Neutral Citation Number: [2023] EAT 71

Case Nos: EA-2021-000858-OO

EA-2021-000939-OO

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 28 March 2023

Before:

MICHAEL FORD KC, DEPUTY HIGH COURT JUDGE

- -

Between:

MR N MENDY	**Appellant**
- and -	
(1) MOTOROLA SOLUTIONS UK LIMITED	
(2) RONAN DANIEL MICHEL DESPRES	
(3) UWE NISKE	
(4) CAROLINE LAWRENCE	
(5) FERGUS MAYNE	
(6) MOTOROLA SOLUTIONS INC	
(7) CLIVE HALLSWORTH	**Respondents**

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Mr N Mendy the **Appellant** in person
Mr J Chegwidden (instructed by Osborne Clarke) for the **Respondent**

Hearing date: 28 March 2023

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JUDGMENT

SUMMARY

Practice and Procedure – striking out claims

The claimant brought claims of breach of contract and indirect race discrimination in his grounds of complaint to the employment tribunal. At a private case management hearing, an employment judge struck out some of his claims for breach of contract and unlawful deduction from wages. She also refused applications to amend to bring claims of indirect race discrimination and post-termination victimisation. Later she refused an application to reconsider her decisions on the basis that her decisions were not judgments but case management orders. The appeal was not resisted.

Held, allowing the appeal in accordance with ***Dozie v Addison Lee*** [2013] ICR D38, (i) the employment judge had erred in striking out the breach of contract and deduction from wages claims at a private hearing, contrary to rule 59 of the Employment Tribunal Rules and without the procedural safeguards required by rule 37(2); (ii) the claimant had already pleaded a claim of indirect race discrimination and so did not require leave to amend, as the EAT had held in an earlier appeal in the same proceedings; (iii) the employment judge did not correctly apply the principles on allowing amendments in relation to the claim of post-employment victimisation; (iv) the decision to strike out the claims amounted to a "judgment" within the meaning of rule 1(3)(b) and so could be reconsidered under rule 70. The appellant's application to amend his notice of appeal to bring new grounds was, however, refused in light of the guidance in ***Khudados v Leggate*** [2005] ICR 1013.

MICHAEL FORD KC, DEPUTY HIGH COURT JUDGE:

Introduction

1. This is an appeal brought by Mr Mendy, the claimant before the Employment Tribunal, against two decisions of Employment Judge ("EJ") Grewal. The first appeal, EA-2021-000858-OO, is against the EJ's "Notes of the Discussion" and orders dated 13 August 2021. The second appeal, EA-2021-000939-OO, is against the EJ's decision set out in a letter of 14 September 2021 refusing the claimant's applications to strike out the response and for reconsideration of her earlier order. Both appeals were refused on the paper sifts by HHJ Shanks under rule 3(7) of the **Employment Appeal Tribunal Rules 1993** but after a rule 3(10) hearing, which took place before Judge Keith, permission was granted to bring an appeal on the basis of an Amended Notice of Appeal drawn up by Mr Ciumei KC who was then acting for the claimant through the ELAAS scheme.

2. I shall refer to the parties as claimant and respondents as they were before the Tribunal. Before me, the claimant appeared in person and presented oral submissions supplemented by a skeleton argument provided this morning. Mr Chegwidden appeared for the respondents and made brief submissions, although the respondents do not resist the appeal.

Background and Tribunal Decisions

3. The background to this matter I only summarise insofar as it is relevant for the purposes of the appeal. According to the claim form, the claimant was employed by Motorola Solutions UK Limited, the first respondent, as a Senior Strategic Account Manager working for the UN Peacekeeping and Development Accounts between 16 July 2018 and 5 May 2020. On 15 May 2020 he brought a claim against Motorola Solutions UK and eight other named respondents for, among other matters, race discrimination and dismissal for making a protected disclosure. He later brought several other claims and eventually his four extant complaints were, I understand, consolidated and formulated in a single document, with the title "Grounds of Complaint", setting out particulars of all

four claims. Under the heading "Discrimination", at paragraphs 121 and following of those Grounds of Complaint, as well as complaining of direct discrimination, harassment and victimisation, the claimant specifically pleaded indirect discrimination because of race, colour, nationality and/or ethnic or national origins contrary to section 19 of the **Equality Act 2010** at paragraph 123.2, referring to the provisions, criteria or practices ("PCPs") listed in Appendix 3**.** The claimant also brought claims for notice pay, holiday pay and other sums, such as overtime pay, reimbursement for business expenses, and pay for travel to high risk countries, which he said had not been paid to him in breach of contract and/or amounted to unauthorised deductions from wages (paragraphs 117-118 of the Grounds of Complaint).

