



EMPLOYMENT TRIBUNALS

Claimant: Mr Dike Uwagwu
Respondent: Wilson James Security Limited
Heard at: East London Hearing Centre
On: 17, 18, 19 and 20 October 2023 and
13 December 2023 (Reserved decision in chambers by CVP)
Before: Employment Judge B Elgot
Members: Ms R Hewitt
Ms G Forrest

Representation

Claimant: In person. The Claimant did not attend and was not represented on 20 October 2023
Respondent: Mr P Chadwick, Employment Law Consultant

RESERVED JUDGMENT

1. The claims of race discrimination including victimisation do not succeed and are **DISMISSED**.
2. The complaint of unfair dismissal does not succeed and is **DISMISSED**.

REASONS

The reasons for our unanimous judgment dismissing all the Claimant's claims are as follows :-

1. Claims and Issues

- 1.1. The Claimant lodged an ET1 claim in case number 3202027/20 on 8 August 2020, following a period of ACAS early conciliation from 19 July to 7 August

Case Numbers: 3202027/2020 and 3206097/2021

2020, making a claim of direct race discrimination under section 13 Equality Act 2010 ('the 2010 Act').

- 1.2. The Claimant is black British of Nigerian national origin.
- 1.3. He filed a second claim on 29 September 2021 in case number 3206097/21 alleging a further nine incidents of direct race discrimination and stating that each of those nine acts subjected him to detriment and were victimisation under section 27 of the 2010 Act. The protected act which the Claimant relies upon is the issue of the first set of tribunal proceedings.
- 1.4. The two claims have been consolidated and heard together.
- 1.5. An accurate summary of the law and the text of the relevant provisions of the 2010 Act is set out in paragraph A of the Respondent's Closing Submission and we need not repeat that information. We are certain that the Claimant has knowledge of the applicable discrimination law and the requirements of the burden of proof not least because he had the benefit of four preliminary hearings/ case management discussions with three other Employment Judges and in particular, as can be seen from pages 61-64 and 98 – 102 of the agreed final bundle, the issues for the tribunal to decide in all of Mr Uwagwu's claims were clearly set out for the parties in detailed terms.
- 1.6. However, we emphasise that the initial burden of proof in discrimination cases lies with the Claimant. He must show facts from which we could conclude that the Respondent treated him less favourably than others because of the protected characteristic of race. A decision by the Tribunal in a race discrimination case is a comparative exercise. The Claimant must show some primary facts from which we could conclude that an actual or hypothetical comparator i.e. someone not of his race and origin, including skin colour (which is a factor he emphasises in his evidence), would not have been treated in the unfavourable way that he says he was treated. The Claimant has identified no actual comparator.
- 1.7. We identify the hypothetical comparator as an employee who is not Black British of Nigerian origin and who is lighter skinned than the Claimant or is white but about whom the same or similar concerns persisted as to his conduct, his ability to maintain cordial and courteous working relationships and his willingness to adhere to the behavioural standards expected of him by the Respondent and its clients.
- 1.8. On 6 June 2022 Employment Judge Massarella conducted a preliminary hearing, which had been adjourned from 25 April 2022 because of the Claimant's late attendance and failure to bring relevant documents with him. The Claimant was one hour late again on 6 June 2022 giving reasons for his lack of punctuality which the Employment Judge found to be untruthful as recorded at page 98. Nonetheless the Employment Judge determined his

Case Numbers: 3202027/2020 and 3206097/2021

application to add a claim of unfair dismissal and to add the dismissal as a discriminatory act and as victimisation.

