out to be the version he had been referring to all along. He was gaslighting the claimant, detracting from the document and manipulating the facts surrounding it. His conduct caused the claimant to eventually leave the meeting. Mr Singh was being fed questions by the respondent's legal team;

2.2.9 Mr Singh did not conduct a fair investigation;

2.2.10 Mr Singh did not uphold the claimant's grievance appeal, said the revocation of TBR was the correct decision and that the altered document was not relevant.

2.3 By doing so, did it subject the Claimant to detriment?

2.4 If so, was it because the Claimant did a protected act? The Claimant asserts that Mr Walker's conduct set out above was because of his grievance and because he engaged in Acas early conciliation. The Claimant asserts that Mr Singh's conduct above

was because of his grievance, because he engaged in Acas early conciliation and because he brought these employment tribunal proceedings.

2.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

3. ***Remedy for discrimination or victimisation***

3.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

3.2 What financial losses has the discrimination caused the Claimant?

3.3 Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

3.4 If not, for what period of loss should the Claimant be compensated?

3.5 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

3.6 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

3.7 Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

3.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

3.9 Did the Respondent or the Claimant unreasonably fail to comply with it?

3.10 If so is it just and equitable to increase or decrease any award payable to the Claimant?

3.11 By what proportion, up to 25%?

3.12 Should interest be awarded? How much?

The legal principles

Direct disability discrimination

14. Direct discrimination is defined in section 13(1) Equality Act as follows:

"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."

15. The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies:

"On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case."

16. Section 23(2) goes on to provide that if the protected characteristic is disability, the circumstances relating to a case include the person's abilities. The effect of section 23 as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparator can be with a hypothetical person.

17. The Employment Appeal Tribunal and appellate courts have also emphasised in a number of cases including Amnesty International v Ahmed [2009] IRLR 894, that in most cases where the conduct in question is not overtly related to disability, the real question is the "reason why" the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator. It may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.

18. In order to satisfy the "because of" test, it is not necessary for the protected characteristic to be the whole of the reason, or even the principal reason, for the treatment. In Nagarajan v London Regional Transport [1999] ICR 877 Lord Nicholls said, (in the context of a complaint of race discrimination but the same principles apply to other protected characteristics):

"*Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others…If racial grounds…had a significant influence on the outcome, discrimination was made out."*

Victimisation

19. Section 27 of the Equality Act 2010 provides:

"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."

20. There is no dispute that the claimant did three protected acts of (a) submitting a grievance in August 2021; (b) engaging in Acas early conciliation from 24 August 2021 to 13 September 2021 and (c) presenting

his employment tribunal claim on 24 September 2021 which was sent by post to the respondent by the Tribunal on 19 November 2021.

21. Whether treatment is a "detriment" is established by asking whether the treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment. It is not necessary to establish any physical or economic consequence. The assessment by reference to a reasonable worker means that an *unjustified* sense of grievance will not pass the test.

22. There must be a link between the protected act and the detriment; the claimant must be subjected to a detriment *because* the claimant did the protected act. Here the tribunal has to ask itself whether the protected act had a significant influence on the outcome. This does not mean it necessarily has to be the main or principal cause. Again this "reason why" analysis involves an examination of the mental processes, conscious or unconscious of the decision maker in question. It is again not a "but for" test.

Burden of Proof

23. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides:

"(2) if there are facts from which the Court (which includes a Tribunal) 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."

24. Consequently, it is for a claimant to establish facts from which the tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

25. In Hewage v Grampian Health Board [2012] IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provisions should apply. That guidance appears in Igen Limited v Wong [2005] ICR 931 as supplemented in Madarassy v Nomura International Plc [2007] ICR 867. Although the concept of the shifting burden of proof involves a two-stage process, that analysis should only be conducted once the Tribunal has heard all the evidence. Furthermore, in practice if the tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Findings of fact

26. We do not have to make findings on every point in dispute between the parties; only those that we need to determine to answer the Issues in the

case. Where there is a dispute we make our findings applying the balance of probabilities.

27. The claimant has been employed by the respondence since 2003 as an Operational Postal Grade. In December 2008 the claimant was suspended facing allegations of theft and was exonerated in January 2009. Whilst on suspension the claimant was the victim of a hit and run car accident which left him with a long term impairment to his right wrist and arm. He had a significant period of time off work receiving treatment for this and also for his mental health. In December 2020 the claimant faced a further investigation for alleged theft, which was conducted by the then late shift manager, Mr Colclough. The claimant was again exonerated. The claimant was regularly reviewed by occupational health who prepared a series of reports, including about modifications to the claimant's duties.

28. [226] is a document signed off by Mr Colclough as Late Shift Manager and Mr Miah, the CWU shift representative that is undated but appears to date to around early 2014. It is headed "Time Bonus Supplement – Full Time (Late Shift) and says that there had been a review of the Late Shift Duty set with the full co-operation of the CWU. It says:

"One of the entitlements is Time Bonus; this is a 15 minute relief prior to the end of your shift (e.g. 21.45 – 22.00). Time Bonus is applicable to the below criteria:

1. *Employment prior to 16th August 2007 – in line with the local agreement between the CWU and Royal Mail*

The following examples do not attract a Time Bonus supplement:

1. *Anyone employed after 16th August 2007*

2. *If you are sitting in a current duty created after 16th August 2007*

(In the event of any reversion to a duty that would attract Time Bonus you would then be entitled)

After understanding the above criteria – we have noted that you are not entitled to this relief break. Therefore we will be asking you to meet the contractual obligations of a full duty attendance.

This will take affect from Week Commencing 3rd February 2014.

If you have any concerns or feel that you are entitled to receiving this Time Bonus supplement then please contact your Work Area Manager and CWU Rep at the earliest opportunity."

29. [226] reads as if it was sent out to individually affected employees but it has not been suggested to us that it was ever individually given to the claimant.

30. On 3 December 2014 the claimant was sent a letter by the then Late Shift Manager, Andrew Colclough [225]. The typed version gives the date of 3rd December 2015 but has been hand amended to 2014. The claimant says

he made his hand amendment to correct the date when he received the letter. The letter is addressed to the claimant's union representative, and is headed "Simon Ali Work Pattern". It says:

"*Mo*

As discussed to reach a resolution which will be beneficial to all parties I can now confirm that I am in a position to align Mr Ali to the correct workload at the correct times in line with his OH Assist Referral.

See below the new pattern to commence from Monday 4th January 2015 and will be a permanent role.

Monday 13:15 – 20:15 (Reception Cover)

Break 17:00 – 18:00

Tuesday – Thursday

12:00 – 13:30 – DSA

13:30 – 14:30 – Reception

14:30 – 17:00 Parcels

17:00 – 17:45 – Break (45 mins) [against this entry is an handwritten comment saying "? 1 hr like everyone else"]

17:45 – 20:00 – Reception

Friday 12:00 – 13:00 – DSA

13:00 – 14:00 Friday prayer

14:00 – 17:00 – Parcels

17:00 – 17:45 – Break (45 mins)

17:45 – 20:00 – Reception [against this entry is a handwritten comment with an arrow saying "no time bonus]

Total Hours = 39 Hours

Please not [presumably note] that as a new duty set this will not attract time Bonus Relief or Late Shift Allowance."

31. The handwritten annotations about the break of 45 minutes being less than the 1 hour of everyone else, and the reference to no time bonus were made by the claimant at the time. He says he discussed three sets of concerns with his union rep, Mr Miah to take away and discuss with Mr Colclough. These were: (a) the incorrect date (b) the shorter 45 minute lunch breaks Monday to Thursday (which as we understand it was to fund the provision for 1 hour Friday prayer) and (c) the removal of time bonus relief and shift allowance. The claimant says that Mr Miah later came back

to him to say that he had managed to get part of the shift allowance reinstated but that was all he heard. The claimant says he carried on at that time in 2015 working the hours outlined in the letter at [225]. The claimant was aggrieved at the time about the removal of his TBR and part of his late shift allowance. He did not pursue a formal grievance or employment tribunal proceedings at the time about the removal of TBR and shift allowance, for reasons explored in the Reserved Judgment of EJ Harfield of 23 June 2022.

32. [227] is a different version of this letter. It is fully typed with a date of 3rd December 2015. It gives a commencement date for the new pattern of Monday 4th January 2016. The pattern for Monday is the same as [225]. There is at [227] no separate entry for Friday. Tuesday to Friday are instead recorded as

    12:15 – 13:30 – DSA
    13:30 – 14:30 – Reception
    14:30 – 17:10 – Parcels
    17:10 – 18:10 – Break
    18:10 – 20:15 – Reception

33. There is now 1 hour break each day (not 45 minutes). [227] moves the start time Tuesday to Friday back by 15 minutes and likewise the end time back by 15 minutes so that Tuesday to Friday the claimant would be due to finish at 20:15 not 20:00. [227] makes no mention of Friday Prayer. The letter at [227] also has an address header of the Cardiff mail centre, Penarth Road, Cardiff, CF11 8TA. Mr Colclough's sign off also has under his job title "Cardiff Mail Centre." Both [225] and [227] say "Please not that as a new duty set this will not attract Time Bonus Relief or Late Shift Allowance." [227] is the document that the claimant describes as being fictitious and fraudulent. He says it is not genuine and he did not receive it at the time it purports to have been written.

