# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| Mr Stephen Melekeowi | v | G4S Cash Solutions (UK) Limited |

**Heard at:** Watford
**On:** 28 February 2023 – 2 March 2023
**Before:** Employment Judge Talbot-Ponsonby

**Appearances:**
**For the Claimant:** Mr Melekeowi in person
**For the Respondent:** Miss S Bowen (C)

**JUDGMENT** having been sent to the parties on 5 March 2023 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

# REASONS

## Introduction

1. This hearing relates to two claims brought by Mr Stephen Melekeowi, the claimant, against G4S Cash Solutions (UK) Limited, the respondent. The first, 3328359/2019, was brought on 31 December 2019 and the second, 3312729/2020 on 23 October 2020.

2. The claimant was employed by G4S Cash Solutions (UK) Limited as vault officer, working in the secure area. At the material times for this claim, he worked in the Northampton branch until 2016; he then obtained a job in Woking, where he worked until it closed in June 2019; he then worked at the Park Royal branch until it closed in August 2020 and he was made redundant.

## Claims and issues

3. In the first claim, the claimant has claimed that he suffered racial discrimination in relation to the contract he was employed under at Park Royal, and in relation to the circumstances surrounding the closure of the Woking branch, both in respect of the payment of a relocation allowance when he went to work at Park Royal, and the extent to which he was helped or hindered from going to work at that Park Royal branch rather than Basingstoke (Chineham). He has also claimed that he was underpaid for his holidays while at Woking. The claim initially also referred to sex discrimination but it was confirmed at the case management hearing that this was not pursued.

4. The second claim relates to the calculation of the claimant's redundancy pay; he claims that, because he had brought the first claim, the respondent deliberately used the wrong date for the start of his employment when calculating his notice pay and redundancy pay, and therefore underpaid him by one year. He has also suggested in April 2021 that the wrong figure was used for the calculation of his notice pay, but this is not pursued.

5. The issues were clarified by Employment Judge Gumbiti-Zimuto in respect of the first claim at a case management hearing on 5 June 2020 and by Employment Judge Anstis in respect of the second claim at a case management hearing on 24 January 2022. At the second case management hearing, the parties confirmed that the description of the claims and issues in the first case management hearing remained Accurate.

6. The issues recorded were as follows:

7. Claim 3328359/2019

*Time limits / limitation issues*

7.1 Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") and sections 23(2) to (4), of the Employment Rights Act 1996 ("ERA")?

*EQA, section 13: direct discrimination because of race*

7.2 Has the respondent subjected the claimant to the following treatment?

7.2.1 The claimant was not paid relocation allowance until he raised a grievance appealing the decision to fail to pay him a relocation allowance.

7.2.2 The claimant was employed on a contract of 30 hours a week instead of 39 hours a week.

7.2.3 The claimant's branch manager (Helen Lacey) failed to listen to complaints about the issues above when raised by the claimant.

7.2.4 Helen Lacy refused to facilitate the claimant's move to go and work at Park Royal, including by refusing to contact Park Royal on my behalf of the claimant when there was a job that the claimant was qualified to perform being advertised to the public.

7.3 Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on the following comparators Kelly Graham and Peter Heath, and hypothetical comparators.

7.4 If so, was this because of the claimant's colour and/or because of the protected characteristic of race more generally?

8. The claimant's complaint of discrimination appears to be made solely on the basis of direct race discrimination. The claimant made reference to indirect discrimination. The matters set out by the claimant do not appear to be properly complaints of indirect discrimination. If the claimant is seeking to pursue a complaint based on indirect discrimination the claimant is to provide to the respondent and the tribunal, in writing, the grounds on which such a claim is being made.

*Holiday pay*

8.1 The claimant claims that he is owed holiday pay in the sum of £1685, in the period October 2016 to June 2019.

8.2 The respondent contends that the employment tribunal does not have jurisdiction to consider the said complaint.

9. Issues in 3312729/2020

9.1 What was the claimant's start date of continuous employment?

9.2 Is the claimant entitled to further notice pay, enhanced redundancy payment and/or statutory redundancy payment (on the basis that his entitlements should have been calculated by reference to nine years' continuous employment rather than eight years' continuous employment)?