- 1.9. The Claimant was dismissed on 13 October 2021. His application to amend his second case to add complaints in relation to that dismissal was granted; the complaints are that the dismissal was both unfair and discriminatory amounting to direct race discrimination and victimisation.
- 1.10. In Employment Judge Massarella's Case Summary at paragraph 66 on page 98 of the bundle he records that the issues in the second case are set out in paragraph 69 under six detailed sub-sections and that he had gone through these issues twice with the Claimant who agreed with him that the list was an accurate summary of the issues (including unfair dismissal) in the second case.
- 1.11. We have utilised this agreed List of Issues (pages 98-102) in answering the questions which the Tribunal must decide in the second case.
- 1.12. In the first case 3202027/20 the issues were identified and agreed at a preliminary hearing before Employment Judge Jones on 30 November 2020 as set out in her Case Summary paragraphs 26-32 on pages 61-64 of the final bundle. Specifically, EJ Jones lists the three different venues at which the Claimant says he experienced race discrimination (paragraph 26 on page 61) and identifies that *'his case is that he complained about these incidents to his managers Lee Evans, Sheneice[Deleon] and Mr Ramsley and was ignored. It is his case that if he was white or lighter skinned the respondent would have invited him to discuss his experience and taken action. He says that instead he was not taken seriously and the respondent showed no interest in handling his complaints'*. The Claimant clarified that his complaints were of discrimination not only by his employer and co-workers but also from third party clients which the Respondent equally failed to take seriously.
- 1.13. We have used this List of Issues in the first case as an agreed summary of the direct race discrimination allegations made by the Claimant consisting of his complaint that the Respondent *'failed to respond adequately or at all to the claimant's complaints of race discrimination at work at the three placements [venues], failed to invite the claimant to a meeting to find out more details of his complaints and failed to take any action in response to his complaints'*. In other word, the Claimant's complaint of less favourable treatment because of race consists of alleged omissions and failures to act by the Respondent.
- 1.14. On 25 May 2021 at a public Preliminary Hearing before Employment Judge Reid resulting in a Judgment with Reasons which is on pages 65-72 of the bundle the Claimant's claim of race discrimination arising out of the complaints he made to the Respondent about his treatment at the Victoria and Albert Museum in August 2019 ('the V&A assignment) was struck out and dismissed because out of time. EJ Reid declined to extend time and held that the Tribunal

did not have jurisdiction to hear this claim. We have therefore not considered or determined the issues arising out of the V&A assignment.

- 1.15. The result of EJ Reid's decision is that we have considered a course of allegedly discriminatory conduct extending over the period from 5 April 2020 (the Excel NHS Nightingale assignment) until the date of dismissal on 13 October 2021.
- 1.16. We reiterate that at each of the four previous preliminary hearings (the record of the hearing on 25 April 2022 is at pages 84-90) the parties including the unrepresented Claimant had the advantage of explanation and guidance from the Employment Judge, case management orders were made by consent relating to documents and witnesses, and sources of help and guidance were identified with the provision of hyperlinks. The Claimant's almost complete lack of preparation for the full merits hearing, his failure to bring the witness statements with him and his serious unfamiliarity with the final hearing bundle is therefore difficult to understand; we make findings below as to the dates he received these documents. The lack of readiness mirrors the situation the Claimant found himself in on 25 April 2022 as recorded at page 87 by EJ Massarella.
- 1.17. In his written closing submission, the Claimant raises several additional issues, for example that an allegation against him of sleeping on duty at the Excel NHS Nightingale hospital was race discrimination; that he was racially discriminated against by colleagues at the Queen's Gate staff entrance to the Science Museum and that acting supervisor roles at the Natural History Museum were only allocated to staff of Caribbean origin. He also says that the Respondent claimed to have accomplished '*illegally transfer of [my]employment contract [to British American Tobacco-BAT]*'. We must emphasise that we have not heard evidence about, or made a decision about these matters or any similar allegations which are not in the two agreed Lists of Issues we have identified above.
- 1.18. We made it clear to the Claimant that we would use the Lists of Issues as our working tools in the final Hearing.

2. Background Facts

- 2.1 The Claimant was employed by the Respondent as an Events Security Officer on a 'zero hours' contract since 15 January 2019 and he worked mainly within the major national London museums in category F118- Museum Overheads. His employment was subject to a mobility clause requiring him to work at any other location in the UK. The Respondent is a large company providing security and construction logistics services to clients across the UK.
- 2.2 On 14 November 2019 the Claimant received from Ms Urszula Kryszowska, Contract Security Manager, a first written warning for unacceptable conduct in August 2019 consisting of rude and aggressive behaviour to another member of staff and to a museum visitor. That warning was not appealed. The

warning expired twelve months later and was not therefore in force at the time of the Claimant's dismissal for misconduct on 13 October 2022. However, we have taken evidential notice of the warning and its content as recorded on pages 234-235 because it demonstrates an early episode of unacceptably rude and angry conduct at work by the Claimant which is consistent with several later complaints about his patterns of behaviour culminating in the reason for his misconduct dismissal.

- 2.3 Part of the Claimant's claim in the earlier proceedings (first claim) is that he had a manager named Mr Ramsley who was one of the more senior staff who ignored his complaints about race discrimination at the Excel NHS Nightingale site. We note from page 68 that EJ Reid makes a finding of fact that Mr Ramsley or Ramsey (we find that they are the same person) was employed by G4S and not the Respondent. The Claimant did not contest that conclusion or seek any review of that finding by EJ Reid.