34. The respondent undertakes re-alignment exercises every 12 months or so. This involves reviewing the work pattern over a 12 month period and then aligning staff shifts and hours to match that work pattern. It is done in conjunction with the CWU. There were various realignment exercises over the years between 2015 and 2021 that we do not have details about. The claimant also says that the issue of losing his TBR was discussed with other work managers in the past, but they had refused to help him [254 – the claimant's version of the minutes of 23 November 2021] but again we do not have any further details of this.

35. The claimant tells us that by the time of the events in question (i.e. before Ms Maunder did the 2021 realignment exercise) he was working Monday to Friday 12 pm to 8pm. By then he was taking his 1 hours break from 7pm to 8pm, meaning he could in effect leave the workplace at 7pm as his break was the last part his shift. He says he was not taking TBR and had not taken it since Mr Colclough revoked it.

36. A further re-alignment process took place in May 2021 to incorporate a shorter working week which meant that frontline staff's attendance hours were reduced by 1 hour but pay remained the same. As part of this exercise Ms Maunder, now Late Shift Manager, met with individuals who

had adjusted duties. This was about 5 individuals including the claimant. The purpose was to discuss their shift patterns and what they could and could not do so that it could be factored into deployment decisions.

37. Ms Maunder met with the claimant on 12 May 2021. There was no discussion of TBR at that time. In the course of their meeting there was a discussion about the claimant's working hours. The claimant says he told Ms Maunder he would leave his desk at 6:45pm with handover time and time to use the facilities meaning that he finished work and left at 7pm or sometimes after 7 pm, as he took his hour's break from 7pm to 8pm. Ms Maunder disputes this stating the claimant had just said that he finished for his break at 6:45pm until 8pm. She says that she assumed from this that the claimant was taking TBR of 15 minutes. She says the colleague who covered the claimant's break also said that he covered for the claimant from 6:45pm to 8pm. We preferred the evidence of Ms Maunder on this point and on the balance of probabilities we do not find it likely that the claimant told Ms Maunder that he was doing a 15 minute handover of duties between 6:45 and 7pm. We do not consider their discussion was likely to have that level of detail. It was also Ms Maunder's presumption the claimant was taking 15 minutes TBR as she accepts she did not have that direct conversation with him about it at the time.

38. There is a dispute as to what happened next. The claimant in his witness statement says he met with Ms Maunder again on or around 25 May 2021 to clarify matters about the shorter working week and realignment and that at this meeting he said to Ms Maunder "Abbi, what about my TBR?" He says he was highlighting discrimination and unequal treatment. He alleges her response was to say: "you have no entitlement to TBR." He says he was disheartened because she could at least have investigated it. The claimant says that Ms Maunder's response was to refer to Mr Colclough's document that revoked his TBR to confidently assert he had no entitlement to TBR. He says he spoke to the CWU rep who said: "leave it with me." He says he then received, via the CWU, the letter from Ms Maunder dated 2 June found at [240-341] albeit he did not receive it until 24 June.

39. Ms Maunder disputes this version of events. She says there was no further meeting with the claimant until July 2021. She said in oral evidence that she initially contacted Mr Colclough, not about TBR, but to get a template letter from him. She says that Mr Colclough on 25 May then sent her the letter found at [225] but without the annotations on it. She says she did not open the email attachment at the time. On 27 May Mr Miah from the CWU sent her an email with a proposed new duty structure for the claimant found at [350] to incorporate the shorter working week. This has a proposed finish time of 19:45 to include TBR. Ms Maunder says when she saw that email, she continued to think that the claimant was entitled to TBR and did not know there was an issue about his TBR entitlement at the time.

40. Ms Maunder says that she first appreciated there was an issue when she opened Mr Colclough's attachment. She says that on 2 June she sent a text message to Mr Miah saying she had just opened Mr Colclough's letter she had received on 25 May, and it seemed that the claimant's duty did not attract TBR. She says she said to Mr Miah that she would leave it with

him to have a conversation the claimant about it. She says that she therefore took TBR off the claimant's new duty structure and then sent Mr Miah the letter found at [240-241].

41. The letter at [240-241] is largely a cut and paste of [225] or at least [225] was used as its template. This is clear because it adopts the same typographical error of "not" instead of "note." It is dated 2 June 2021 and is headed "Simon Ali Work Pattern." It does not have the address of the Cardiff Mail Centre at the top (like [225] but unlike [227]). There is a very similar opening sentence of "*As discussed, to reach a resolution which will be beneficial to all parties, I can now confirm that I am in a position to align Mr Ali to the correct workload at the correct times for his duty."* It goes on to say:

"See below the new pattern to commence from Monday 28th June 2021 and will be a permanent role.

Monday

12:15 – 13:30 – Parcels

13:30 – 14:00 – Reception

14:00 – 15:00 – Parcels

15:00 – 16:30 – Reception

16:30 – 17:30 – Break

17:30 – 20:00 – Reception

Tuesday -Wednesday [there is a handwritten annotation 12:15 – repeated against each day]

12:30 – 13:30 – Parcels

13:30 – 14:00 – Reception

14:00 – 16:30 – Parcels

16:30 – 17:30 Break

17:30 – 20:00 Reception

Thursday

12:15 – 13:30 Parcels

13:30 – 14:00 Reception

14:00 – 16:00 Parcels

16:30 – 17:30 Break

17:30 – 20:00 Reception

Friday [against this is handwritten 14:00 start]

12:15 – 13:15 Parcels

13:15 – 14:00 (SWW Prayer)

14:00 – 16:00 – Parcels

16:00 – 17:00 – Break

17:00 – 20:00 Reception

Total hours = 37 Hours [against this is handwritten a star and 37.5 hrs]

Please not that as this was a new duty set created back in 2015. This duty does not attract time Bonus Relief or Late Shift Allowance."

42. We therefore have a conflict of evidence between the claimant and Ms Maunder. There are discrepancies with both the accounts. The claimant, particularly in his cross examination of Ms Maunder was unclear and confused about the sequence of events. At times he agreed with her there was no second meeting in May. At other times he reverted to what his witness statement said. In relation to Ms Maunder there is a conflict between her oral evidence and her written witness statement. Her written statement says: *"I contacted Andrew Colclough about TBR, and on 25 May 2021, he forwarded me the templated letter that Simon was provided with in 2015."* But in her oral evidence she said that her first contact with Mr Colclough was not about TBR. We also have not been given the text message she says she sent to Mr Miah.

43. We looked to see what documents were available to us. This includes the note that Ms Maunder subsequently prepared and gave to the claimant on 17 August 2021. This summary of events does not include a further meeting with the claimant in May 2021 and says that after receiving the templated letter "*Abbie informed Mo Miah that it seems Simon isn't entitled to TBR and hasn't been since 2015 so the TBR was taken off the new duty structure which was issued to Simon on 02/06/2021."* That is the most contemporaneous document we have and accords with Ms Maunder's oral evidence to us. Applying the balance of probabilities, we therefore ultimately prefer Ms Maunder's oral account of events. We find Ms Maunder did not initially think there was an issue about TBR but thought that the claimant was legitimately taking it. She obtained the templated letter from Mr Colclough. We think it likely in doing so she was looking for a template she could re-use to set out the claimant's work pattern. She said in evidence that the claimant's duty was different to most people and most people only did one or two tasks whereas the claimant was undertaking a variety of tasks and rotating between them. On opening the email attachment, she then saw that the claimant was not entitled to TBR and so altered the work pattern before sending the letter found at [240-241]. She also messaged Mr Miah to say it seemed the claimant was not entitled to TBR and had not been since 2015 and she would leave Mr Miah to discuss that with the claimant. Again, that seems the most likely

sequence of events given that Mr Miah was in direct contact with Ms Maunder about the claimant's duties under the shorter working week.

44. Ms Maunder said that around 14 June 2021 she went to work in Swansea for a week and Mr Miah telephoned her and raised concerns about the claimant's entitlement to TBR saying that the claimant believed his duty was an adjusted duty under the Equality Act and not a new duty such that he should retain his TBR. She says that she was due to take a period of leave so told Mr Miah she would pick it up on her return from leave. She says that some time after her return from leave in the week commencing 28 June 2021, and therefore in late June or early July, she spoke with Mr Colclough to ask him what the conversation was he had with the claimant in 2015. She says Mr Colclough said that if you were signed into a new duty after 2007 you were not entitled to TBR but for the sake of 15 minutes she should just give it back to the claimant. She says that she therefore went back to Mr Miah and told him that. We accept that version of events.