4. In the responses served on behalf of all the respondents, the respondents said the claimant was dismissed for gross misconduct after disciplinary proceedings and denied the claims.

5. Subsequently, one of the parties to the original claims, Motorola Solutions Inc (a US company said to be the parent company of Motorola Solutions UK), listed as the sixth respondent on the Grounds of Complaint, ceased to be a respondent because the claim against it was withdrawn.

6. On 20 November 2020 a Case Management Hearing took place in private before EJ Hodgson who set out the issues for the hearing in Schedule A, recorded that the claim against Motorola Solutions Inc had been withdrawn, made the various orders set out in Schedule B, and listed the case for a preliminary hearing. At paragraph 2.9 of Schedule A to his order, EJ Hodgson said, it now turns out mistakenly, that there was "no discernible claim of indirect discrimination," that the PCPs relied on by the claimant were allegations of direct discrimination and that "if the claimant wanted to bring such a claim he must apply to amend and…should set out the essential elements of such a claim." EJ Hodgson further provided in Schedule B for the matters which should be included in any application to add a claim of indirect discrimination.

7. On 10 August 2021 a case management hearing took place before EJ Grewal. In an e-mail sent at 6:54 am on the morning of the hearing, the claimant made an application to strike out the respondents' response for, among other matters, failure to give disclosure of specific documents. He

also asked to add two new claims of post-termination victimisation for the purpose of a claim based on section 108 of the **Equality Act 2010**. The first of those claims was an allegation that the first respondent, Motorola Solutions UK, and the fourth respondent (Ms Lawrence, an employee of the first respondent) had made some statements on the phone to the insurer to whom the claimant had applied for mortgage unemployment protection insurance. The claimant alleged that the fourth respondent had sent his dismissal letter to the insurer and, as a result of what was said, his claim for mortgage unemployment insurance had been declined. He said this was an act of post-termination victimisation which had caused him several detriments.

8. As a second and separate claim of post-termination victimisation, in the same e-mail the claimant said this:

> "2. I also recently made a SAR/GDPR request to Motorola Solutions Inc (US based) who were initially party to the ET proceedings…Instead of complying they engaged Osborne & Clarcke [*sic*] (in deliberate knowledge of a conflict of interest), who in turn asked me to waive my rights"

He went on to raise matters in relation to that second complaint, such as accessing his personal data, which he sought to rely on as a in support of the claim of post-termination victimisation.

9. On 13 August 2021 EJ Grewal set out in the "Notes of the Discussion" the decisions she had made at the preliminary hearing which had taken place on 10 August 2021. In essence, the four central things she decided at the hearing were the following:

(i) She struck out the claimant's claims for untaken holiday due in respect of 2018 and 2019, for overtime payments, and for payments for travel to high risk countries under rule 37 of the Employment Tribunal Rules of Procedure 2013. Those were claims said to amount to breach of contract and/or unauthorised deduction from wages. At paragraph 8 the EJ said she considered the claimant had not provided the "legal bases" for those claims. However, at paragraph 9 she allowed other complaints of breach of contract – commission payments, holiday pay for 2020 and unpaid business expenses - to proceed.

(ii) She refused the claimant's application to amend to include a claim of indirect race discrimination, proceeding on the same basis as EJ Hodgson that no such claim had ever

been brought. She said this at paragraph 10 of her judgment:

> "At the preliminary hearing on 20 November 2020 Employment Judge Hodgson noted that there was no discernible claim of indirect race discrimination in the particulars given by the Claimant and made it clear that if he wished to pursue such a claim he would need to apply for leave to amend his claim to include it and he set out what the elements of such a claim are. On 7 December 2020 the Claimant provided a document running into many pages headed "schedule of PCPs (section 19 Equality Act 2010)." Unfortunately what is set out in the document are not PCPs that apply to everyone but impact disparately on people of the Claimant's race. It sets out direct acts of race discrimination. I refuse the Claimant's application to amend his claim to include a complaint of indirect discrimination because the content that he wished to add was not a complaint of indirect race discrimination."