3. The Conduct of these proceedings

- 3.1 We have explained above that we are certain that the Claimant was helped to understand what he needed to do to prepare for the final hearing. In fact, he had not read the 553 pages of the agreed bundle of documents and was unable to identify the pages relevant to his own arguments or the questions he wished to ask the Respondent's witnesses and he had prepared no coherent questions for cross examination of those witnesses.
- 3.2 This situation resulted in the demonstration by Mr Uwagwu of a high degree of anxiety, frustration and anger. He vehemently denied any ill-health. We carefully considered whether he experienced any language or literacy difficulties but it is clear from his written correspondence and, for example, his closing submissions, that this is not the case. He was able to participate in four previous preliminary hearings and none of the three previous employment judges identified a problem requiring remediation.
- 3.3 On the third day of the Hearing, 19 October 2023, the Claimant became extremely agitated, exhibiting a significant stress-related stammer and shouting uncontrollably at the Employment Judge and the Respondent's representative. It was necessary to call the security guard because the Claimant refused any kind of cooling off period or break as had been granted the previous day. He was unable to carry on with the Hearing that day and in the late evening sent an email to the Tribunal timed at 22:45 which was treated as an application by him for the recusal of the Employment Judge by reason of conduct bias.
- 3.4 The full Tribunal considered that application and refused to accede to the removal of the Employment Judge. A Judgment with Reasons was given in writing and sent to the parties on 23 October 2023 and its content need not be repeated here. The Claimant was notified that his application had not succeeded, that his request for a postponement of the resumed hearing on 20 October 2023 was refused and that he would be expected to attend at 10 am.

He did not attend and was not represented. We decided under Rule 47 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 to proceed with the hearing in the absence of the Claimant having made enquiries as to the reasons for his absence and considering the information available to us.

The Claimant did however comply with an invitation to submit written closing submissions which were received on 3 November 2023 and copied to the Respondent. The Respondent sent written closing argument to the Tribunal and to the Claimant on 1 November 2023.

- 3.5 The Claimant states in his final submission that he did not attend on 20 October 2023 because of '*harassing me*' then '*arrogance*' and lack of sincerity by the Respondent's representative. We strongly reiterate our finding that this was not the case. The Respondent's representative behaved with the utmost courtesy and professionalism towards the Claimant and did not seek to mislead us in any way. In accordance with the usual and invariable practice of the tribunal Mr Chadwick waited during breaks and at the end of each day for the Claimant to collect up his papers and pack his bag so that the parties could leave the tribunal room together and would face no accusation of having remained in the room alone with the Tribunal panel or any one of them. This was in accordance with the Employment Judge's request and explanation. With respect, the security officer is not conversant with Tribunal procedure and protocol and was not able to advise to the contrary, as the Claimant alleges.

4. Documents and Witnesses

- 4.1 The Claimant gave evidence on his own behalf. His witness statement is un-amended and dated 27 November 2022 but he confirmed that it was up to date, accurate and that he had read it recently. The Respondent's witnesses were Mr Lee Evans, Security Operations Director, Ms Sheniece Deleon, Events Security Manager who was the Claimant's immediate line manager and Mr Jason Bolwell who adjudicated at a disciplinary hearing involving the Claimant the outcome of which is dated 30 June 2021 when a final written warning was issued. Mr Bolwell was then the BP Security Operations Manager and is now employed directly by BP. Each of these witnesses were cross examined by the Claimant.
- 4.2 The Respondent's other witness in person was Mr Tarquin Halse, Account Director for Security at the Broadgate site in London. Mr Halse gave his evidence at 2pm on the fourth day of the Hearing on 20 October 2023 when the Claimant did not attend and could not therefore conduct a cross examination. Mr Halse answered questions from the Tribunal.
- 4.3 There was a witness order for the attendance of another witness, Mr Abel de Oliveira Filho, who is no longer employed by the Respondent. He conducted the disciplinary investigation into the events involving the Claimant at the National History Museum on 20 March 2021 and prepared a report

recommending that the matters should proceed to the disciplinary stage eventually presided over by Mr Bolwell. Mr Filho was unfortunately unwell with the covid 19 virus and was unable to attend the Hearing. We find that he had a valid and genuine reason for his non-attendance. He sent a signed written witness statement dated 17 October 2023 which we accepted as his evidence having informed the parties that less weight can be attached to a written statement where the witness in question does not appear to submit himself to cross examination. The Claimant expressed himself to be unconcerned about the non-appearance of Mr Filho to whom he referred as '*only the investigator*' despite claiming at page 100 in the second List of Issues that Mr Filho had, under the '*influence*' of Ms Deleon, conducted a '*biased*' investigation on 26 April 2021.

