Neutral Citation Number: [2023] EAT 86

Case No: EA-2021-SCO-000095-SH

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 07 June 2023

Before :

THE HONOURABLE LADY HALDANE

- -

Between :

ADAM GREASLEY-ADAMS	**Appellant**
- and -	
ROYAL MAIL GROUP LIMITED	**Respondent**

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- -

Dr Corinne Greasley-Adams for the **Appellant**
Dr Andrew Gibson for the **Respondent**

Hearing date: 1 March 2023

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JUDGMENT

THE HONOURABLE LADY HALDANE:

Introduction

[1] In this decision I shall refer to parties as the claimant and respondent, as they were before the ET. The claimant brought claims against the respondent under s 47B of the **Employment Rights Act 1996** ('**ERA**'), as well as sections 26 and 27 of the **Equality Act 2010** ('**EqA**'). After a hearing in Dundee extending over 7 days in July and August 2021, presided over by Employment Judge Meiklejohn, sitting with ET members Ms F Paton and Dr R A'Brook, the ET issued its reserved judgment dated 27th August 2021 in terms of which it dismissed all of the claimant's claims.

[2] The claimant submitted an application for reconsideration of that decision on 7th September 2021. The ET's decision in respect of that application was issued on 1st December 2021. The ET substituted paragraphs 179 and 243 of its original Judgment but otherwise confirmed its decision of 27th August 2021.

[3] The claimant sought to appeal the decision of the ET, as amended. He originally advanced 10 grounds of appeal which were amended at a Rule 3(10) hearing to a more succinct 4 grounds under 3 different headings of Harassment, Time Bar and Victimisation.

[4] The claimant did not appear at the Full Hearing in this case, set down for 1st March 2023. Instead his appeal was advanced on his behalf by his wife, Dr Greasley-Adams, acting as his lay representative. Dr Greasley-Adams is to be commended for the articulate and careful manner in which she presented this appeal on the claimant's behalf. The respondent was represented, as it has been throughout these proceedings, by Dr Gibson.

Background

[5] The general background and context to this appeal is drawn from the ET's decision, and may be summarised as follows:- It was a matter of agreement that the claimant was and is disabled within the meaning of s 6 of the **EqA**. Specifically, he has Asperger's Syndrome, an Autistic Spectrum Disorder. He began employment with the respondent on 20th October 2008. As at the date of the ET decision complained of, he was employed as a part time MGV driver working 30 hours per week. Those terms of employment (as well as other matters) were confirmed in a COT 3 agreement entered into between the parties following an earlier claim brought by the claimant which was settled by way of judicial mediation in July 2018.

[6] Notwithstanding settlement of his earlier claim, the claimant continued to have a number of concerns about his working pattern and duties, particularly around overtime opportunities, in respect of which the claimant felt he was disadvantaged and which were not in accordance with the terms of the COT3 agreement between the parties. In addition he made disclosures to the respondent about alleged driver infringements which formed the basis of his whistleblowing determent claim (the findings in relation to which are not the subject of appeal). In turn one of the claimant's colleagues, a Mr McEwen, suspected the claimant of accessing and reading his personal records and there was a separate incident involving the claimant suffering an autistic episode and the reaction of another colleague, Ms Williamson, to that event.

[7] Over time, relations between the claimant and two of his colleagues, Mr McEwen and Mr Knox, deteriorated to the stage that McEwen and Knox each submitted bullying and harassment complaints about the claimant. These were investigated by Mr Walker of the Respondent who conducted a number of interviews between 21st August and 4th September 2019 and reported thereafter on his conclusions in relation to each complaint. In summary, he upheld the complaint of harassment brought by each of Mr McEwen and Mr Knox against the claimant, and made recommendations on what should be done to manage matters going forward. Shortly afterwards the claimant submitted a

document setting out criticisms of Mr Walker's conclusions and recommendations, whilst acknowledging that the respondent's procedure did not allow for such an appeal. He received a response to that document some time afterwards but in the meantime submitted his own grievance on 4th December 2019, alleging that Mr Walker's investigation had failed to recognise that the claimant, too, had been subjected to bullying and harassment. He made complaints under three broad headings, firstly, harassment on the part of management in the form of disclosing confidential information about him, secondly the spreading of rumours by Mr McEwen, Mr Knox and possibly one other, and thirdly negative comments by the aforesaid McEwen and Knox about the claimant's disability, and the overtime worked by him, such comments stemming from disagreement with the terms of the COT 3 settlement the claimant had entered into to settle his previous claim. Another member of staff, Ms Stevens, was tasked with investigating this grievance.