45. The claimant remained concerned about his TBR entitlement. On 15 July 2021 he met with Ms Maunder and Mr Miah. The claimant says he told Ms Maunder he had been a victim of discrimination by Mr Colclough, he was protected by the Equality Act and that she should have sought advice from HR. Ms Maunder accepted the claimant may have mentioned discrimination and that he had said something about Mr Colclough although she did not recall that it was an accusation of discrimination directly against Mr Colclough. She states that she told the claimant and Mr Miah that it appeared to her that the claimant had already been taking TBR before she reinstated it. She based this on the fact she understood the claimant was taking a break of 1 hour 15 minutes which would be a break of 1 hour and 15 minutes TBR. We accept she did say words to that effect as they are recorded in her subsequent note at [242]. The claimant was saying that he had not had TBR. Ms Maunder asked the claimant what he was looking for from the meeting and he stated that any time owed from the TBR he believed he had missed out on from 2015 to July 2021 should be paid to him in monetary terms.

46. Ms Maunder states that after the meeting she spoke again with Mr Miah and again said from what she could she the claimant was already taking TBR. She says that on 19 July 2021 Mr Miah said the claimant no longer wished to pursue it. The claimant says he has no knowledge of this. We accept that Mr Miah, irrespective of whether he had the authority of the claimant to do so, did say that to Ms Maunder. Again, it is included in her note at [242].

47. The claimant then lodged a formal grievance [351-354]. We do not know the exact date this was submitted but it must have been in July or August. The claimant said he was raising a letter of grievance for discrimination and unfair treatment under the Equality Act. He said that in January 2015 it was made exclusively crystal clear to him in writing that he was not entitled to TBR by Mr Colclough. He said that was unfair treatment and direct discrimination. He said that by reinstating his TBR 6.6 years after the fact the respondent must accept there had been a serious mistake made which breached agreements and the Equality Act. He said that the respondent must accept that it was unfair, unfavourable or less favourable treatment to him that could not be objectively justified compared with non-

disabled people. He said he was put at a disadvantage compared to the rest of the late shift.

48. The claimant said that by not paying the hours in question, the hours he worked of 1.15 hours a week for 6.6 years the respondent was further directly discriminating against him. He said his TBR should never have been revoked in the beginning, it was direct discrimination, and he should not have to be made to pay for his reasonable adjustment by means of his TBR. He said managers should have sought HR advice.

49. There was then some discussion with HR as to how to take the claimant's grievance forward. We were told by Ms Maunder that HR said that because Ms Maunder had already had a meeting with the claimant and Mr Miah it could be treated as a stage 1 informal grievance meeting even though it had not been labelled that at the time. HR suggested that Ms Maunder write up a bullet point summary which she did producing the document at [242]. We accept that was the likely sequence of events as it explains how [242] came about and why it was written up about a month after the meeting of 15 July. It was received by the claimant on 17 August 2021, and he handwrote the date on his copy found at [242]. There is an error in Ms Maunder's witness statement which she identified before she approved her statement under oath. Her witness statement says there was a further meeting on 17 August 2021, but everyone is agreed there was no meeting on that date.

50. The formal stage 2 grievance was allocated to Mr Walker who was on temporary promotion to shift manager. Mr Walker had previously only dealt with informal grievances not formal ones. He was aware of the grievance policy but not familiar with its detail and he did not re-read it. Mr Walker gave evidence, which we accept, that he was under a lot of pressure at the time he took on the claimant's grievance. He was opening a new site where he had no internet access or access to resources. He was managing the induction of around 200 new casual workers who were working across 3 different shift patterns. It meant Mr Walker himself was working parts of the 3 different shift patterns across morning, afternoon and nights.

51. We accept Mr Walker's evidence that he noticed the grievance involved Mr Colclough who was a grade 9 that was two levels above a shift manager. He queried this with the Cardiff Mail Centre Manager, Mr Press, but was told he could handle the grievance as he was on temporary promotion to shift manager. Mr Walker says that with hindsight he should have checked that with HR but felt at the time it was appropriate for him to handle it as he had checked it with a more senior manager. We accept his evidence.

52. On 3 September 2021 Mr Walker met with the claimant and Mr Farah from the CWU [243]. In the course of the meeting the claimant referred to other staff who had moved to a twilight shift but had kept their allowances. Mr Walker did not send a meeting note to the claimant to comment on. He says, which we accept, he did not know it was something he should do (not having checked the grievance policy) and that with hindsight he realises it would have been a good idea.

53. Mr Walker met with Mr Colclough on 10 September 2021 [244]. The record records Mr Colclough being asked: "why did you change Simon Ali duty" and Mr Colclough stating: "We didn't just change his Duty, we Created a duty to support Simon as he was unable to carry out his current duty, and he also had some personal problems at that time." Mr Colclough was asked whether the union was involved in the decisions, and he is recorded as saying: "Yes Mo Miah was the CWU REP at the time when we created this new duty for Simon. I also provided a letter to Simon Ali with all the new start finish times and location of work." He was asked "was Simon TBR taken off him in 2015?" and Mr Colclough said: "When Simon signed for this new duty the letter, it stated that it did not attract TBR or late shift Allowance."

54. Mr Walker interviewed Ms Maunder on 5 October 2021 [245]. She was asked if she recalled reinstating the TBR and said: "on my return from holidays I had a conversation with Andrew Colclough regarding Simons TBR and Was advised to reinstate it by Andrew." She said she returned from holiday on 28 June 2021. She said Mr Colclough told her to reinstate the TBR as it was only 15 minutes a day. She was asked whether she believed the claimant was entitled to the reinstatement and she said she herself was under the impression the claimant was taking it before she was told to reinstate it. Mr Walker says he believes Ms Maunder was on leave hence the delay in interviewing her, combined with the fact he was working between sites at the time.

55. Mr Walker interviewed Mr Miah and Mr Khan from the CWU on 6 October 2021 [245A]. Mr Walker said in oral evidence there had been delays with the CWU in arranging this meeting, which we accept. The note records Mr Miah stating that there was a change in duty in 2015 to support the claimant. He was asked: "Was Simon happy with the changes made" to which he replied: "yes he was happy with the new changes we had made for him." He was asked: "Did you support him with the new Schedule of Times that Andrew had made" and he said: "yes I believe I did support Simon." The note also records Mr Walker showing a copy of the letter he had been given by the claimant. The note does not show Mr Walker asking Mr Miah any direct questions specifically about the removal of TBR and late shift allowance.

56. Mr Walker did not send copies of the interview notes to the claimant. He says, and we accept, that was because he was not aware it was something he should do. He did not think he was allowed to share notes of someone else's interview. As above, Mr Walker had not re-familiarised himself with the grievance policy. He accepts now with hindsight he should have sent the notes to the claimant for comment.

57. There was also some delay in the grievance process due to a delay in obtaining historic occupational health records. Mr Walker was seeking to obtain a copy from archives albeit the claimant was able to give him a copy the claimant had already obtained, to speed things up.

58. On 22 October 2021 the claimant chased the grievance response saying it was over 30 working days into the process and that the long wait was causing him more stress and anxiety [246]. He acknowledged that some people had been on leave and that Mr Walker had conveyed that to him.

On 27 October Mr Walker wrote to the claimant to say that he was currently unable to make a decision, and he apologised for the delay. He said it was because he was currently seeking advice on the case. He referred the claimant to sources of support [248].

59. On a date probably in early to mid November 2021 Mr Walker told the claimant his grievance had not been upheld [249 – 252] (his report is undated). Mr Walker addressed a complaint headed "Simon believes that his TBR should never have been Revoked as his employer was aware that he was disabled from around 2012 and should have Sought HR advice" by saying that the records from 2009 and 2010 show the line manager being supportive in terms of assessments and reasonable adjustments including a phased return plans and adjusted duty. He said: "given all the Referral information that I have been given the business has supported him: I cannot see any evidence that the business has discriminated against Simon under the Equality act."

60. Mr Walker then dealt with a second point termed "Why was Simon made to pay for this Reasonable adjustment, by means of the Revoke of his TBR." Mr Walker said the claimant had given him a letter which "advises on 3rd December 2014, a new duty was created to support Simon due to his Condition in line with his OHS Assist Referral. Simons new shift pattern would commence from Monday 4th January 2015." Mr Walker says it was supported by the CWU and does state on the letter that the new duty will not attract time bonus relief or late shift allowances. He says: "so this was a new duty that Simon had signed for" and that the letter clearly stated the claimant would not be entitled to these and that the claimant was well aware he was going to lose this time/money back in 2015. Mr Walker stated he had checked a pay directive from 16/2002 which refers to "weekly time bonus pay supplement payment criteria" which states "Area Planning and Systems managers for the units concerned will provide a one-off list of employees who meet this criterion at the outset." He says: "As Simons duty was different add times etc… he was not included on this list and this is why he was advised specifically in the letter sent in 2014." The pay directive document was not before us as it was disclosed late and the claimant objected to its admission.