9.3 Did the respondent's handling of the complaints he made at the time about being underpaid amount to a detriment and, if so, was this detriment because the claimant had brought a tribunal claim alleging race and sex discrimination?

9.4 To the extent that the claimant succeeds with his claim, what compensation should he receive?

**Procedure, documents and evidence**

10. The hearing was listed from 28 February – 3 March 2023, but in fact took 3 days rather than the 4 allowed.

11. The tribunal consisted of Employment Judge Talbot-Ponsonby, Ms Sian Hughes and Mr Frank Wright.

12. The claimant appeared in person; the respondent was represented by counsel, Miss Bowen.

13. The tribunal had a bundle for each of the two cases, comprising the pleadings, some of the claimant's contracts of employment, and other documents and relevant correspondence. The Tribunal read all these documents.

14. The tribunal had witness statements and heard oral evidence from the claimant, and from Miss Helen Lacey and Miss Jade Walter of the

respondent. Written submissions were provided by Miss Bowen at the start of the hearing and the tribunal heard oral closing submissions from both Miss Bowen and from the claimant. The tribunal was grateful to them both for their assistance.

15. On the first day, the tribunal considered 2 preliminary issues. The first of these was whether the holiday pay claim was brought out of time. The second was based round an observation by Miss Bowen that the claimant's witness statement appeared to seek significantly to expand the claim: the tribunal treated this as an application by the claimant to amend his claim.

16. The decision on these preliminary issues was given on day 1, in which the tribunal decided that the holiday pay claim was out of time and refused permission for the claim to be amended.

17. As a result of this, the issues in relation to the holiday pay fell away and do not need to be considered.

18. In addition, in cross examination the claimant conceded that he was not alleging that he has suffered racial discrimination in relation to his employment on a contract of 30 hours per week rather than 39, or any issues surrounding this. Accordingly, that part of the race discrimination claim falls away and does not need to be considered. Some of this is set out in the findings of fact because it forms the background to the claims.

19. Similarly, shortly after the case management hearing in the second claim, the claimant provided to the respondent a contract of employment which showed his start date as 27 October 2011. The respondent accepted this and paid the additional year's notice and basic and enhanced redundancy pay. Accordingly, this element of the second claim falls away, leaving only the claim in victimisation for the tribunal to decide.

**Fact finding**

20. The claimant commenced work within the G4S group on 27 October 2011, working for G4S Secure Solutions (UK) Limited as a security officer. He then transferred to work for the respondent. The tribunal does not know the exact date of the transfer, but the claimant had a contract with the respondent as a vaults officer based in Watford with effect from 1 June 2014. This contract erroneously records his date of continuous employment with the G4S (UK) group as 31 October 2011.

21. Thereafter the claimant worked in the Northampton branch as coin store operative. He and his family moved to Feltham and he found the long commute difficult so he looked for alternative locations where he could work. The Woking branch was advertising for a vaults officer and so he applied for, and was offered, this position. This position was a part time role, for 30 hours a week, rather than the full time position (39 hours per week) that he had had at Northampton. Nonetheless, the claimant accepted this role.

22. At first, the claimant continued to work an additional 12 hours per week at Northampton but when Miss Lacey discovered this, she forbade it. This was for a number of reasons. She was concerned that if staff worked for other

branches, she could not monitor their working, holidays, breaks etc; administratively, it caused a lot of difficulties because staff could not be on the payroll for 2 different branches; and, in any event, she said that the claimant was needed to cover peak hours and holidays at Woking, and indeed thereafter he worked exclusively at Woking, including a lot of overtime for which he was paid.

23. Miss Lacey explained that the part time working was a necessity because she had been trying to reorganise the shift patterns at Woking; the staff had been organising this themselves, and it became apparent that the shift patterns did not reflect the peaks and troughs of the workload. Accordingly, at the time the claimant started at Woking, and at all times thereafter, his position was only part time, although there was often a lot of overtime work available.