[8] Ms Stevens investigated the claimant's grievance, including meeting with him and Dr Greasley-Adams but she ultimately concluded that there was no evidence to support the claimant's allegations. She concurred with Mr Walker's recommendations to try and find a solution to build the working relationship between Messrs McEwen, Knox and the claimant. Specifically she recommended mediation funded by the respondent to address the issues raised.

[9] The claimant responded to Ms Stevens' conclusions by text, challenging her findings and recommendations and specifically rejecting the possibility of mediation. Ms Stevens treated that text as an appeal against her grievance outcome and another member of staff, Mr Kelly, was appointed to deal with that matter. There were exchanges of emails between Mr Kelly and the claimant between April and June 2020 and then Mr Kelly wrote in October 2020 advising that he did not uphold the claimant's appeal and setting out his reasons for so doing. He too recommended mediation to explore a mutually acceptable resolution to allow parties to move forward. Mediation was arranged but the claimant did not participate. The claimant had prior to these events submitted the ET1 form in the present case on 1st February 2020.

The applicable law

[10] The applicable law, so far as relevant to this appeal, is as follows:-

Section 26, Equality Act 2010

Harassment

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

(a)the perception of B;

(b)the other circumstances of the case;

(c)whether it is reasonable for the conduct to have that effect.

Section 27, Equality Act 2010

Victimisation

(1)A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2)Each of the following is a protected act—

(a)bringing proceedings under this Act;

(b)giving evidence or information in connection with proceedings under this Act;

(c)doing any other thing for the purposes of or in connection with this Act;

(d)making an allegation (whether or not express) that A or another person has contravened this Act.

(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4)This section applies only where the person subjected to a detriment is an individual.

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

Section 123, Equality Act 2010

Time limits

(1)Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a)the period of 3 months starting with the date of the act to which the complaint relates, or

(b)such other period as the employment tribunal thinks just and equitable.

(2)Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, or

(b)such other period as the employment tribunal thinks just and equitable.

(3)For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.

(4)In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do

something—

(a)when P does an act inconsistent with doing it, or

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

The claimant's submissions

[11] The first limb of the claimant's arguments in relation to the findings so far as harassment was concerned, centred on the conclusion by the ET expressed in paragraph 179 of its Judgment (as revised following reconsideration) in the following terms:-

> '179. Disparaging comments about the claimant could have the effect of violating his dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant (the "proscribed effect") but only to the extent that the claimant was aware of them. We found that the claimant became aware of what his colleagues were saying about him only during the B&H investigation. However, for the reasons set out at paragraphs 182- 190 below, we did not believe that the unwanted conduct had the proscribed effect.'

The criticism made is that the approach of the ET in this paragraph is flawed because it asserts that the extent of the effect was limited to the awareness of the claimant. Put another way (and I intend no disrespect to the detail of the submissions made when I summarise the argument as follows) a person's dignity can be violated whether or not they are 'aware' of the unwanted conduct. In the present case therefore, there was evidence that the claimant had been spoken about in unfavourable terms by and amongst his colleagues, and that he had been the subject of allegations by Mr McEwen that the claimant had been looking at his (McEwen's) files. This conduct was not only unwanted, as the ET had accepted, but Dr Greasley-Adams submitted it was capable of violating the claimant's dignity in terms of s.26(1)(b)(i) even before he was made aware of it during the course of the Bullying