61. Mr Walker also said: "I have been made aware that this TBR was reinstated back in August 2021 by a senior manager covering the Mail centre manager role. This should not have taken place and should be removed given that Simon Agreed to these changes with his union Rep back in 2015. This was a mistake by the management team. No admission was given by this manger to state Simon should have been given this bonus from 2015. This manager was not fully aware of all the background of Simons duty." He went on to say he believed the reinstatement was the wrong thing to do and, in his opinion, should be revoked asap.

62. In essence Mr Walker was saying he believed a new duty had been created for the claimant in 2015 which the claimant had agreed to and that it had been clearly set out to the claimant at the time that it would not attract TBR or shift allowance. He said he believed the respondent had made reasonable adjustments to support the claimant in work, including that new duty, which improved the claimant's attendance. He thought the claimant's TBR had been wrongly reinstated and recommended it be

revoked again. He said in evidence that the reason given of it only being 15 minutes a day was "flippant" and not a proper management rationale for reinstating it.

63. Mr Walker accepts his outcome letter did not include a right of appeal. He says he used a template letter that was emailed to him by HR, as he was not able to access resources on the new site he was working on. He does not know why the right of appeal is not referenced but accepts he should have checked to ensure that there was one set out. He accepts it was an oversight on his part. We accept his evidence about this.

64. Mr Walker was obviously aware of the claimant's grievance, as he was dealing with it. Mr Walker accepts he became aware of the claimant going through Acas conciliation on 10 September 2021 when in correspondence with the respondent's lawyers but says he did not understand what Acas early conciliation was. He says he was not aware of the claimant's tribunal claim being issued until 10 December 2021 when the solicitors Weightmans contacted him about this. This was after he concluded his grievance report.

65. The claimant contacted HR about the absence of a right of appeal, and they told him he could appeal and set that in train for the claimant. Mr Press appointed Mr Singh to conduct the grievance appeal.

66. The claimant attended a meeting with Mr Singh on 23 November 2021. He was accompanied by Mr Farah from the CWU. There is a dispute about what was said and what happened at that meeting. Mr Singh's original notes are at [371-372]. The notes were sent to Mr Farah by Mr Singh on 24 November 2021, who forwarded them to the claimant on 25 November. On 29 November the claimant gave Mr Singh his version found at [253-255].

67. The dispute came about because on 26 November 2021 the claimant found the [227] version of the letter in his sick file. Both he and Mr Singh agree that the version of [227] they looked at on 26 November in the claimant's sick file was a newly printed document, on a crisp white piece of paper.

68. The claimant believes that [227] was in his sick file that was in the room when he met with Mr Singh on 23 November 2021. He believes that [227] was deliberately forged and placed in his file to trap him and that entrapment plan was in place by 23 November. He calls it a fraudulent and fictitious document. In particular, the claimant believes that [227] had a duty finish time of 8:15pm put on it to make it look like he was dishonest and had been claiming TBR throughout (because the claimant was finishing at 7pm which would mean a 1 hour break at the end of his shift plus 15 minutes TBR).

69. At the meeting on 23 November the claimant was asked what his hours of attendance were before the shift change and under the proposed adjusted duty. He said 14:00 to 22:00 with TBR and 12:00 to 20:00 without TBR. The claimant says this series of questions and answers was "entrapment questions before the Fact"; i.e. that Mr Singh was trapping him into saying he finished at 8pm when the letter at [227] would show he was due to work

on to 8:15pm. The claimant says that at the start of the meeting on 23 November he was looking through his sick file and he caught a glimpse of [227]. The claimant says that Mr Singh put his hands over the file and said words to the effect "don't worry about that, its not important, we'll deal with it later" and that Mr Farah then put the file aside. Mr Singh says that he does not recall that happening. Mr Singh accepts the claimant's sick file was in the room. Mr Singh says he did not see the crisp white letter that is [227] until the 26 November. Mr Singh says that the version of Mr Colclough's letter that was in the sick file and that was being referred to on 23 November is [225] and that at some point, after 23 November, someone had swapped [225] with [227] in the sick file. Mr Singh denies setting out to trap the claimant into saying his work hours were different to those at [227]. Mr Singh says there was no plan to set the claimant up whether individually by him or in concert with others such as Mr Colclough, Ms Maunder, and Mr Walker. Mr Singh says [225] was also being referred to and looked at in the meeting on 23 November because it said that the claimant would not be entitled to TBR and late shift allowance. He points out that both [225] and [227] contain this same sentence in any event.

70. Having evaluated the evidence and applying the balance of probabilities we do not find that Mr Singh knew about [227] as at 23 November 2021. We accept his evidence. We find that the version of the letter Mr Singh knew about on 23 November was [225]. [225] was the version that the claimant had given Mr Walker which Mr Singh would have had access to given he was hearing the grievance appeal and indeed on the claimant's notes of 26 November at [256] Mr Singh talked about the claimant giving the letter to Mr Walker. As at 23 November 2021 we do not find that Mr Singh knew about or had a hand in creating [227]. We accept that the claimant may have been looking at his sick file on 23 November 2021 and that Mr Singh may have made a comment about looking at it later, but that would have been a reference to starting their meeting. It explains why Mr Farah would have then moved the file to one side.

71. On either version of the minutes of 23 November 2021 a comment had just been made that when Mr Colclough had adjusted the claimant's duty the claimant "did not get removed from shift" and that only the late shift and early shift was entitled to TBR. It was therefore a perfectly logical question for Mr Singh to ask the claimant what his hours of attendance were before the shift change and what the proposed hours were under the adjusted duty. The claimant had changed from a 10pm finish to an 8pm finish. We do not find there was anything sinister in Mr Singh's questions; they were genuine questions as part of his grievance appeal investigation.

72. The claimant then alleges that Mr Singh inserted two comments into the meeting minutes that he says were not said at all on 23 November. These are:

"KS – on the letter that is in Simons file it clearly states that the duty given to Simon is a new duty and does not attract TBR, did you not see this or agree to this?

Simon accepts that this was presented to him as new duty you accept that you were told this attracted no TBR."

73. The claimant asserts that Mr Singh added these comments after the event and are part of the alleged pre-planned entrapment of him, to get him to falsely confirm that Mr Singh had shown him [227] on the 23 November and that the claimant had accepted on 23 November that back in 2014/2015 he had seen and accepted the contents of [227]. I.e. that Mr Singh was underhandedly getting him to confirm he knew he had an 8:15pm finish.

74. We do not find this was the case. As above, we find the version of the letter that Mr Singh knew about and was talking about on 23 November was [225]. Mr Singh was not trying to trap the claimant into saying he had an 8:15pm finish. What Mr Singh was doing was exploring his confusion, as part of his investigation, about why the claimant was complaining about the removal of his TBR some years down the line when the letter from Mr Colclough at [225] said the claimant would not be entitled to TBR and late shift allowance. So Mr Singh was referring to that sentence in the letter at [225] and asking the claimant had he not seen it or agreed to it at the time. We accept that this exchange genuinely happened between the claimant Mr Singh on 23 November and that this was why Mr Singh was asking it. This is supported by the fact that even on the claimant's version of the notes at [253] Mr Singh proceeded to say: "Then why would you now turn around and say that this was wrong, why?" I.e the claimant had just confirmed to Mr Singh that at the time in 2014/15 he had seen that the letter said it was a new duty and did not attract TBR. Mr Singh was therefore asking, which was a logical next step, why after a number of years the claimant was now complaining about its removal. The claimant then went on to explain his reasoning which included that at the time he felt intimidated and fearful of his job and did not want to question Mr Colclough's decision.

75. On both version of the minutes the claimant also said that at stage one of the grievance he had been wrongly accused of taking TBR when he had never taken it. This was a reference to Ms Maunder's note.

76. On 26 November 2021 the claimant found [227] in his sick file. As already stated, he believed he was being set up. He became distressed. At one point the claimant seemed to be suggesting that he had a pre-planned meeting with Mr Singh that day, which Mr Singh denied. We do not find there was a pre-planned formal meeting. Instead, the claimant found the letter and then went to Mr Singh and said there was a fraudulent document in his medical file, which Mr Singh then went to look at.