24. In early 2019, a plan was formed to close the Woking branch and transfer its work to other branches, principally Basingstoke (Chineham) but also some to Park Royal and Coulsdon. This was called “Project Waverley” by the respondent. In February 2019, a question and answer (“Q&A”) document was prepared for the staff.

25. This confirmed as follows:

    25.1 There would be roles available for all existing staff except for 10 secure area roles and 3 night HGV roles (page 63 in the bundle at Q1).

    25.2 The work was to transfer to Basingstoke (Chineham), Park Royal and Coulsdon. Where possible, employees would be transferred to the location nearest their home but that depended on the locations the work was transferring to (page 63 Q3).

    25.3 The respondent would offer transfer payments of £3,000 for those moving to Basingstoke or Coulsdon, and £5,000 for those moving to Park Royal. This payment was taxable. The payment was only available if an employee transferred to the branch where the original work transferred to; if they decided to take up a role at another branch, the payment would not be available (page 64 Q7)

    25.4 The roles available were set out in (page 67 Q2)

        25.4.1 36 Drivers in Basingstoke, 12 in Coulsdon and 16 in Park Royal

        25.4.2 16 secure area staff in Basingstoke

        25.4.3 4 trunk driers in Basingstoke

        25.4.4 These were expressed to be provisional, and the respondent would inform employees if the numbers changed; there was no evidence before the tribunal to suggest that that the numbers ever did change and Miss Lacey confirmed that they did not.

26 On 11 March 2019, the claimant had a meeting with Miss Lacey. He confirmed that he would happily go to Park Royal, either on his current basis or for a full time post. He did not wish to work in Chineham because of the distance from his home and the childcare issues it raised. Miss Lacey noted that she did not know whether he would receive a transfer payment, as a move to Park Royal would be outside the scope of Project Waverley (the name given to the closure of the Woking branch and relocation of those employees). Miss Lacey agreed to look into this issue.

27 The claimant had a redundancy consultation meeting on 12 March, at which he was informed that he was at risk of redundancy. At that meeting, the claimant again stated that he could not travel to Basingstoke (Chineham) because of the distance from his home. He stated that he would prefer to travel to Park Royal.

28 At about the same time, the claimant became aware of an advertisement at Park Royal for a full time vaults officer. This appears to have been posted on 19 March 2019. On 21 March 2019, the claimant sent an email to Miss Lacey drawing her attention to this, and saying that he would like to move to Park Royal rather than Chineham. The claimant noted that Miss Lacey had said that she would find out whether there was a vacancy at Park Royal and asked whether she had contacted Park Royal on his behalf.

29 The bundle contains a letter dated 26 March 2019 formally offering the claimant the opportunity to go to Chineham in accordance with the Q&A.

30 The claimant contacted his union representative, David Baker, who spoke to Miss Lacey. Mr Baker confirmed to the claimant on 29 March that Miss Lacey was not insisting that the claimant move to Chineham, and she was open to persuasion; but the main problem was that she wanted the claimant to move to Chineham because he was very useful.

31 Meanwhile, Miss Lacey had contacted Jade Walter, in the respondent's human resources department, to clarify whether the claimant would receive a transfer payment if he went to Park Royal. Miss Walter's advice was that he would not, because such a move was outside the scope of Project Waverley, as the claimant's work (the vault officer work) was all moving to Chineham.

32 On 8 April 2019, Miss Lacey invited the claimant to a meeting on 17 April to discuss the possible move. On the same day, she also informed Mr Baker that, if the claimant took the job at Park Royal, he would not be eligible for the transfer payment. Mr Baker informed the claimant of this the same day, and Miss Lacey confirmed this to the claimant in an email on 10 April.

33 At around the same time, the claimant became aware that 2 drivers (Kelly Graham and Peter Heath) were moving to Park Royal and did receive the relocation allowance. Conversely, the transport manager, Peter Horan, elected not to go to Chineham (where his role transferred to) but instead found a vacancy at Nine Elms, applied for this and moved there. He did not receive the relocation allowance as this was outside the scope of Project Waverley. All 3 of these individuals were white.