and Harassment investigation instigated by Mr McEwen and Mr Knox. The concept of conduct being capable of violating a person's dignity was therefore distinct and severable from the individual's perception of that conduct as provided for in s.26(4)(a). A conclusion in relation to alleged conduct could be made whether or not the individual concerned was aware of that conduct. Dr Greasley-Adams fairly and properly conceded she had been unable to find any authority specifically supporting that interpretation but sought to distinguish authorities such as **Richmond Pharmacology v Daliwal** [2009] UKEAT/0458/08 and **Pemberton v Inwood** [2018] ICR 1291, CA. She contended that these authorities were relevant to whether or not comments could be viewed objectively as harassment without also being viewed subjectively as such. In contrast, the issue in the present case was whether conduct that is considered subjectively as harassment by a claimant can be considered to have the proscribed effect before the affected individual has awareness of the unwanted conduct.

[12] The second aspect of the decision on the question of harassment criticised by the claimant related to the conclusions of the ET at paragraphs 182-190 under the heading of whether it was reasonable for the conduct complained of to have the proscribed effect. In summary, the ET concluded under that heading that the claimant did perceive that, on the one hand, comments about his disability, the allegations made by Mr McEwen, and the events that occurred with Ms Williamson, and on the other hand, the claimant's perception that his COT 3 agreement was not being fully complied with and that the respondent was not complying with the Professional Drivers Agreement all had the proscribed effect. The ET also concluded that the manner in which these issues came to light or were ventilated, that is to say in the context of the Bullying and Harassment investigation carried out by Mr Walker, was also relevant. However the claimant submitted that the ET failed in that analysis to give any consideration to a number of other factors he contended were significant, such as derogatory comments made before Mr Walker's investigation, the motivation for the complaints made by Messrs McEwen and Knox, and the context in which the words were used (under reference to **Bham v 2Gether NHS Foundation Trust** EAT 0417/14/DXA, **Richmond Pharmacology v Daliwal** and

Weeks v Newham College of Further Education [2010] UKEAT/0630/11/zt). Failure to give any, or adequate, consideration to such matters, and other factors such as whether the comments were made to influence and shape the investigation, amounted to an error of law. The ET ought to have followed the approach set out in **Pemberton v Inwood** at paragraph 88, and carried out a three-stage approach, firstly to consider the claimant's perspective (which it was accepted the ET did do) then to consider whether the conduct was capable of having the proscribed effect and finally gone on to consider the other circumstances of the case. The ET had failed to carry out the second and third stages of the analysis. A further flaw could be found in the ET failing to give consideration to anything other than the words used in the internal investigation. Had the ET considered the question of reasonableness in relation to all the forms of unwanted conduct complained of by the claimant, then it would have upheld the harassment claim.

[13] The third ground of appeal is directed to the ET's approach to the question of time bar, and specifically its approach as set out in its reconsideration decision. The claimant argued that the extension of time bar afforded following reconsideration should have been in respect of all matters of which the claimant first became aware on or after 2nd September rather than 'matters occurring on or after 2nd September 2019' as is stated in paragraph 48 of the reconsideration decision

[14] The fourth ground of appeal is a perversity challenge and relates to the last sentence of paragraph 204 of the ET judgement, which is in the following terms:-

> '204. The claimant alleged that being subjected to the B&H complaints was a detriment. We agreed. However those complaints were not submitted because the claimant had done a protected act but because of the effect his behaviours had on Mr McEwan and Mr Knox'

That conclusion is perverse having regard to the evidence before the ET, including the witness statement of Mr McEwen, from which it can be seen that there was a causal link between the claimant carrying out a protected act (exercising his rights under the COT3 agreement, particularly in relation

to overtime) and the bringing of a complaint by Mr McEwen. Any suggestion by Mr McEwen in evidence or to Mr Walker during the investigation that the complaint was prompted by the constant behaviour of the claimant towards him, rather than because of the fact of the claimant doing a protected act was misleading.