I note in passing that she, in common with EJ Hodgson, appeared to have overlooked that the claimant's pleaded claim did in fact already include a claim of indirect race discrimination.

(iii) The EJ also refused the claimant's application to add a complaint of post-termination victimisation. She said this at paragraph 12:

> "The Claimant applied this morning before the hearing to add a complaint of post-termination victimisation. The Respondents opposed the application. I refuse the application. The current claim already includes a very large number of complaints. There have already been delays in processing it and it was not in the interests of justice to have any further delays. If the Claimant wishes to pursue further complaints about acts that took place after his dismissal he can bring a fresh claim in respect of them."

(iv) In response to the claimant's application to strike out the response, EJ Grewal said that the respondents should respond to it and she would deal with it in paper.

10. The EJ went on to list the case for 15-day liability hearing and gave directions for that purpose. The anticipated date of the hearing then was in April and May 2022. However, I was told that that date could not be met because of various problems and the case now is listed to be heard in June of this year but is more likely to be heard in September and October 2023.

11. In her subsequent decision of 14 December 2021, which is the subject of the second appeal in these proceedings, EJ Grewal refused the claimant's application to strike out the response. In the meantime the claimant had made an application for her to reconsider her earlier orders. In response to that application the EJ said in the letter of 14 December that an “application for reconsideration can only be made in respect of judgments of the Tribunal, it cannot be made in respect of Case

Management Orders".

12. The claimant subsequently brought Notices of Appeals challenging both of EJ Grewal's decisions in the Employment Appeal Tribunal ("EAT"). As I have already explained, initially the decision on the paper sift was that those claims disclosed no reasonable grounds for bringing an appeal. However, on 31 March 2022, the EAT President, Eady J, delivered judgment in another appeal brought by the claimant against the same respondents in the same proceedings, ***Mendy v Motorola Solutions UK Ltd & Ors*** [2022] EAT 47. In that appeal, the claimant challenged the order of EJ Hodgson made at the hearing on 28 November 2020 that there was no discernible claim of indirect discrimination, so that the claimant would need to amend his claim to bring such a complaint. In her judgment, Eady J ruled, first, that the claimant had in fact brought a claim of indirect discrimination, referring to paragraph 123.2 of the Grounds of Complaint supplementing his claim form; and, second, that the effect of EJ Hodgson's order was to strike out the claimant's claim for indirect discrimination at a private hearing contrary to rule 56 of **The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013** (the "ET Rules") and without the procedural safeguards which apply to strike out applications in rule 37(2). She therefore set aside that part of EJ Hodgson's order in which he had effectively struck out the claim for indirect discrimination.

13. On 7 September 2022 there was a rule 3(10) hearing before Judge Keith where the claimant was represented by Mr Ciumei KC acting through the ELAAS scheme. Subsequent to that, again while the claimant was represented by Mr Ciumei KC, an Amended Notice of Appeal was submitted which provided the grounds of appeal and set out the basis upon which permission to appeal was granted. By two orders dated 21 September 2022, Judge Keith gave permission to appeal on the terms set out in the Amended Notice of Appeal, dismissed all other grounds of appeal and gave permission to amend the notice of appeal.

14. In an e-mail of 13 October 2022 the respondents informed the EAT that they did not intend to resist the appeals and were content for the EAT to reinstate the claimant's claims for breach of contract and unlawful deduction of wages and to allow the claimant's application to amend to include

a claim of indirect discrimination and to bring a claim of post-termination victimisation. In an e-mail of 28 November 2022, the claimant agreed to the respondent's decision not to resist the appeal but also made submissions about the scope of the appeal. As a result of the reduced area of dispute on the appeals, the claim was listed for a one-hour hearing in person. The claimant also brought a review application challenging Judge Keith's decision, which Judge Keith refused in an order dated 21 November 2022, which I shall deal with below.

The Exiting Grounds of Appeal

15. Where a respondent consents to an appeal, the EAT Practice Direction of 2018 says at paragraph 17.3 that it is usually necessary for the matter to be heard by the EAT to determine whether there is a good reason for making the order. The reasons for this are obvious - in particular, the EAT must be satisfied there are genuinely good grounds for allowing the appeal and setting aside an order of the employment tribunal: see Judge Richardson in ***Dozie v Addison Lee Plc*****,** UKEAT/0328/13, 13 August 2013, noted at [2013] ICR D38, referring to whether there is "real substance" in the grounds.