34 There were further discussions about the closure of the Woking Branch and, in the meeting with Miss Lacey on 17 April, the claimant again stated that he would like to move to Park Royal because it was closest to his house. Miss Lacey noted that the AA route planner app (agreed by the union as the appropriate measurement) gave a travel time of 43 minutes from the claimant's home to Chineham, and 35 minutes to Park Royal. On the same day, Miss Lacey also tried to contact Park Royal to check whether the vacancy was still available. The branch manager was away at the time but due back the following week.

35 Ultimately, the claimant was able to move to Park Royal with effect from 10 June 2019.

36 He did not receive the relocation allowance in his June payslip, and so, on 5 July 2019, he raised a grievance in respect of this. He noted that Miss Lacey had made it clear to him that the decision not to pay the relocation allowance was made by the human resources department; he stated that he considered it to be discriminatory but did not say what the basis of the discrimination was (i.e. whether this was based on race, sex, or some other characteristic).

37 A grievance investigation report was prepared by Matthew French, and a meeting held with the claimant on 10 September 2019. We have not seen the minutes of that meeting. There are minutes of a meeting held about a separate grievance, held on 9 October 2019, and mistakenly dated 10.9.2019.

38 On 17 October, Mr French wrote to the claimant to inform him that he had considered the grievance and all the relevant information, and took the view that the policy had been correctly applied and the claimant was not entitled to the relocation allowance, so the grievance was not upheld.

39 The claimant appealed and the appeal was heard on 10 December 2019. The (undated) appeal outcome letter from Jim McMillan, the branch manager, confirms that the company had technically acted correctly but that, bearing in mind that (i) Park Royal was closer to the claimant's home, and (ii) drivers had transferred to Park Royal and received the allowance, he could understand how the claimant perceived this to be unfair, and so on these grounds, and as a gesture of goodwill, he agreed to allow the payment.

40 The claimant commenced ACAS early conciliation on 1 December 2019 and this ended on 2 December 2019.

41 The claimant then applied to the tribunal on 31 December 2019, on the basis that the initial refusal to pay the relocation allowance, and the failure to make the payment until he had gone through the grievance procedure, was discriminatory due to his race.

42 In summer 2019, further reorganisations of the respondent's business meant that the Park Royal branch was also closed down. The claimant was again at risk of redundancy and was indeed made redundant on 31 August 2020, being paid in lieu of notice.

43 The claimant had consultations with William Cuxton, the operations manager, on 31 July 2020 and with someone, whose name is not easy to read but whose initials appear to be N. B., on 13 August 2020. Due to the pandemic, both consultations took place by telephone. The consultation form incorrectly records the claimant's start date as 31 October 2011 rather than 27 October. The claimant's evidence was that he had, on both occasions, told the company that his start date was wrong. Neither form records that the claimant said this; the claimant's explanation is that they failed to write it down or do anything about it. The evidence of Miss Walter was that there is space on the form to record exactly this sort of information and that, if either of these individuals had been told this, they would have recorded it for the human resources team to check.

44 The effect of the mistaken date is that the claimant was treated as having just under 9 years' service rather than just over, and therefore paid redundancy pay and notice pay for 8 years not 9. the claimant claims that this is victimisation, arising because of the first tribunal claim, and brought the second claim on 23 October 2020.

45 The tribunal notes that there are several different documents in the bundle which contain different versions of the claimant's start date. These are:

45.1 The "viper" print-out dated 11 March 2019, recording a start date of 27 October 2011 (A70)

45.2 The redundancy consultation on 12 March 2019, recording a start date of 27 October 2011 (A71)

45.3 A contract of employment dated 21 January 2013, recording a start date of 12 January 2012 (B43)

45.4 The redundancy consultation note on 31 July 2020, recording a start date of 31 October 2011 (B68)

45.5 the claimant's contract dated 7 November 2011, recording a start date of 27 October 2011 (B77)

45.6 An email from Secure Solutions (the division where the claimant initially started work) dated 28 January 2022 recording a start date of 31 October 2011 (B83)

46 The explanation given by Miss Walter for the miscalculation was that human resources, who calculated the redundancy payment, relied on the date on their system, which was given to them by Secure Solutions; this date is reconfirmed in the email dated 28 January 2022.