- 4.4 We are satisfied that the Claimant was sent the final version of the Respondent's witness statements no later than 3 October 2023 giving him adequate time to prepare his case. He was allocated a 15-minute break during the Hearing in which to read the witness statement of Mr Filho.
- 4.5 As we have said, there is an agreed indexed bundle of documents consisting of 553 pages. In accordance with the usual practice of the tribunal we read only those documents to which we were referred by the parties, the Respondent's representative, or the witnesses; this was explained to all involved.
- 4.6 The Claimant has persistently and vociferously complained that he was not given the relevant documents in this case until the last minute and was thereby effectively ambushed and prejudiced. We cannot agree. Certainly, as appears from the inter partes correspondence on the tribunal file, Mr Uwagwu received the Respondent's draft bundle on 21 December 2022 following the case management order of EJ Massarella on page 94 which provides for disclosure of both parties' documents by 19 September 2022. That order explains exactly what each party including the Claimant himself must do in undertaking disclosure and providing documents to each other. The three-month delay has not significantly prejudiced the Claimant because this Hearing has been postponed from 19 January 2022 (listed for three days) until 17 October 2023 (listed for four days).
- 4.7 On 11 September 2023 the Claimant confirmed to the tribunal his readiness to proceed with the full merits hearing. On 12 September 2023, two months before the first day of this Hearing, he wrote to the Respondent stating that he had no documents to add to the bundle. By 28 September 2023 the final paginated agreed bundle was sent to the Claimant in both digital and paper format thus allowing him three weeks in which to finally familiarise himself with its content and layout. He states in his own November 2022 witness statement that he intends to '*bring other emails, letters and documents that confirm and verify dates and times of these issues mentioned*'. He therefore knew that he must collate and send his own documents. He now asserts that he has persistently received documents from the Respondent '*on the eves of each hearing from preliminaries in 2021 to this final hearing in 2023*'. We find this

Case Numbers: 3202027/2020 and 3206097/2021

not to be the case. We are satisfied that the Claimant had a sufficient and reasonable time to prepare his case by reference to the documents and witness statements which were used at this Hearing.

- 4.8 We did agree to permit the Claimant to add two late documents to the bundle which are numbered pages 503A and 504A. The Respondent did not object. These two pages were in the Claimant's bag but were not apparently disclosed and were not part of the agreed tribunal bundle. Page 503A is an email dated 23 August 2021 from the Claimant to Ms Deleon. Page 504A is an email dated 27 August 2021 from him to Emily Swain (who was not a witness) who is a senior member of the Respondent's Human Resources/Employee Relations team. At the foot of page 504A there is an incomplete reminder message dated 1 September 2021 from the Claimant to Ms Swain.
- 4.9 We permitted this late disclosure because these two pages relate to matters raised by the Claimant in paragraph 13.1- 13.5 of his witness statement and which are not addressed in Ms Deleon's statement. We permitted questions to Ms Deleon about this correspondence. The documents address the allegation of less favourable treatment because of race at paragraph 3.2.8 in the List of Issues in the second case at page 100 that '*on 22 August 2021 Ms Deleon instructed the security control room not to give the Claimant any more shifts at the Science Museum*'. We would usually expect that each of the issues in the List would be dealt with in the evidence of the key witness in question i.e. Ms Deleon. It is unsatisfactory that she does not mention this allegation of race discrimination in her statement at all.
- 4.10 The Claimant did not disclose, even at this late stage, any other emails or documents about the issues mentioned by him at pages 503A and 504A in respect of which, therefore, we still have an incomplete picture.
- 4.9 We note that these emails were sent from the Claimant's yahoo email account on or around the same dates that he entirely denies receiving correspondence from the Respondent about disciplinary investigations and meetings, for example, the email at page 508 dated 3 September 2021, sent to the same yahoo account by Ms Taryn Greenwood of the Respondent's Employee Relations team rescheduling an investigation meeting with Mr Andy Copley. We conclude, as we describe in detail below, that the Claimant did receive all relevant correspondence at this time and chose to ignore and/or delete it and was untruthful about non-receipt.