77. The claimant's note of their subsequent discussion is at [256]. It shows Mr Singh saying he believed it was the original document, with the claimant saying it did not look like the original, and Mr Singh saying there must be some mistake and saying maybe Mr Walker had put it there as the claimant had given Mr Walker a copy. The claimant said he had but not the copy in question ([227]). Mr Singh said he did not know how it had got in there. The claimant said, according to his note: "Neither am I, and this fraudulent document was not shown to me at the stage 2 meeting with you yet you make clear reference to it." I.e the claimant had by then formed the belief that Mr Singh in his minutes had been referring to [227] but that [227] had not been shown on 23 November. He records Mr Singh saying: "Yes it was shown and this is the original document you gave to Chris

Walker?" and the claimant saying "No it wasn't. I'm telling you that looks like a fraudulent copy of the original, so how can I agree and accept its content that you made reference to, I think somebodies put that in there and is covering something up." Mr Singh then said: "No not sure, well you amend, sign and return the notes you have back to me." He then offered the claimant a copy of [227] which was done.

78. We find that Mr Singh was trying to figure out on 26 November what the claimant was talking about. Mr Singh was confused about the claimant saying there was a fraudulent document in the file. On being shown [227], which Mr Singh accepts was on new, crisp white paper, Mr Singh was saying it looked to him like [225]. That is understandable given their overlap in content and he would not have been looking at them side by side. We find that when the claimant was saying to Mr Singh that [227] had not been shown to him on 23 November, and Mr Singh was saying it was shown and it was the original document the claimant gave to Mr Walker, Mr Singh was at that time thinking that they were one and the same document. We do not find, as already set out above, it was part of some entrapment of the claimant on Mr Singh's part, albeit the claimant was by then himself subjectively thinking that it was entrapment.

79. The claimant then amended the meeting notes of 23 November and gave them to Mr Singh on 29 November [258]. Part of his amendment included an additional section where he set out his concerns about the finding of [227]. His concerns are at [255]. Mr Singh asked the claimant to attend another meeting. Mr Singh wanted to discuss the amendments the claimant had made and ask some further questions. The claimant said he would meet again to go through some information and for Mr Singh to raise any queries about the amended notes, but he would not be rescinding his amended notes. The claimant said he would not agree to an interview [257].

80. Mr Singh initiated some investigations as to what had happened regarding the insertion of [227] into the claimant's sick file. The file was kept within a locked room. Only a few managers had keys. Mr Singh says that Mr Bowen-Bravery, Work Area Manager, told him that the claimant had requested the claimant's sick file on 26 November 2021 and that Mr Bowen-Bravery had given the file to the claimant who had taken it away, returning it later. The claimant denies this. We did not hear from Mr Bowen-Bravery. To decide this case, we do not need to make a finding of fact about this. Nor do we need to make a finding as to who inserted [227] into the claimant's sick file. It is sufficient for us to find, as we do, that it was not done by Mr Singh, and he was not a party to its insertion. We also accept Mr Singh's evidence that Mr Bowen-Bravery told Mr Singh what Mr Singh has set out. Again, however, that is simply a finding that Mr Bowen-Bravery told Mr Singh the claimant had access to his file. It is not a finding by us that the claimant inserted [227] himself.

81. On 29 November Mr Singh reported the breach to the security help desk. He said that a letter in a sick file had been replaced with a different letter [341]. Mr Singh spoke with a member of the security team who asked Mr Singh to forward on the two versions of the letter, which he did [343 – 345]. Mr Singh also sent an email to managers [342] saying that it looked like there had been a breach and that they should reinforce the message

that the sick room keys should not be given out to other individuals and people should not have unsupervised access to files. Mr Singh told us in evidence that the security team said they had been unable to progress the investigation further as there was no CCTV. On 26 November the claimant also wrote a letter of complaint to the CEO found at [357]. He received a reply on 24 December 2021 [359] saying that as there was an ongoing employment tribunal complaint it would be inappropriate to comment on the concerns.

82. Mr Singh's further meeting with the claimant took place on 2 December 2021. Mr Watts was there as a note taker and his notes are at [330 - 337] Mr Farah was also in attendance with the claimant. The claimant disputes the accuracy of the notes. In cross examination he was taken through parts of them. Some parts he could remember. Other parts he said he could not recall. The claimant on 8 December 2021 wrote to confirm [267] he was not amending or signing the notes as they did not portray the meeting for what it was intended to be, and he felt like he was being entrapped in the meeting. The claimant said it was being done to cover up discrimination and to victimise him. He said he could not understand the new notes as they were confusing, and he was having difficulty with his mental health. The claimant said that at one point he had said he thought he needed a solicitor on the room and that he felt he was on trial for a crime. He said he was feeling mentally unwell and left the meeting feeling confused and dazed and he felt under duress, pressured and harassed by the form of questioning.

83. We are satisfied that the notes at [330-337] represent the gist of what was said at the meeting on 2 December 2021. The claimant has not set out an alternative version of what he says was said. He had a union representative present throughout who would have been in a position to take his own notes, and we have not been provided with an alternative record of events prepared by Mr Farah.

84. We also do not find that Mr Singh conducted the meeting in a way that was oppressive or harassing or was trying to entrap the claimant or to cover any thing up or to (as the claimant alleges) "gas light" the claimant or to interrogate the claimant. The claimant was represented by Mr Farah from the CWU throughout and he did not interject to oppose the style of questioning. We accept that Mr Singh arranged the meeting because he was trying to clarify some matters, including the amendments and comments the claimant had made to the notes from the previous meeting. In particular, Mr Singh referred to [225], asked the claimant to confirm that this was the original letter the claimant had received from Mr Colclough, and was asking the claimant to confirm that he had received and accepted the letter at [225] at the original time it was given by Mr Colclough, which clearly stated the new duty did not attract time bonus or late shift allowance.

85. This was a valid line of questioning given the gap in time between the claimant's grievance and the original provision of the letter at [225]. We find that what then happened in in the meeting is not what Mr Singh would have anticipated. The claimant and Mr Farah then started saying (which the claimant had not said at the previous meeting) that the claimant had not understood what Mr Colclough was saying to him and that the claimant

did not understand the letter at [225] and thought that the new duty would still attract previous allowances. Mr Singh was therefore legitimately asking questions about what the claimant and Mr Farah were now saying in this regard, found at [332 – 334].

86. The claimant complains that Mr Singh was not clear in the meeting about which version of the letter Mr Singh was talking about. He says the minutes refer to "the letter" without differentiating between them or that Mr Singh was switching intermittently between them. We do not find this is the case. We find that during the first part of the meeting Mr Singh was referring to [225] and they looked at it and talked about it together, which Mr Singh then asked the above mentioned questions about. Paragraph 77 of the minutes at [334] also show that [225] is being talked about as the notes refer to Friday prayer time which is only referenced in [225] not [227].

87. [335] of the minutes then show that the claimant said he wanted to present the letter that was in his file which is different to the one that Mr Singh was presenting i.e. the claimant was saying he wanted to talk about [227]. There was then a dispute between the claimant and Mr Singh about whether in the first meeting Mr Singh had showed the claimant [225] or indeed whether they had discussed a letter at all at that meeting. It culminated in Mr Singh asking Mr Farah whether Mr Farah could recall them discussing a letter and Mr Farah "did not confirm either way." The claimant then said that Mr Singh was "puzzling my head; I did not discuss a letter and I do not make any reference to a letter in the first meeting." We do not find here that Mr Singh was seeking to oppress the claimant or entrap him or "gas light" him. Mr Singh was, in our judgement, confused about how the claimant was behaving at the meeting on 2 December. From Mr Singh's perspective at the earlier meeting Mr Singh had only known about [225] and [225] had been the topic of the discussion. Mr Singh was therefore confused by the fact the claimant now seemed to potentially be saying that there had been no discussion of [225] at all, bearing in mind [225] was the basis for the claimant's grievance in the first place.

88. The claimant alleges that Mr Singh was looking at a screen and that Mr Singh was being fed questions by the respondent's legal team. Mr Singh denies this. We accept Mr Singh's evidence and do not find he was being fed questions by anyone. Mr Singh was asking his own genuine questions, in a situation in which he was confused by what the claimant was saying.

89. In the tribunal's judgment it is likely that the claimant had become very paranoid by this point in time. As mentioned above, when he saw [227] the claimant subjectively believed that he was being set up to agree that [227] contained his working hours, and believed it was part of an attempt by the respondent to suggest he had been taking TBR all long. The claimant feared he was going to face disciplinary action. We consider it likely that by the time of the meeting on 2 December the claimant's paranoia about facing disciplinary action had reached such an extent that he was now denying there had ever been a discussion about [225] at the previous meeting and was denying ever having understood that his TBR and late shift allowance had been removed by Mr Colclough when Mr Colclough

initially amended the claimant's duty. That was not a logical stance given the claimant had given over a copy of [225] to Mr Walker as being part of the very basis of his grievance. It is therefore understandable that Mr Singh would have been confused about what the claimant was saying on 2 December.