47 Miss Walter confirmed that the Viper system was to enable operations and rostering, and human resources did not have access to it. In his submissions, the claimant suggested that all redundancy consultations were carried out by managers at the branch, who would have had access to the Viper system.

48 In the light of the lack of any evidence on the consultation forms that the claimant raised this issue, the tribunal finds that the claimant did not raise this at the consultation meetings.

**Law**

Discrimination

Time limits

49 Under the Equality Act 2010, section 123, there is a primary time limit of 3 months from the date of the relevant act, or if there is a continuing act, the end of the period of discrimination).

50 It is important to note that one must look at the act, not the consequences; this was made clear by the decision of the House of Lords in Barclays Bank plc v Kapur and ors [1991] ICR 208, which drew a distinction between a continuing act and an act that has continuing consequences. They held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time. Thus in Sougrin v Haringey Health Authority [1992] ICR 650, CA, the Court of Appeal held that a decision not to regrade an employee was a one-off decision or act, even though it resulted in the continuing consequence of lower pay for the employee who was not regraded. There was no suggestion that the employer operated a policy whereby black nurses would not be employed on a certain grade; it was simply a question whether a particular grading decision had been taken on racial grounds.

51 The tribunal has jurisdiction to extend time under section 123(1)(b) if it is just and equitable to do so.

52 This is a broad discretion. In Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434, CA, the Court of Appeal stated that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) of the Equality Act 2010, "there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule." However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law does not require this but simply requires that an extension of time should be just and equitable, as per the decision in Pathan v South London Islamic Centre EAT 0312/13.

53 The fact that a claimant has awaited the outcome of his or her employer's internal grievance procedures before making a claim is just one matter to be taken into account by an employment tribunal in considering whether to extend the time limit for making a claim: Apelogun-Gabriels v London Borough of Lambeth and anor [2002] ICR 713, CA.

Discrimination generally

54 Section 13(1) Equality Act 2010 provides that (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

55 Under section 9, race is a protected characteristic and includes colour, nationality and ethnic or national origins.

56 In order to claim direct discrimination under section 13, the claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant.

57 In the pivotal case of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL, (a sex discrimination case), Lord Scott explained that this means that "the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class".

58 In Watt (formerly Carter) and ors v Ahsan [2008] ICR 82, HL, (a race discrimination case), Lord Hoffmann opined that it is "probably uncommon" to find an individual who qualifies as a statutory comparator. Furthermore, where such an individual is identified, there is likely to be disagreement over whether his or her circumstances are materially different. However, Lord Hoffmann thought that in most cases "it will be unnecessary for the tribunal to resolve this dispute because it should be able, by treating the putative comparator as an evidential comparator, and having due regard to the alleged differences in circumstances and other evidence, to form a view on how the employer would have treated a hypothetical person who was a true statutory comparator."

59 The definition of direct discrimination in the Equality Act 2010 requires the complainant to show that he or she received less favourable treatment "because of a protected characteristic". The protected characteristic must be an "effective cause" of the treatment.

Burden of proof

60 Section 136 of the Equality Act 2010 provides that, once a claimant proves facts from which the tribunal could conclude, in the absence of any other explanation, that an employer has committed an act of direct discrimination, the tribunal is obliged to uphold the claim unless the employer can show that it did not discriminate.

61 Further guidance was given by Mummery LJ in Madarassy v Nomura International plc [2007] ICR 867, CA, where he stated: "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Victimisation

62 Section 27(1) of the Equality Act 2010 provides that: "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."

63 Detriment has a wide meaning, and means anything that an individual might consider puts them at a disadvantage.

64 The detriment must be because of the protected act; there must be an influence which is more than trivial.

Burden of proof

65 Section 136 of the Equality Act 2010, with the same shifting burden of proof, applies in respect of victimisation as well as to discrimination. As with a discrimination claim, there must be more than just the bare fact of a detriment and a protected characteristic: there needs to be "something more" from which the tribunal can infer victimisation.