Submissions for the respondent

[15] Dr Gibson, on behalf of the respondent addressed each of the four grounds of appeal in turn. So far as the first ground was concerned, the respondent took issue with the characterisation of an individual's dignity as something being capable of being violated in the absence of the individual perceiving such to be the case. He submitted that the test under s.26(4) has subjective and objective elements to it, the former requiring an assessment of the act from the claimant's perspective – did he regard it as violating his dignity or creating the proscribed environment? Dr Gibson placed reliance on the case of **Bham** in support of that proposition, as well as **HM Land Registry v Grant** [2011] ICR 1390.

The case of Grant was also support for the proposition that the time at which the claimant comes to be made aware of the comment is a relevant and material factor in deciding whether the conduct has the proscribed effect. In short the claimant could have had no perception of anything until he became aware of the unwanted conduct. Specifically, if he was not aware of the conduct then he could not be said to have had his dignity violated, or an adverse environment created.

[16] The second part of the test is objective, with the purpose, he submitted, of excluding liability where a claimant is hypersensitive and unreasonably takes offence. In the present case, the ET had not fallen into error. It had properly carried out an assessment of whether or not it was reasonable for the unwanted conduct to have the proscribed effect having regard to all the circumstances, not just the point at which the claimant became aware of the unwanted conduct, but the context in which that

came to light, being during the course of the Bullying and Harassment investigation. That was important context in which to draw the conclusions set out at paragraphs 182-190, and no error was demonstrated in the ET's approach. Nowhere in its judgment did the ET state that it was not reasonable to treat the unwanted conducts as having the proscribed effect 'simply because' it emerged during the course of the investigation. Those words appeared only in the grounds of appeal. The ET had examined all the circumstances and reached a conclusion on reasonableness that was open to it on the evidence presented.

[17] Dr Gibson then turned to the time bar argument advanced by the claimant. This was a narrow point and turned on the interpretation of paragraph 48 of the reconsideration decision, which set out a revised paragraph 175. He submitted firstly that the ET had clearly, at paragraphs 175-177, considered instances of what it accepted to be unwanted conduct, but were able to conclude 'without hesitation' that none of the unwanted conduct was done with the purpose of violating the claimant's dignity, or creating an intimidating, hostile, degrading humiliating or offensive environment for the claimant. So far as the relevant date was concerned, the ET had, correctly, and on a just and equitable basis, extended the time bar to matters of which the claimant became aware on or after 2nd September 2019. The complaint that the last sentence of the revised paragraph 243 had the effect of extending the time bar only to matters occurring after 2nd September was misconceived when the paragraph was read along with paragraph 48 of the reconsideration judgment – the effect was clearly to extend the time bar to matters of which the claimant became aware on or after that date. In any event the argument became redundant when one had regard to paragraph 49 of the reconsideration judgment as there it is made clear that the ET had in any event given consideration to the behaviour complained of which was *prima facie* time barred.

[18] On the final ground of appeal, a perversity challenge to the ET's conclusion that there was no causal link between the protected acts of the claimant, and the bullying and harassment complaint brought by Mr McEwen, Dr Gibson firstly reiterated the high threshold for a successful perversity

challenge. He then submitted that the ET had reached a conclusion on this aspect of matters that was open to it on the evidence presented, namely that the behaviours complained of by Messrs McEwen and Knox went some way beyond the protected acts of the claimant (in short asserting rights derived from his COT 3 agreement). The ET had looked at this matter again in its reconsideration judgment and explained further why their conclusion was not perverse. Only if that conclusion flew in the face of properly informed logic, could it be regarded as perverse. Whilst the claimant referring to his COT 3 agreement formed part of the list of complaints founded on by Mr McEwen, the ET were entitled to conclude on the evidence before it that he did not make his complaint *because of* that fact, and accordingly the perversity challenged failed.