5. The Issues in Claim 1

- 5.1 Excel NHS Nightingale 5 April 2020. Did the Claimant experience less favourable treatment than others because of his race when working at this venue on this date because the Respondent failed to respond adequately or at all to his complaint of race discrimination by security guards at the site?

Case Numbers: 3202027/2020 and 3206097/2021

The Claimant complained to his line manager Ms Deleon on 9 April 2020 in an email at page 257 saying that he could no longer work at Excel as a result of his experience the previous Sunday, 5 April 2020, when a '*G4S Illegal Security Inspector*' asked him security questions whilst he was eating in the canteen. The Claimant said this was a '*serious discriminatory incident of singling me out because I didn't see any other officer being stopped or questioned like me.*' Ms Deleon is correct to point out in paragraph 16 of her witness statement that the Claimant did not refer in his email to any complaint that his race was the reason for his being singled out as he describes.

- 5.2 We have reminded ourselves that the alleged less favourable treatment is that the Respondent, because of the Claimant's race, failed to deal adequately or at all with this complaint, did not take it seriously and did not invite the Claimant to a meeting to discuss the difficulty he had encountered.

We cannot agree that this was the case and the Claimant has failed to discharge his burden of proof in showing facts from which we could conclude that race discrimination occurred.

- 5.3 The bundle is unfortunately not arranged chronologically but we have seen Ms Deleon's response on page 258 dated 9 April 2020. As the Claimant's line manager she was the correct person to deal with this initially as opposed to Mr Ramsley (not the Respondent's employee) or Mr Evans who was her senior. She does immediately respond and express concern, she did not ignore the Claimant or fail to take his complaint seriously. She writes '*I am sorry about this I will take a look into this and let you know the outcome. If anything else comes up [work at an alternative venue] I will let you know.*'

- 5.4 On page 364 we can see that Ms Deleon immediately contacted Mr Lee Evans, her boss, for his input. Mr Evans told us, and we are content that the Claimant knew, that he (Evans) was a well-known senior manager of the Respondent seconded to this site with extensive responsibility at the Excel Nightingale for what he called '*multiple layers of checks throughout the building including in the wards and the canteen for infection control*'. The Nightingale Hospital was set up in the short time frame of 9 weeks at the peak of the covid 19 pandemic. Mr Evans' evidence is that he wrote the Nightingale access policy although the Claimant may not have been aware of this at the time. Mr Evans' prompt reply to Ms Deleon on page 365 is unequivocal, '*all the below is inaccurate. Every single member of staff has ID checked all the time including myself and I am well known to the site so I am comfortable that the officers are conducting there (sic) duties.*' We are satisfied that this response was conveyed verbally to the Claimant by Ms Deleon who reassured the Claimant that he was not singled out because of his race or for any other reason, the matter was closed and he did not pursue it further.

- 5.5 In conclusion the Claimant has not shown facts from which we can conclude that he received less favourable treatment at all. His complaint was not ignored, it was taken seriously, properly taken forward with a senior manager and the outcome communicated to him; there was no failure by the

Case Numbers: 3202027/2020 and 3206097/2021

Respondent to take adequate and proportionate steps to resolve Mr Uwagwu's complaint.

- 5.6 The Claimant made his own decision without further protest to leave the Excel site. He conveyed that decision to Ms Deleon as can be seen from page 366.

5.7 Santander Bank, Camden High Street 18-27 May and 1-30 June 2020

The List of Issues in the first case set out on page 62 of the bundle cites the same complaints of race discrimination made by the Claimant in respect of his work at Santander Camden as are made about his assignment at Excel NHS Nightingale. We note that this work was being carried out against the very difficult background of the global pandemic and national lockdown. We reiterate that we are not deciding whether the Claimant was or was not subjected to less favourable treatment because of his race by all or any of the third-party client's employees at the Bank. He was without doubt agitated and upset by his poor working relationship with some of them. Hence, he ended the Camden Santander assignment of his own accord on 30 June 2020.

- 5.8 The Claimant refers, for example at page 306A in an email to the Tribunal and the Respondent dated 26 May 2021, to loss of booked shifts at Santander for all of July 2020. We interpret that reference the Claimant's quantification of the financial losses which he says flowed from the discrimination in May and June 2020 because, he alleges, he was not supported by the Respondent in his complaints of '*fear of victimisation, stigmatisation (sic) and intimidation*' by bank staff. What is certain is that the Claimant ended the Santander Camden assignment himself as is evident from his 11 June 2020 email on page 309 where he refers to 30 June 2020 as his last day. In the fourth paragraph on page 306A he also confirms that he told Ms Deleon by telephone that he was leaving the Bank that day on 29 June 2020.