**Conclusions**

66 Claim 3328359/2019

*Time limits / limitation issues*

67 Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA") and sections 23(2) to (4), of the Employment Rights Act 1996 ("ERA")?

68 This issue now relates solely to the discrimination claim.

69 The tribunal accepts that the decision was taken by Miss Lacey (relying on the advice of Miss Walter) on or about 8 April 2019, when it was communicated to the claimant. It was not a continuing policy or decision; it was a one-off decision, applying the policy to the claimant's particular circumstances. Although the consequences of the decision did not affect the claimant until June 2019, the decision was made in April and he was aware of it.

70 Accordingly, the last date for the ordinary time limit under s.123 EqA was 7 July 2019.

71 The claimant explained why he did not bring the claim sooner. Essentially:

71.1 Until it was confirmed that he could move to Park Royal, the decision made no difference to him

71.2 As soon as he did not receive the payment, he raised a grievance and he then waited for the outcome of that grievance.

72 The tribunal considered that, taking into account the law as set out above, the claimant's explanation, and also that:

72.1 if the claimant had not been able to move to Park Royal, the decision would have been irrelevant; and

72.2 the application was made promptly after the decision on the grievance appeal;

it is just and equitable to extend the time limit for the claimant to make the application for discrimination until 31 December 2019.

*EQA, section 13: direct discrimination because of race.*

73 Has the respondent subjected the claimant to the following treatment?

73.1 The claimant was not paid relocation allowance until he raised a grievance appealing the decision to fail to pay him a relocation allowance.

74 The claimant was subjected to this treatment

74.1 The claimant was employed on a contract of 30 hours a week instead of 39 hours a week.

75 This is no longer pursued

75.1 The claimant's branch manager (Helen Lacey) failed to listen to complaints about the issues above when raised by the claimant.

76 The tribunal does not find that this is the case. It is clear, from the documents, and from the evidence of Miss Lacey and Miss Walter, both of whom were credible witnesses, that Miss Lacey took advice from Miss Walter in order to decide whether the claimant should receive the allowance. The claimant's concern here appears to be that that Miss Lacey did not agree with him rather than that she did not listen and consider the issues.

76.1 Helen Lacy refused to facilitate the claimant's move to go and work at Park Royal, including by refusing to contact Park Royal on my behalf of the claimant when there was a job that the claimant was qualified to perform being advertised to the public.

77 The tribunal does not find that this is the case. It is clear from the telephone attendance notes that Miss Lacey did contact Park Royal to ascertain whether the job was still available; although the claimant was required to apply for the position himself, this was consistent with the fact that the claimant's role was being transferred to Chineham rather than Park Royal. The position was made clear to the claimant both by Miss Lacey and by his union representative.

78 The comments below in respect of the comparators also apply in relation to the extent of the help given by Miss Lacey.

78.1 Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The claimant relies on the following comparators Kelly Graham and Peter Heath, and hypothetical comparators.

79 The tribunal does not find that there was less favourable treatment.

80 First, the tribunal considers that the respondent's interpretation of the policy document at A63-A68 is correct. The policy refers to all the employees who will be required at the other sites, and specifically refers to all the secure area staff being required at Basingstoke, whereas the drivers would move to all 3 locations.

81 Miss Lacey confirmed that the policy was agreed with the unions, and the claimant's union representative, David Baker, did not challenge this interpretation of it.

82 The claimant sought to suggest that the job at Park Royal arose because of transfer of work from Woking. Miss Walter's evidence was that the vacancy arose for a different reason; the Enfield branch was closing, and its work was being transferred to Park Royal. A vault official from Enfield who would have taken up this role at Park Royal successfully applied for a different job, leaving this vacancy at Park Royal. Although the claimant told the tribunal that he had been told by the Park Royal branch manager that the vacancy arose as a result of the transfer of work from Woking, the tribunal accepts the evidence of Miss Walter and finds that the Park Royal job was, for these purposes, not a transfer to the branch where the work was moving for the purposes of Project Waverley and accordingly outside the scope of the relocation payment.