90. The notes then show that the claimant asked Mr Singh if Mr Singh could explain the modified letter (i.e [227]) or how it got into his personal file and Mr Singh legitimately said that he could not explain it. The conversation then circled back again to the claimant saying again they had not discussed a letter in the last meeting and Mr Singh saying they had. The claimant then said his mental health had declined as there was no consistency and transparency and that he was leaving the meeting.

91. The claimant alleges that Mr Singh was "gas lighting" him by trying to make out that Mr Singh had been referring to [225] all along. In essence the claimant is saying that Mr Singh had originally set out to get the claimant to agree to [227] being the correct version of the letter (so that the respondent could then assert the claimant had been in receipt of TBR throughout). But that when the claimant found [227] and called out the respondent about it, Mr Singh at the meeting on 2 December was then backtracking and pretending that he had been referring to [225] all along, and making out that any confusion lay with the claimant. We do not find, as a matter of fact, that this is what Mr Singh was doing. In the 23 November meeting Mr Singh was referring to [225] and did not know about [227]. When [227] came to light and the claimant was upset about it, Mr Singh told the claimant he would disregard it and refer to [225] in his decision making. At the meeting on 2 December Mr Singh was referring to and discussing [225] again on that basis. As set out above, there was then later on in the meeting on 2 December a discussion about [227] when raised by the claimant. We find that the claimant left the meeting on 2 December due to his own paranoia and his poor mental health, but we do not find that was down to Mr Singh having done anything improper. Both parties drew our attention to paragraph 10.1.8 of the grounds of resistance at [38] where it is admitted that Mr Singh "(at a further meeting on 2 December 2021) referred to a different letter (setting out the Claimant's hours of work and entitlement to TBR) than the letter referred to on 23 November." Paragraph 10.1.9 goes on to deny that the use of a different letter by Mr Singh was victimisation of the claimant and says that "Mr Singh simply held no knowledge why the letters within the Claimant's employee file were different during the two meetings." These paragraph of the grounds of resistance are perhaps inelegantly worded but we did not find them to be an admission that Mr Singh was on 2 December referring to [227] whether throughout or intermittently in some inappropriate way as the claimant alleges. There was a discussion about [227] at the meeting on 2 December and as 10.1.8 goes on to say, Mr Singh told the claimant at the meeting on 2 December he could not explain why or how the document in the claimant's file had changed from [225] to [227].

92. Mr Singh gave his decision on 24 January 2022 [338 -340]. In the appeal meeting Mr Farah said that 21 part timers had been picked into new duties which attracted time bonus and he named several other people who he said had their duty changed but were still given time bonus. He said that Mr Colclough and Mr Miah had gone against the local agreement, which

meant the claimant had his time bonus removed when others were still in receipt of it. As part of considering the grievance appeal Mr Singh went away and looked at what happened when people had opted for new duties or new duties had been created for them. His finding was that time bonus had been taken off these individuals, which he considered was the correct application of the policy that TBR is not maintained when a new duty is created. However, he also found that on the ground there was inconsistent enforcement of this within the plant. He said that with people on the same shift supposedly finishing at different times it was difficult for managers to keep an eye on who was finishing at what time. But he said that he was going to review this within the plant and ensure that a consistent approach would be applied to TBR.

93. Looking at the claimant in particular Mr Singh then said he considered the duty had been created as a supportive measure for the claimant and that it had been made clear to the claimant at the time of acceptance that the duty would not attract TBR. Mr Singh said it was unfortunate there appeared to be an inconsistent approach to TBR and steps would be taken to ensure TBR is applied consistently going forward, but he was satisfied the original decision that the claimant was not entitled to TBR was the correct one. Mr Singh said, and we accept, that in his decision making he disregarded the version of the letter at [227] (albeit [227] contains the same wording about the loss of TBR and late shift allowance in any event).

94. Mr Singh was obviously aware of the claimant's grievance as he was dealing with it at stage 3. He says he does not think but is not 100% sure that he was aware the claimant had been through Acas early conciliation. Acas conciliation ended before Mr Singh had any involvement in the appeal so he suspects he would not have been notified at the time and does not recall being told about it. He accepts he was made aware by the respondent's solicitors of the tribunal claim on 10 December 2021. He disputes that it affected his handling of the claimant's stage 3 grievance.

Discussion and conclusions

95. Applying our findings of fact to the issues to be decided our conclusions are as follows.

Direct disability discrimination – letter from Ms Maunder dated 2 June 2021

96. As a matter of fact, Ms Maunder did give the claimant a letter dated 2 June (not 24 June) 2021 asserting that the claimant was not entitled to TBR or shift allowance.

97. We do not find, however, that was less favourable treatment of the claimant because of disability. Ms Maunder gave the claimant the letter at [240-241] because she obtained from Mr Colclough a template letter to set out the claimant's duty pattern following the latest realignment exercise. In obtaining that template letter she noted and thereafter believed from her perspective that in 2015 a new duty set had been created for the claimant which did not attract, from that point on, TBR or late shift allowance. She therefore did not understand or believe that the claimant was entitled to late shift allowance, which had been asserted by Mr Miah in his proposals

on behalf of the claimant. When drafting the letter of 2 June, using [225] as a template, she therefore amended the closing line to say "Please not [sic] that as this was a new duty set created back in 2015. This duty does not attract Time Bonus Relief or Late Shift Allowance."

98. That the wider context of the claimant being sent the original letter at [225] related to the claimant being a disabled person in need of adjustments in the workplace does not mean, in terms of Ms Maunder's mental processes, that the claimant's disability either consciously or subconsciously, was a material influence on her decision to say the claimant's duty does not attract TBR or late shift allowance. We find that it was not. It was simply said and sent because Ms Maunder believed the claimant was not entitled to TBR. The claimant complains that Ms Maunder did not seek advice from HR, and he is right that Ms Maunder did not. However, that again demonstrates that the reason why Ms Maunder acted as she did is because her simple understanding and belief was that the claimant was not entitled to TBR or late shift allowance.

99. We consider that if Ms Maunder had been faced with a similar situation with an individual who was not disabled, then Ms Maunder would have acted in exactly the same way. For example, if Ms Maunder as part of the realignment exercise for a shorter worker week, were faced with an individual working a bespoke shift pattern and duties for other reasons (for example caring responsibilities), and obtained a template letter from a previous manager which said that individual had previously been placed on a new duty set and was not entitled to TBR and late shift allowance, she would have acted in exactly the same way as she did for the claimant.

100. We are satisfied that the claimant's disability did not play any part in Ms Maunder's decision making. In our own decision making we preferred to concentrate on the reason why Ms Maunder acted as she did rather than an analysis focused upon the burden of proof. The respondent argued the burden did not shift and the claimant argued it did, referring to the fact there were others who had changed duty but continued to receive TBR. We do not know a great deal about the other individuals referred to but, it seemed to us that this would amount to a difference in treatment and a difference in status which by themselves without "something else" would be insufficient to shift the burden to the respondent. However, in any event, if the burden were to shift, we have concluded that disability played no part in Ms Maunder's decision making.

Victimisation

101. The respondent accepts that the claimant's grievance, his engagement in Acas early conciliation, and the presentation of his tribunal claim constitute protected acts.

<u>Mr Walker not removing himself as grievance manager</u>

102. Mr Walker should not have been the stage 2 grievance manager. It was against policy as he was a lower grade manager than the manager he was investigating. We have found that Mr Walker was aware of this and checked with Mr Press who told him he could continue as he was on temporary promotion to shift manager. That was incorrect as the grievance

involved Mr Colclough who was a grade 9, which is two grades above the grade Mr Walker was at on temporary promotion.

103. We have found that Mr Walker continued to act as stage 2 grievance manager because he had been told by Mr Press as Cardiff Mail Centre Manager that he could still handle the grievance. That was against the written policy, however, we accept it was genuinely what happened and why Mr Walker continued as stage 2 grievance manager.

104. The respondent had not received the claimant's employment tribunal claim at the time and therefore Mr Walker could not have known about it, and it could not have been a material influence on his decision to continue to be stage 2 grievance manager. He did know about the claimant's grievance and from 10 September 2021 onwards knew the claimant was going through Acas early conciliation. We do not, however, find that these things influenced at all Mr Walker's decision to continue to be the stage 2 grievance manager. They were simply part of the wider context. Mr Walker did what he did because he took what Mr Press, as a senior manager, told him at face value. It was not because he was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination.

<u>Mr Walker not sharing his meeting notes with the claimant</u>

105. Mr Walker did not share the notes of his meeting with the claimant for the claimant to approve or correct or comment upon. This is contrary to the grievance policy which says: "The manager should share a summary of the meeting with the employee for their comments…"

106. We have found that Mr Walker failed to do this because he was not aware that he should do so. He had not been back and re-read the grievance policy, in turn in part because of the work pressures Mr Walker was facing at the time. He had not dealt with a formal grievance before so had no prior knowledge or experience to work upon. It does not appear to the tribunal that he was being guided in any meaningful way by an experienced HR professional.