- 5.8 Was the Claimant subjected to direct race discrimination because of the Respondent's failure to deal with the Claimant's complaints about race discrimination at work on this assignment?

The Claimant raised his initial concerns verbally on 10 June 2020 with Ms Deleon and followed up his complaint with an email dated 11 June 2020 at page 306. Again, that email does not refer to the Claimant's allegation that he has been mistreated by reason of his race, national origin and/or skin colour. Ms Deleon did not ignore him; she responds almost immediately on page 307 '*I understand your frustration*' to say that the matter has been forwarded to the branch manager of Camden Santander and asking him whether he wishes to make a formal grievance.

- 5.9 Page 308 also shows that Ms Deleon raised the Claimant's complaint with Matt Osborn (not a witness) who was then the Property Services Manager for Santander Services with special responsibility for the multiple Santander sites across London. It is not clear that the Claimant knew that Mr Osborn was

consulted but he knew that the matter had been raised with the branch manager at Camden. He wrote again to Ms Deleon saying that he had not yet decided whether to make a formal complaint. *'I will not be making a decision now, till next week or the week after, after seeing and assessing the situation since you have said it's been raised with the branch manager'*. Thus, the Claimant acknowledges that certain appropriate initial steps have been taken. He was not ignored and Ms Deleon did refer his difficulties to senior managers at Santander. She says at paragraph 27 of her witness statement that she spoke to Mr Osborn who agreed to raise the dispute with the branch manager. At page 308, on 11 June 2020, she notified Mr Peter Griffin the Respondent's Museums Consortium Director- *'just to give you the heads up I have spoken to matt (sic) who has spoken with the site manager for camden (sic) Santander*

- 5.10 On 15 June 2020 Ms Deleon asked the Claimant to provide a statement of what had happened at the Bank. In other words, she continued to address the problem the Claimant had identified. Mr Uwagwu's statement is on page 313 and it makes no reference to race discrimination including harassment. The Claimant still does not indicate on page 313 that he wishes to make a formal complaint; we are satisfied that this statement does not revive or renew his initial complaint or raise it to a higher level. Nonetheless the Respondent was clearly raising concerns on his behalf with Mr Osborn and the management at the Bank.
- 5.11 The relevant email streams in the bundle do not appear to be complete but we do note pages 331 and 332 which show that Ms Taryn Greenwood (not a witness) of the Respondent's Employee Relations (HR) department continued to liaise with Mr Osborn because on 23 June 2020 Mr Osborn notified her that the issue between branch staff at Santander Camden and the Claimant had been resolved. He writes that the Santander retail divisional management team had spoken to the Camden branch manager who agreed there had been miscommunication about different processes at the bank, that the branch manager had agreed to sit down and talk to Mr Uwagwu, and that this meeting to *'clear the air'* had taken place. Ms Greenwood thanks him and confirms that *'I can take it off my chaser radar list'*.
- 5.12 Our findings of fact lead us to conclude that the Claimant was not subjected to the less favourable treatment which he alleges i.e. that his complaints about the behaviour towards him of certain staff at the Bank were not dealt with, that no action was taken and that he was unsupported and not kept informed.
- 5.13 The Claimant told us in his oral evidence that he was not asked to sit down and have a meeting with the Santander branch manager and was never spoken to or given any *'hope or reassurance'*. We do not find his evidence in this regard to be credible. This is because he did not pursue any formal complaint or ask Ms Deleon or anyone else to take any further action after he had sent his statement on 16 June 2020 on page 313. He left this assignment voluntarily on 29 June 2020 having, he says, made one more call to Ms Deleon to complain about an incident on that same day. In her oral evidence Ms Deleon did not recall this telephone complaint and there are no notes, emails

Case Numbers: 3202027/2020 and 3206097/2021

or any correspondence or document in the bundle relating to any such telephone conversation or renewed grievance. The Claimant finished his work at Camden Santander at the end of June as he had previously notified on 11 June 2020 on page 309.

- 5.13 Ms Deleon, in her evidence more than three years later, was somewhat confused about whether the Claimant did any shifts at Camden Santander in July 2020 but she was clear that she heard and saw no further complaints from him.
- 5.14 The claim of race discrimination regarding the assignment at Santander does not succeed because the Claimant has failed to show, on the balance of probabilities that he was subjected to neglect and ill treatment by the Respondent let alone that he suffered any treatment which, because of his race, was less favourable than others would have received.