83 Conversely, some driving work was transferring to Park Royal and therefore the drivers who transferred there were within the scope of Project Waverley and entitled to the transfer payment.

84 For these reasons, their circumstances were not the same as those of the claimant in all material circumstances and they are not statutory comparators.

85 Similarly, Peter Horan, who elected not to go to Chineham (where his role transferred to) but instead found a vacancy at Nine Elms, is not the same in all material circumstances because no work whatsoever moved to Nine Elms, so there could be no question of whether the transfer payment would be relevant.

86 A hypothetical comparator would be someone who was not from the claimant's race, but who nonetheless worked as a vault officer, and transferred to Park Royal. The respondent confirmed that such a person would not have received the transfer payment, based on the Protect Waverley Criteria, and the tribunal accepts this.

 86.1 If so, was this because of the claimant's colour and/or because of the protected characteristic of race more generally?

87 Considering the first stage of the burden of proof, the tribunal finds that there is no evidence at all that the claimant's race played any part in the decision making process at the respondent. Miss Lacey relied on the advice of Miss Walter. Miss Walter confirmed that she had never met the claimant before the hearing this week and did not know his race at the time she

made the decision. The decision is consistent with the policy for Project Waverley and was accepted by the trade union representative.

88 There are no other circumstances from which the tribunal would infer discrimination: Miss Lacey confirmed that the branch staff were from a variety of racial and ethnic backgrounds, and all were treated equally. The claimant did not suggest that there was any inherent discrimination going on in the treatment of the different workers.

89 Even if the tribunal is wrong about this, and the claimant has established a prima facie case, for the reasons given in relation to the comparators, the tribunal accepts that the reason for the non payment was that given by the respondent, namely that the claimant fell outside the policy in Project Waverley, and that this was the sole reason for the non payment of the transfer payment in the first instance. It was later paid, but as a goodwill gesture: the respondent has never conceded that it was properly due, and the tribunal agrees that it was not.

*Holiday pay*

90 These issues have already been addressed in the preliminary decision on 28 February 2023

91 Issues in 3312729/2020

91.1 What was the claimant's start date of continuous employment?

92 Is the claimant entitled to further notice pay, enhanced redundancy payment and/or statutory redundancy payment (on the basis that his entitlements should have been calculated by reference to nine years' continuous employment rather than eight years' continuous employment)?

92.1 These two issues have already been addressed.

93 Did the respondent's handling of the complaints he made at the time about being underpaid amount to a detriment and, if so, was this detriment because the claimant had brought a tribunal claim alleging race and sex discrimination?

94 Failing to pay the claimant's full redundancy pay is a detriment.

95 Although the failure to pay arose after the claimant had brought the tribunal claim, the simple fact that one occurred after the other is not enough in the view of the tribunal to amount to a prima facie case; on the face of it, especially bearing in mind the 6 different documents with varying different contract start dates, and the lack of challenge to this in the consultation papers, this appears to have been a simple administrative error. It is implausible that the respondent had a conspiracy to change the claimant's start date, just slightly, so as to reduce the redundancy payment to him.

96 Even if the tribunal is wrong on this, and the claimant has established a prima facie case, the tribunal accepts the explanation given by the respondent and finds that the reason for the underpayment was an administrative error. This is reinforced by the number of different start dates

shown in the bundle, and that the respondent made the relevant payment once the claimant provided evidence.

97 Finally, Miss Lacey's offer of work to the claimant at the time of the second redundancy further shows that there was no grudge; it is implausible that, at the same time, the respondent was both offering him further employment and also seeking to disadvantage the respondent by making a reduced redundancy payment. The evidence is rather that the claimant was a valued employee.

97.1 To the extent the claimant succeeds with his claim, what compensation should he receive?

98 In the light of the above, this does not arise.

99 Accordingly, the tribunal finds that the claims in race discrimination and victimisation are not well founded.

______________________________
Employment Judge Talbot-Ponsonby

Date: 13 July 2023

Judgment sent to the parties on

14 July 2023

GDJ
For the Tribunal office