Analysis and decision

[19] The first ground of appeal relates to the significance or otherwise of the claimant's awareness of the unwanted conduct in determining whether or not such conduct could have the proscribed effect. Dr Greasley-Adams presented a nuanced and considered analysis in support of her contention that a person's dignity could be violated even when they were not aware of the unwanted conduct on the basis that 'dignity' means how an individual is held in esteem by those around them and thus can be violated without their direct knowledge. She properly conceded she could offer no authority directly in point, but I have nevertheless given the submission careful consideration.

[20] Ultimately I have concluded that this is a flawed proposition. Giving the language of s.26 its plain meaning makes it clear that the test is a cumulative one. By that I mean that it is stated that A harasses B if, firstly, they engage in unwanted conduct, secondly that the conduct has the effect of violating B's dignity (for present purposes) and that in deciding whether the conduct has that effect, 'each of the following *must* (my emphasis) be taken into account…a. the perception of B, b. the other circumstances of the case, and c. whether it is reasonable for the conduct to have that effect.' In other words, the perception of the person claiming harassment is a key and indeed mandatory component

in determining whether or not harassment has occurred. If there is no awareness, there can be no perception. I am fortified in that conclusion having regard to authorities cited to me such as **Pemberton v Inwood** in particular the opinion of Underhill LJ at paragraph 88 where he said, referencing his own earlier decision in the case of **Dhaliwal**,

> 'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim *perceives themselves to have suffered the effect in question* (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.' (emphasis added)

I consider that this passage is an entirely clear and correct statement of the proper approach to the construction of this section, and I respectfully adopt it.

[21] It follows that the first ground of appeal, predicated upon an alleged failure by the ET in determining the question of harassment, to have regard to conduct of which the claimant was not aware, does not identify an error in law and I therefore dismiss this ground.

[22] The second ground of appeal is directed to the question of whether or not the ET fell into error in determining the question of reasonableness in terms of s.26 having regard to the context in which

the unwanted conduct came to light, namely the bullying and harassment investigation. The claimant argues, in effect, that this was too narrow an approach, and failed to have regard to other relevant circumstances such as derogatory comments made before that investigation, the context of the words used (beyond the proximate context of the investigation) and what was said to be the obligation to consider the conduct itself and not just the 'learning' of the conduct. In considering the task undertaken by the ET, I do not conclude that they failed in the manner contended for. Paragraph 179 of the judgment, as revised, and already the subject of criticism, states that disparaging comments could have the proscribed effect, and that the claimant was in fact offended by them (paragraph 181 and 183). Thus their conclusions go beyond the mere 'learning' of the conduct and accept that the conduct was unwanted conduct within the meaning of s.26 **EqA**. However the question of reasonableness in this context is not a broad general concept but has to be seen in the context of the statutory provision in which it appears. That mandates consideration of the claimant's perception of the conduct which, as already discussed, was engaged when he became aware of the conduct. That point was during the course of the Bullying and Harassment investigation in respect of complaints made about him. Thus the context of the investigation was, as stated by the ET at paragraph 187, relevant to consideration of the question of reasonableness. Paragraph 187 continues,

> 'That context was an investigation into B&H complaints brought by two of his colleagues against the claimant. It was entirely appropriate that these allegations should be investigated'

The judgment goes on to state,

> '188. It was inevitable that in the course of Mr Walker's investigation things would emerge which the claimant did not like. If Dr Gibson was meaning, in the passage we have quoted at paragraph 177 above, that this could not be unwanted conduct related to the claimant's disability, we did not agree. However, in the context of a B&H investigation, it was not in

> our view reasonable that the "unwanted conduct" should have the proscribed effect
>
> ……..
>
> 190. We did not believe that an employer should be constrained in carrying out an investigation into allegations of B&H because matters emerging from that investigation are then alleged by the subject of the investigation to be "unwanted conduct". Similarly, we did not believe that interviewees should be constrained from answering the questions put to them in the course of that investigation, provided they do so truthfully in accordance with their own view of the matters under investigation. Viewed in that context we did not consider that it was reasonable for the "unwanted conduct" which we found in this case to have the proscribed effect.'