16. The first Ground in the Amended Notice of Appeal is in essence that EJ Grewal erred in striking out the complaints of breach of contract and unauthorised deductions wages in respect of untaken holiday in 2018 and 2019, overtime payments and payments for travel to high risk countries, as set out in paragraph 8 of her decision of 13 August 2021. In particular, it is said that she did so at a private hearing, in breach of rule 56 of the ET Rules, and without giving the claimant a reasonable opportunity to make representations, either in writing or orally, at the hearing in breach of rule 37.

17. I consider there is real substance in this Ground of Appeal in light of the earlier decision of Eady J in the other appeal proceedings brought by the claimant, to which I have already referred.

(i) First, it appears the EJ struck out the claim at a private hearing contrary to Rule 56 of the ET Rules. In striking out those claims, the Tribunal was considering and determining a matter which should only be dealt with at a hearing in public: see rule 56, referring to determinations under rule 53(1)(c), on whether a claim should be struck out, as one of the

exceptions to preliminary hearings taking place in private. I note the matters raised in the Amended Grounds of Appeal at paragraph 1.2, explaining that the hearing notice for the10 August hearing referred to a case management hearing (which ordinarily take place in private); that there was no response to the claimant's prior enquiry whether the hearing was private or public; and that there was no direction or mention in the hearing itself that it was taking place in public. In those circumstances, for essentially the same reasons as given by Eady J in her earlier decision, I consider it was wrong of the EJ to strike out the claims at what was a private hearing.

(ii) Second, it also appears that the claimant was not given a sufficient reasonable opportunity to make representations about the strike out of the claims, either in writing or at the hearing, contrary to rule 37(2). It seems nothing was said in the notice for the hearing to inform the claimant that a strike out would be considered at the hearing. Although at paragraph 8 of her decision the EJ seemed to have been critical of the claimant for not providing information to support his claims, unless he was told that a strike out was to be considered at the hearing, he would not have been in a proper position to provide relevant documents (such as his contract of employment) which might show, for example, that there were sufficient legal bases for his claims.

18. For these reasons Ground 1 of the appeal is allowed.

19. Ground 2 of the Amended Notice of Appeal is that EJ Grewal erred in refusing the claimant's application to amend to include a claim of indirect race discrimination. This was the matter she dealt with at paragraph 10 of her decision, set out above. The premise of this decision by EJ Grewal was that EJ Hodgson's earlier order requiring the claimant to provide further particulars and to seek amendment to bring a claim of indirect race discrimination was correct. But that aspect of his order was set aside by Eady J in her judgment of 31 March 2022, when she decided that EJ Hodgson had erred in inadvertently striking out the pleaded case for indirect discrimination. In those circumstances, I consider the claimant did not need make an application to amend because, just as

Eady J held in the previous appeal, he had already pleaded indirect discrimination. In those circumstances, I allow Ground 2 of the appeal.

20. Ground 3 of the appeal relates to the claims of post-termination victimisation. It is said, in outline, that the EJ refused the claim for post-termination victimisation because she did not properly apply the principles of many authorities on amendment, including ***Selkent Bus Company Ltd v Moore*** [1996] ICR 836 EAT. The principles require an EJ to carry out a careful balancing exercise of all relevant factors when dealing with an amendment application, including the nature of the amendment, having regard to the interests of justice and the relative hardship that could be caused to the parties by granting or refusing the amendment.

21. It is important to note at the outset that the Amended Notice of Appeal only addressed the first of the two matters which were sought to be added as new complaints of post-termination victimisation, namely the complaint about the refusal of the claimant's claim for mortgage unemployment insurance. As drafted, the Amended Notice of Appeal said nothing about the second complaint of post-employment victimisation to which I have referred above.

22. The background to this matter is set out in paragraphs 7-8 above. In his e-mail to the Tribunal of 10 August 2020, the claimant said he had recently discovered that the first respondent and the fourth respondent had referred to his tribunal claim in a telephone conversation with the mortgage insurer and as a result the insurer had declined his claim for mortgage unemployment insurance.

23. I have already set out the reasons for which the EJ refused the application to add a complaint of post-termination victimisation, contrary to section 108 of the **Equality Act,** at paragraph 12 of her decision of 13 August 2021. I consider there is real substance in this ground of the Amended Notice of Appeal. In my judgment, the Employment Judge failed to apply the relevant legal principles on amendment. She did not consider, for example, the reasons for the delay and nor did she balance all the relevant factors, including the prejudice or hardship to the parties in granting or refusing the amendment.