6. The Issues in Claim 2

- 6.1 The issues in the second case refer to incidents which the Claimant claims are both direct race discrimination and victimisation. Our findings of fact and conclusions are as follows :-

6.2 Incident at the Natural History Museum (NHM) on 20 March 2021

We can deal with issues 3.2.1 to 3.2.7 together because they all and each arise from the same incident and its investigation and disciplinary aftermath.

First, we are satisfied that there is no evidence put forward by the Claimant which shows that Ms Deleon *‘took sides with other staff’* (paragraph 3.2.1 on page 100) in relation to this incident before she even spoke to the Claimant or found out what had happened.

We are clear that Ms Deleon had no choice but to investigate the complaint made about the Claimant’s behaviour and insubordination on that evening. She received a complaint from Mahri Saryeva who was the Respondent’s acting Security Supervisor at the NHM on the evening of 20 March 2021. She said that the Claimant had left his post without permission, that he had shouted and been aggressive to colleagues and displayed rude and unacceptable behaviour in the presence of the client’s staff. We do not agree, as the Claimant maintained in his answers to the cross examination, that Ms Deleon should have ignored what he described as fabricated and one-sided accounts and that her decision to look into this complaint was an incident of race discrimination against him. If she had neglected to investigate this alleged misconduct she would have been in breach of her duty as a manager to take steps to protect other employees of the Respondent and to provide a safe working environment. She notified the Claimant on 22 March 2021 that she intended to speak to him and others about what had occurred.

- 6.3 We are certain that she instigated and undertook that investigation in an open, straightforward, and conventional manner in accordance with the usual procedures of a fair employer. Ms Deleon interviewed Ms Suryeva and obtained the statements at pages 370 and 377 in which Ms Suryeva states that the Claimant left his security position early and came down to the security desk to find his taxi home before he had been properly stood down and, when asked to go back upstairs whilst de-rigging was completed, he began to argue with Ms Suryeva and shout at another colleague, a Security Officer named Ms Michelle Brown. Ms Deleon logically then spoke to Ms Brown whose written statement is on pages 368-369 and 371. Those statements confirm a rude and angry exchange with Mr Uwagwu which was overheard by Ms Harriet Johnson, Senior Events Operations Manager at the NHM, who was on the balcony above the main Hall looking down on the security desk. Ms Johnson's statement is on page 375 *'I heard raised voices ...it was clear that DK was shouting/speaking in raised voice to Mhari. I was not impressed that DK would speak to any colleague like that, that while representing the Museum and Wilson James would have a poor attitude in front of the client'*.
- 6.4. We find that the Claimant's allegation that she (Ms Deleon) then suggested other witnesses' names to Mr Filho and attempted to influence the investigation is not correct. It was the Claimant himself who asked Mr Filho to undertake a supplementary investigation and speak to 'Mr John' (Ozen) and to Vida Boateng-Opoku. Ms Deleon only spoke to Ms Brown, Ms Suryeva and Ms Johnson.
- 6.5. She wrote the letter on page 384 dated 9 April 2021 clearly setting out the allegations and inviting the Claimant to an investigatory meeting, stating unequivocally *'the meeting is entirely a fact-finding exercise'*. He received that email via his yahoo email account and we find that there is no indication in that correspondence that Ms Deleon has pre-determined the outcome of the investigation or applied what the Claimant calls *'double standards'*.
- 6.6. Nevertheless, the Respondent agreed to the Claimant's request for the investigator to be changed in view of his objection to Ms Deleon's participation. Mr Filho confirms in paragraph 10 of his witness statement that he had never met the Claimant, that he did not know Ms Deleon and did not speak to her about the investigation. He says *'she never persuaded me to do a biassed (sic) investigation. My job was to gather the facts; I would never conduct a biassed investigation.'* We find his evidence to be credible and compelling. The Claimant made no objection to Mr Filho's appointment. The Claimant has shown no facts from which we could conclude that the matters set out in paragraphs 3.2.4 and 3.2.5 are true and that these events occurred. We find no less favourable treatment of the Claimant in this respect.
- 6.4 In this part of our reasons we record that there are two email accounts of the Claimant to which he had full and regular access. One was his personal email dikeuwagwu@yahoo.co.uk and the other is his work email 30013814@ess.wilsonjames.co.uk which he told us he certainly accessed to check his payslips. We are satisfied that all correspondence sent to either of

these addresses did reach and was seen by the Claimant. We find him to be untruthful when he said throughout his oral evidence under oath that there were emails particularly relating to the investigations by Mr Filho and later by Mr Copley and the disciplinary meetings conducted by Mr Bolwell and later by Mr Halse that he did not receive at all.