107. It was poor practice and deprived the claimant of the opportunity to correct and comment on the notes, but we find that this is genuinely why Mr Walker failed to do what he should have done.

108. The respondent had not received the claimant's employment tribunal claim at the time and therefore Mr Walker could not have known about it. The tribunal claim itself therefore could not have been a material influence on Mr Walker failing to send the meeting notes to the claimant. Mr Walker did know about the claimant's grievance and from 10 September 2021 onwards (the meeting itself having taken place on 3 September) knew the claimant was going through Acas early conciliation. We do not, however, find that these things influenced at all Mr Walker not sending the claimant the meeting minutes. They were simply part of the wider context. Mr Walker did what he did (or failed to do what he should have done) because of the poor practice we have identified. It was not because he was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination or that he was trying to supress evidence or supress the claimant's complaint because it was a complaint of

discrimination in general, or a complaint of discrimination against Mr Colclough.

Mr Walker not sharing other witness statements or interview notes or other evidence gathered with the claimant

109. Mr Walker did not share with the claimant other witness statements or witness interview notes or other evidenced gathered with the claimant before he made his decision about the claimant's grievance. (Indeed, the claimant did not see the record of Mr Walker's meeting with Mr Miah and Mr Z Khan until part way through this tribunal hearing, albeit the failure to disclose during the litigation process (as opposed to the grievance process) lay in the hands of the respondent's solicitors rather than Mr Walker).

110. In failing to disclose the records and information during the grievance process, Mr Walker deprived the claimant of the ability to comment. For example, the claimant had no opportunity to point out to Mr Walker questions that had not been asked of the witnesses that he considered relevant, such as not specifically asking Mr Miah about the removal of the claimant's TBR. This was poor practice and contrary to the grievance policy which says: "Where further investigations are completed, relevant information should be shared with the employee."

111. We have found that Mr Walker failed to do so because he believed that these notes should be shared with the claimant. He thought that he was not allowed to share notes of someone else's interview with another employee. Again, Mr Walker did not have prior experience to fall back on and did not check the grievance policy or with HR. Again, in part, in turn this was due to the work pressures Mr Walker was facing at the time.

112. It was poor practice, but we accept that this is genuinely why Mr Walker failed to do what he should have done. Again, Mr Walker did know about the claimant's grievance and from 10 September 2021 onwards knew the claimant was going through Acas early conciliation. We do not, however, find that these things influenced at all Mr Walker's failure to share the records and documents with the claimant. The grievance and Acas early conciliation were simply part of the wider context. Mr Walker did what he did (or failed to do what he should have done) because of the poor practice we have identified. It was not because he was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination or that he was trying to supress evidence or supress the claimant's complaint because it was a complaint of discrimination in general, or a complaint of discrimination against Mr Colclough.

Mr Walker did not inform the claimant of his right of appeal

113. Mr Walker did not inform the claimant of his right of appeal. This is contrary to the grievance policy which requires the manager, when giving the decision in writing, to provide information regarding next steps if the employee is not satisfied with the outcome. The claimant contacted HR directly himself who put the appeal in train for him.

114. We have found that Mr Walker had obtained from HR a template to use for his decision letter. Bizarrely this did not include mention of the right of appeal and Mr Walker did not notice this and he had not checked the grievance policy. Again, in part we accept this was due to his lack of experience in dealing with formal grievances and the pressures on Mr Walker at the time together with his lack of access to internal systems.

115. It was poor practice, but we accept that this is genuinely why Mr Walker failed to do what he should have done. Again, Mr Walker did know about the claimant's grievance and from 10 September 2021 onwards knew the claimant was going through Acas early conciliation. We do not, however, find that these things influenced at all Mr Walker's failure to include within his grievance decision letter notification of the right of appeal. The grievance and Acas early conciliation were simply part of the wider context. Mr Walker did what he did (or failed to do what he should have done) because of the poor practice we have identified. It was not because he was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination or seeking to supress the claimant's complaint because it was a complaint of discrimination in general, or a complaint of discrimination against Mr Colclough.

<u>Mr Walker exceeded the 28 days allowed under policy in concluding the grievance, without explanation for the delay until the claimant contacted HR</u>

116. The grievance policy states that the resolution with the manager should be completed within 5 to 28 calendar days. Mr Walker exceeded this. Mr Walker also did not stay in regular contact with the claimant about the delays. We accept these failings happened for a variety of reasons that included delays in meeting Ms Maunder due to her being absent on annual leave, delay in obtaining occupational health records from archive (remedied by the claimant providing his own copy), and in seeking advice. We also accept that it was due to the workplace pressures Mr Walker was facing at the time in inducting a large number of new staff, working across 3 shift patterns and two sites, and without access to internal resources.

117. Again, Mr Walker did know about the claimant's grievance and from 10 September 2021 onwards knew the claimant was going through Acas early conciliation. We do not, however, find that these things influenced at all the delays in the process. The grievance and Acas early conciliation were simply part of the wider context. The delay was for the reasons given and was not because Mr Walker was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination or seeking to supress the claimant's complaint because it was a complaint of discrimination in general, or a complaint of discrimination against Mr Colclough. The claimant suggested to Mr Walker in cross examination that if Mr Walker had been dealing with a complaint not about discrimination but, for example, a simple annual leave dispute, then he would have handled it far more expeditiously and in general would have complied with the grievance policy requirements. Mr Walker denied this. We do not consider that Mr Walker would have dealt with such a complaint more expeditiously or in a more compliant manner if it was a grievance that was not about discrimination. We do not find that Mr Walker was deliberately delaying the progress of this grievance because it was a complaint of

discrimination or a complaint of discrimination against Mr Colclough or that he was trying to "time out" the claimant from bringing an employment tribunal complaint.

Mr Walker did not uphold the claimant's grievance and concluded an error had been made in reinstating the claimant's TBR. Did Mr Walker threaten to revoke the claimant's TBR again?

118. We have found that Mr Walker did not uphold the claimant's grievance because he genuinely believed that the claimant had been given a new duty in 2015 with the support of the CWU and that the claimant had clearly been told at the time that it would not attract TBR or late shift allowance and that this was in accordance with time bonus criteria. He considered the claimant had been supported with adjustments in the workplace that included the new duty pattern which had in turn improved the claimant's attendance. He also considered it was also a complaint being raised by the claimant some 6 years after the event.

119. This was Mr Walker's genuine, independent decision, and was not because Mr Walker was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination or seeking to supress the claimant's complaint because it was a complaint of discrimination in general, or a complaint of discrimination against Mr Colclough. It is important to bear in mind here that what we have before us is a complaint of victimisation in not upholding the claimant's grievance. It is not, for example a complaint of discrimination because of something arising in consequence of disability, or an indirect discrimination complaint where we would have to potentially engage with questions of objective justification.

120. Mr Walker did conclude an error had been made in reinstating the claimant's TBR. We do not find that he "threatened" to revoke the claimant's TBR in the sense of Mr Walker saying something that was inappropriate or oppressive. What he did was make a recommendation or voice his opinion that that decision to reinstate the claimant's TBR should been revoked because he considered the wrong decision had been made to reinstate it. We are satisfied that Mr Walker genuinely believed that reinstating the claimants TBR had been a wrong management decision. He understood Mr Colclough had directed Ms Maunder to reinstate it because it was only 15 minutes – i.e. it was not worth the management hassle. Mr Walker believed that was not a proper basis on which managers should make this kind of decision; he termed it "flippant." He therefore recommended its removal. Again, that was his genuine, independent viewpoint. Mr Walker did not say this because he was seeking to disadvantage the claimant because the claimant had made a complaint of discrimination or a complaint of discrimination against Mr Colclough. In fact, Mr Walker in making his recommendation was expressly contradicting Mr Colclough's earlier direction to reinstate the TBR.

121. We have above addressed the claimant's victimisation complaints that involve Mr Walker individually. However, in our deliberations we also considered the complaints holistically. In particular, the claimant's position was that one error by Mr Walker could be a mistake, two could reflect incompetence but that given there were 4 or 5 it must mean that Mr

Walker was doing it on purpose. The claimant also considers that Mr Walker was engaged in a practice, together with other individuals such as Ms Maunder and Mr Singh to suppress the claimant's complaint and protect and cover up for Mr Colclough. He considers that there was an awareness amongst managers that Mr Colclough's original decision was discriminatory and that they were covering this up and covering for Mr Colclough. The claimant also believes that Mr Walker was a party to a plan to set him up to say that he had received [227] at the time, so that the claimant could potentially be accused of having received TBR throughout. He points to the fact that in the notes of [244] Mr Colcough is recorded as saying "I also provided a letter to Simon Ali with all the new start finish times and location of work." The claimant sees the reference to "location" of work as meaning the address given on [227] (which is not on [225]) of the Cardiff Mail Centre. The claimant believes the suppression of his complaint is also demonstrated by Mr Walker not asking searching questions of those he interviewed.