24. I also consider there are good grounds for allowing the appeal on the basis that the EJ relied

on irrelevant factors or reached an impermissible decision in paragraph 12 of her reasons. In particular, first, she said that the current claim already included a "very large number of complaints". But it is hard to see how this is relevant to the decision whether or not amendment should be made to add a new complaint, in which the focus should be on the specific amendment sought. Second, she implied that granting the amendment would cause delay in dealing with the claims. However, given the limited factual scope of the amendment that were being sought in respect of a discrete event, it is hard to see how it would do so. Neither reason, in my judgement, provided a sufficient basis for refusing permission to amend.

25. In the circumstances, I consider there is real substance in Ground 3, as pleaded in the Amended Notice of Appeal, and I therefore allow the appeal on this ground. The Amended Notice of Appeal, which the respondents do not resist, contends that the EJ would have permitted the amendment if she had properly applied the law. In that light, I consider the sensible way to resolve this matter is for me to allow amendment rather than remit this matter to the Tribunal. Consequently, and as agreed by the respondents, my decision is that the claimant is given permission to amend his claim to bring the first complaint of post-termination victimisation set out in his e-mail of 10 August 2021, relating to the refusal of mortgage unemployment insurance.

26. The final ground of appeal is Ground 4, about which little was said by either party. This is a challenge to EJ Grewal's subsequent decision of 14 September 2021 in which she declined to reconsider her earlier decision because she said an application for reconsideration could only be made in respect of judgments and not case management orders. It is said that she was wrong in concluding that the orders she made striking out the various claims were case management orders because these were in fact final determinations in respect of those matters: see the definition of a "case management order" in rule 1(3)(a) of the ET Rules. I consider this ground of appeal is correct: the EJ's strike out decision fell within the definition of "judgment" in rule 1(3)(b) and hence it could have been reconsidered under rule 70. (Alternatively, if her decisions were case management orders, they could have been reconsidered under the general power of a tribunal to reconsider its case management

orders under rule 29).

27. My conclusion in relation to Ground 4 is, therefore, that there is therefore real substance in it and so the appeal is allowed. However, in light of the rulings I have made on Grounds 1 and 2, it does not appear to me this ground has any practical effect on the pursuit of these proceedings.

Applications to Amend the Notice of Appeal

28. Before me, the claimant sought to rely on two other matters, neither of which was raised in the Amended Notice of Appeal.

29. First, he sought to amend his Notice of Appeal so as to challenge the EJ's refusal of his application to add a complaint of post-termination victimisation, not only in respect of the mortgage insurance refusal which I have dealt with under Ground 3, but also in respect of the second matter raised in his e-mail of 10 August 2021: that is, the claim against Motorola Solutions Inc, the US company, and the allegation that their solicitors had asked him to waive his data protection rights (see paragraph 8 above). Secondly, he also applied to amend his Notice of Appeal to raise other complaints about how the EJ dealt with his claims for breach of contract.

30. Before considering the applications to amend, I should say something about the background. It seems that in a document sent to the Tribunal in December 2020, with the heading "Claimant notes of clarification to the Respondents" and which the claimant showed me at the hearing, he listed various complaints of what his breach of contract claim "includes but is not limited to". He listed 20 matters which were said to amount to breaches of contract, including various complaints about failures to follow or investigate properly disciplinary matters, failures to follow a fair grievance procedure or properly investigate his grievance, his suspension, breach of confidence and the matters he claimed were acts of retaliation, victimisation, harassment and race discrimination.

31. EJ Grewal's decision of 13 August 2021 did not specifically mention the second post-termination victimisation complaint at paragraph 12, although it seems clear she was considering (and refusing) permission to bring both of the complaints under section 108 of the **Equality Act 2010**

because she simply referred to the "complaint" of post-termination victimisation which had been the subject of an application that morning. Interpreted fairly, her decision was a refusal to grant permission to amend to include both of the allegations set out in the claimant's e-mail of 10 August 2021.

32. As regards the complaints about the grievance, disciplinary process and other matters which were said by the claimant to amount to breaches of contract, the EJ said this at paragraph 6 of her decision:

> "In his particulars, the Claimant also claimed he was complaining of breach of contract in respect of matters relating to the handling of his grievances and the disciplinary process against him. These matters were not identified as the subject matter of his claim in the single document setting out all his claims on 3 August 2020. Hence, he cannot pursue these claims."