Thus the unwanted conduct and the context of that conduct are relevant considerations in the carrying out of the exercise mandated by s.26(4) of **EqA** and the ET did not misdirect itself in this regard. Their conclusion, read fairly, was not that it was not reasonable for the conduct to have the proscribed effect 'simply because' it arose in the context of the investigation (as the relevant ground of appeal is expressed). That context was however a relevant consideration when carrying out this objective assessment and their conclusion demonstrates no error of law in the carrying out of that exercise.

[23] The third ground of appeal, relating to the question of time bar in the harassment claim, was ultimately a short point. I have concluded that it too fails to establish an error of law on the part of the ET. In its reconsideration decision, the ET correctly self-directed on the applicable law at paragraphs 46 and 47. It then concluded, in paragraph 48, as follows:-

> 'The reason for the delay in this case seemed to us to be the ignorance of the claimant as to the detail of how the time limit operated in his case. The

> delay was short, *at least in relation to matters of which the claimant became aware on 2 September 2019*. We considered on reflection that it was harsh to the claimant to refuse to extend time in the case of matters which were only a few days out of time. In contrast, the respondent would still have to answer a complaint of harassment in relation to matters which were not out of time. *We decided upon reconsideration that the balance of prejudice favoured the claimant to the extent of allowing consideration of matters occurring on or after 2 September 2019*.' (emphasis added)

[24] I accept that the distillation of that paragraph into the revised paragraph 243 is unfortunately expressed as it does not carry across the whole of the reasoning in paragraph 48. However when one reads the whole of paragraph 48 the intent of the ET is clear. In any event, as submitted by Dr Gibson, the matter becomes otiose when consideration is given to paragraph 49 which makes it clear that the ET did in any event have regard to all of the claimed instances of unwanted conduct when dealing with the harassment complaint.

[25] The final ground of appeal was a perversity challenge directed to the final sentence of paragraph 204 of the ET decision stating that 'However these complaints were not submitted because the claimant had done a protected act but because of the effect his behaviours had on Mr McEwen and Mr Knox'. Dr Greasley-Adams correctly identified the relevant test for a perversity challenge as set out in **Yeboah v Crofton** [2002] IRLR 634 CA and also properly recognised that the threshold for such a challenge is a high one. The perversity in the conclusion complained of was said to arise having regard to findings in fact at paragraphs 91-94 of the ET judgment and certain passages in the witness statement of Mr McEwen where reference is made to the claimant having referenced his rights derived from his COT 3 agreement. In short, it was argued that Mr McEwen's motivation for making the Bullying and Harassment complaint was clearly the claimant's protected act in that regard and thus contravened s.27 **EqA**. To conclude otherwise was perverse.

[26] Dr Greasley-Adams identified a number of passages in Mr McEwen's witness statement where he makes reference to the claimant raising complaints about the overtime he was given as well as shift patterns more generally. Reference is also made to the claimant having relied upon his COT 3 agreement. However those passages have to be viewed in the context of the whole of the witness statement as well as other evidence. The same rationale applies to the selected findings in fact relating to overtime allocation relied upon by the claimant. Looked at as a whole, the ET has analysed the evidence before it including the complaints made by the claimant, the witness statement of Mr McEwen as well as the reasons stated by Mr McEwen for initiating the Bullying and Harassment complaint and which are set out in paragraph 93 of the ET judgment. These extend to a number of instances of behaviour only one of which might be thought to encompass references to overtime allocations and the like. Looked at as a whole therefore there was ample material before the ET to entitle it to reach the conclusion that it did at paragraph 204. Thus the suggestion that the conclusion was perverse, in the sense of misunderstanding the evidence, making a finding in fact unsupported by the evidence, or contrary to un-contradicted evidence, is misconceived.

Conclusion and decision

[27] The judgment of the ET was to dismiss the claimant's claims brought under sections 26 and 27 of **EqA**. It adhered to that conclusion following its reconsideration of the claim as set out in its reconsideration judgment dated 1st December 2021. For the foregoing reasons, I can identify no error of law in the reasoning underlying that decision. The appeal is accordingly dismissed.