122. We do not find that Mr Walker was engaged in any such conspiracy with Mr Colclough or others. Mr Walker said he understood the reference to "location" as being the duties the claimant was undertaking (for example, on reception or dealing with parcels). We accept that was his understanding. We also accept, as already stated that Mr Walker undertook his grievance duties independently and in good faith, albeit of course the various errors identified were made. His independence of mind is demonstrated by the fact he gave the opinion that Mr Colclough had made the wrong decision in directing that the claimant's TBR should be reinstated. We find that the number of errors made by Mr Walker were (whilst regrettable) simply that and down to the reasons that we have set out above, and not for some sinister purpose of seeking to supress or minimise the claimant's discrimination complaint in general or because it was against Mr Colclough. Mr Walker was not engaged in some plan to set up the claimant as having received [227] at the time. We accept that Mr Walker could have asked some better quality questions. He could have, for example, specifically asked Mr Miah direct questions about the removal of TBR and late shift allowance. But we accept Mr Walker's account, and his own self reflection that he showed in cross examination, that he simply thought at the time that he was asking the questions he needed to ask at the time to deal with the claimant's grievance. At the time he thought he was doing his best. We do not find he was engaged in a cover up.

123. We would also make the general observations for the benefit of the respondent and in particular their HR department, that it appeared to us that Mr Walker had been poorly served by HR. He was a manager who had not dealt with a formal grievance before and was under substantial workplace pressures with a lack of access to resources. More could have been done by HR to ensure that Mr Walker understood the process he should be following such as sharing notes of meetings, keeping an eye on timescales and updating the claimant, making sure Mr Walker was asking all the right questions, and ensuring that Mr Walker used a template letter that properly set out the claimant's right of appeal.

<u>On 23 November 2021 did Mr Singh ask the claimant questions about a different version of the letter given to the claimant by Mr Colclough in December</u>

2014/January 2015 which the claimant describes as "fraudulent and fictitious"? Were Mr Singh's questions pre-loaded, incriminating, trying to cover up discrimination and make the claimant out to be dishonest by asserting that the claimant had been in receipt of TBR throughout?

124. This is an allegation that on 23 November 2021 Mr Singh was asking the claimant questions about [227] and not [225]. We have not made a finding of fact that this was the case. Instead, our finding of fact is that Mr Singh only knew about [225] and was asking the claimant questions about [225]. Mr Singh was therefore not on 23 November 2021 asking the claimant questions that were pre-loaded, incriminating, trying to cover up discrimination, or to make the claimant out to be dishonest by asserting the claimant had been in receipt of TBR throughout. We have found Mr Singh was asking the claimant genuine, independent questions as part of the grievance stage 3 process. We do not find that Mr Singh was involved whether individually or in concert with others such as Mr Colclough, Ms Maunder, and Mr Walker to cover up discrimination or to set the claimant up to face an allegation that he had been in receipt of TBR throughout.

Did Mr Singh on 2 December 2021 then use the original version of Mr Colclough's document and make it out to be the version he had been referring to all along. Did Mr Singh engage in gaslighting the claimant, detracting from the document and manipulating the facts surrounding it. Did Mr Singh's conduct cause the claimant to eventually leave the meeting? Was Mr Singh being fed questions by the respondent's legal team?

125. Our findings of fact are that Mr Singh did on 2 December 2021 use [225] as the main basis for discussion and it was on the basis that it was the document Mr Singh had been referring to all along. However, that was genuinely the position and was not anything inappropriate or sinister or designed to entrap the claimant or gaslight the claimant or set the claimant up in some way or to detract from a document or manipulate the facts surrounding it. Mr Singh on 2 December 2021 was largely referring to [225] because that was the document Mr Singh had been referring to on 23 November and was the only version Mr Singh had known about on 23 November. Mr Singh was also referring to it because he had told the claimant that was the version he would use for deciding the grievance given the concerns about the provenance of [227].

126. We have not found that Mr Singh was being fed questions by the respondent's legal team.

127. The claimant by 2 December 2021 had become highly paranoid. He subjectively thought that Mr Singh had previously being trying to entrap him and get him to agree he had received [227] at the original time. He thought the respondent was trying to set him up to discipline him by alleging the claimant had been taking TBR throughout. Mr Singh was not in fact engaged in this entrapment whether by himself or in conjunction with others. But the claimant's belief and paranoia meant that by 2 December 2021 the claimant engaged with Mr Singh's questions by now asserting that he had never understood he was no longer entitled to TBR and late shift allowance when Mr Colclough gave him the original letter and by asserting that on 23 November 2021 there had never been any discussion about any letter from Mr Colclough. The claimant's behaviour

was confusing Mr Singh and Mr Singh was engaged in asking genuine questions about what the claimant was saying so that he could deal with the claimant's grievance. The claimant's paranoia and poor mental health led the claimant to leave the meeting but that was not through the fault of Mr Singh.

128. Mr Singh's conduct on 2 December was not victimising the claimant because the claimant had submitted a grievance about discrimination. We accept it is likely that at that time Mr Singh did not now about early conciliation or the claimant's tribunal claim being lodged, but even if he did, we would not find that Mr Singh was victimising the claimant for these things. Mr Singh was genuinely engaged with addressing the claimant's grievance. He was not, as already said, engaging in conduct to protect Mr Colclough from a complaint of discrimination by the claimant or as part of that to set the claimant up, or to cover up a previously failed attempt to set the claimant up.

Did Mr Singh not conduct a fair investigation?

129. This is a victimisation complaint and not case about general investigation standards. We are satisfied that Mr Singh was genuinely engaged in addressing the claimant's grievance at stage 3 in good faith and conducted it in a way he considered appropriate. Mr Singh did not adopt some investigation standard or process as a means to disadvantage the claimant because the claimant had brought a grievance about discrimination or there was an anticipation that an employment tribunal claim would be brought or because he was seeking to supress a discrimination complaint whether in general or because it involved Mr Colclough.

Mr Singh did not uphold the claimant's grievance appeal and said the revocation of TBR was the correct decision and that the altered document was not relevant

130. Mr Singh said in his decision [227] had no bearing on the outcome of the grievance because he worked from [225] because the claimant said [225] was the correct version received at the time. Moreover, Mr Singh's interest in [225] was about the statement about the claimant not being entitled to TBR and late shift allowance which was in identical wording in [227] in any event. He was not seeking to disadvantage the claimant because the claimant had brought a grievance and had brought employment tribunal proceedings. Mr Singh was trying to ensure he decided the grievance on the basis of the document which the claimant said was the genuine one. Mr Singh did disregard [227] for the purpose of the grievance process but it was not because Mr Singh had been caught out in previously trying to get the claimant to agree [227] was the correct version or to detract from what had happened with [227]. He was just working from the version the claimant said was the correct one.

131. Mr Singh did not uphold the claimant's grievance because he genuinely believed that the correct decision had been made to remove the claimant's entitlement to TBR when the claimant moved duty. He believed the claimant had moved to a new duty and under TBR policy where there was a change in duties the claimant would not be entitled to it. Mr Singh

believed that this had been communicated to the claimant at the time and that some 6 years had passed since the events in question. Mr Singh accepted that there had been inconsistent enforcement of decisions to remove TBR within the plant on a change of duty, but he did not consider that such inconsistency meant an improper decision had been made in the first instance. Instead, Mr Singh's thinking was that the inconsistencies should be corrected in the plant going forward.

132. As above in relation to our analysis of Mr Walker's decision making, this is a victimisation complaint and not a complaint of for example, discrimination arising from disability. We are therefore not engaged in examining whether the decision can be objectively justified or the justification of the respondent's wider TBR and late shift allowance policy. Mr Singh, in deciding not to uphold the claimant's grievance, was not subjecting the claimant to a detriment because the claimant had done a protected act in complaining about disability discrimination. Mr Singh was not seeking to protect the respondent or Mr Colclough from a complaint about discrimination or to cover up for an alleged earlier discriminatory act by Mr Colclough.

133. Again, in looking at the individual victimisation complaints involving Mr Singh we did also take a step back and look at the wider picture. We were satisfied in general on the evidence before us that Mr Singh whether individually or in concert with others was not engaging in conduct to subject the claimant to a detriment because the claimant had done a protected act in complaining about victimisation, or to set the claimant up, or to cover up any earlier actions by himself or by others. Mr Singh was genuinely engaged in the grievance process.

134. For all these reasons the claimant's complaints of direct disability discrimination and victimisation are unsuccessful and are dismissed.

Employment Judge R Harfield
Date 10 March 2023

RESERVED JUDGMENT & REASONs
SENT TO THE PARTIES ON 13 March 2023

FOR EMPLOYMENT TRIBUNALS Mr N Roche