However, she made no orders striking out those claims and said nothing more about them.

33. The original Notice of Appeal, which I presume was drafted by the claimant, included a challenge to how the Tribunal had dealt with the grievances and other complaints of breach of contract. In particular, the claimant said that he did not agree with the way the EJ dealt with these matters in paragraphs 5 to 9 of the original Notice of Appeal challenging her decision of 13 August 2021. When the claimant was represented by Mr Ciumei KC at the rule 3(10) hearing on 7 September 2022 before Judge Keith, these points were not raised, and nor were they raised in the Amended Notice of Appeal submitted on 9 September and which stood as the grounds of appeal following the two orders of Judge Keith dated 21 September 2022.

34. The claimant subsequently submitted a detailed review application, challenging some aspects of Judge Keith's order at the rule 3(10) hearing but making no reference to the two matters which he sought before me to include in his Notice of Appeal. That application was refused by Judge Keith in an order dated 29 November 2022. In fact, as the claimant accepts, neither matter was raised with the respondents or the EAT until the matters were set out in his skeleton argument for the hearing before me at today's hearing.

35. The claimant's only explanation for the matters not being raised earlier is that he told me he

has been dealing with lots of applications as well as working, and it is hard work doing these cases on his own.

36. In the circumstances, I do not think it is just to allow the amendments to the Amended Notice of Appeal to pursue these arguments now in light of the guidance on the principles in ***Khudados v Leggate*** [2005] ICR 1013. The application to amend was not made as soon as is practicable. There has been no real explanation for the long delay in raising these matters until this morning. There are also problems with the nature of the amendments sought. For example, any challenge on appeal to the EJ's refusal of the claimant's application to bring a post-termination claim against Motorola Solutions Inc will face the significant difficulty that this is not a matter which could properly be dealt with by way of an amendment application in any event because that US company is longer a party to the tribunal proceedings, as the claimant accepts.

37. In addition, I do not consider that at the appeal today, which was only listed for one hour, it would be practicable to address the arguments and factual background about the numerous complaints of breach of contract, meaning that if these matters were to be addressed, the hearing would need to be relisted for a further hearing, adding further delay to the resolution of this appeal. In all the circumstances, I do not think it is appropriate or just to allow the amendment to be made at such a late stage and I therefore refuse the applications to amend.

38. However, there is one final practical matter which I should raise. Paragraph 6 of EJ Grewal's decision of 13 August left unclear the status of the claimant's complaints of breach of contract (other than those which she specifically struck out at paragraph 8 and which I have held she was wrong to do so). Though she said the claimant "cannot pursue those complaints", she did not strike out the matters which were raised by the claimant in the "notes of clarification" he sent to the respondent in December 2020. In those circumstances, it seems to me the sensible practical course is for the parties to resolve as early as possible the status of those claims and, if this cannot be agreed, to seek an order from the Tribunal as to how those claims, if they are pleaded, are to be dealt with at the full hearing.

Conclusion and Disposal

39. My conclusion is that I allow the Grounds 1, 2, 3 and 4 as set out in the Amended Grounds of Appeal and to which the respondents have consented. But I refuse the claimant leave to amend the Amended Notice of Appeal to add the additional complaints which the claimant sought to raise at the hearing.

40. As a consequence: (i) the EJ's decision to strike out the claims for holiday pay for 2018 and 2019, for overtime payments and for payments for travel to high risk countries is set aside; (ii) the EJ's decision refusing permission to bring a complaint of indirect race discrimination is set aside; (iii) the EJ's refusal to allow the Claimant to bring a complaint of post-employment victimisation based on the allegation that the first and/or fourth respondent caused him to be declined mortgage unemployment insurance is set aside and the claimant is permitted to bring such a claim. Although both parties addressed me on remittal, the consequence of my decision is that there is nothing to remit.

41. The final matter I should add is a point raised by the claimant in his submissions before me, that the regrettable delay in this case is causing him hardship. No doubt the delay in resolving the claims is also having a similar effect on the respondents. I remind both of the parties of the overriding objective in rule 2 of the ET Rules and the need to cooperate with each other and with the Tribunal so that the case can be dealt with justly and without undue delay. I hope that in future their focus and that of the Tribunal can be on ensuring this case is resolved as soon as is reasonably practicable at a full hearing.