- 6.5 On 26 April 2021, Mr Filho interviewed the Claimant at a pre- arranged meeting having notified the Claimant of the allegations and potential disciplinary outcomes. Over the course of a meeting lasting one hour and 15 minutes the Claimant at first denied any altercation at the NHM and said that all the allegations were *'lies. All these are lies. I will not continue with this. These are lies. Do not ask me questions based on these lies.'* He maintains his absolute denial of the allegations on page 3 of his written submission and told us that Mr Filho had presented him with a *'made up story, all just made up'*.

Mr Uwagwu was agitated at the investigation meeting and raised his voice as Mr Filho states in paragraph 13 of his witness statement. This is consistent with the Claimant's previous and subsequent attitude towards what Mr Filho calls the Respondent's 'core company values.' The investigator was concerned about the level of stress the Claimant was under and his possible mental health difficulties, and states in his report headed 'Disciplinary Investigation Meeting Summary' on page 400 *'it took me some time to explain to him that I was not supporting the evidence and that I was interested in hearing his side of the history (sic) in order to make a fair judgment'*.

The record of Mr Filho's interview with the Claimant which is on pages 394-397 and then 398-401 contains no note of any accusation by the Claimant that he was treated less favourably on 20 March 2021 or during the subsequent investigation because of his race.

- 6.6 Mr Filho diligently investigated the Claimant's assertion that he was not the only security officer who left his post and assembled early in the reception area at the time when he (Mr Uwagwu) had been told the taxis were booked to arrive. Ms Emma Asante was interviewed on 12 May 2021 and gave a statement at page 405 that she was still in her own security position in the 'picnic area' and saw the Claimant by himself *'going somewhere'* towards the main hall before the shift had ended and out of his position.

Mr Filho checked and there was no relevant cctv footage available at the NHM for that night of 20/21 March 2021.

- 6.7 In conclusion, the objectively un-biased and reasonable recommendation of the investigator, based on his fact- finding conclusions, was to advise that the complaint against the Claimant and allegations of his misconduct should go to a hearing which was the next stage of the disciplinary process. Mr Filho's conclusion was based on the consistency of the evidence from all the witnesses save the Claimant himself who denied being out of position or

engaging in any altercation. He also concluded that the Claimant did not tell the truth during the investigation meeting with him.

Mr Filho is adamant in paragraphs 18 -22 of his witness statement, and we accept, that he did not treat the Claimant less favourably in any way because of his race, colour, and/or national origin.

6.8 In fact, the Claimant's witness statement makes no reference in any way to Mr Filho or to Mr Bolwell and their part in the disciplinary process. His paragraphs 11 and 12 are a broad accusation of racism and bias only against Ms Deleon.

6.9 Mr Jason Bolwell, who has extensive experience of chairing such hearings, was asked to conduct the disciplinary hearing; he was based at BP in St James Square, he had never met the Claimant and he had not ever worked on the Respondent's Museum account. He told us that he did not know of the Claimant's colour or race. He did not know Ms Deleon and credibly denied in his sworn oral evidence that he was briefed by her in advance. The Claimant did not object at the time to Mr Bolwell's appointment to carry out the disciplinary meeting. Mr Bolwell sent all the witness statements relating to the NHM incident to the Claimant who agrees that he received them.

We are certain that the Claimant received the invitations (with enclosures) dated 18 May 2021 and 27th May 2021 sent by Mr Bolwell asking him to attend disciplinary hearings and re-scheduling dates when the Claimant did not attend. On page 415 in an intemperate email to Ms Louise Livesay in HR dated 29 May 2021 the Claimant notified the Respondent that he would not attend any *'lop sided, one-sided and double standard investigation disciplinary meeting...I will not be part of an investigation processes full of questionable conducts of unfairness, double standards, racism and lop-sided because I am black'*. His condition for attendance at any meeting was that two other witnesses from the Respondent's staff, identified as *'Ms Vida'* and *'Mr John'* who were at the NHM on 20 March 2021 should also be interviewed. No surnames were given.

6.10 The Respondent acted fairly by again re-scheduling the disciplinary hearing to 11 June and then to 10 June 2021 (see pages 418-422). The Claimant did not attend. Vida Boateng-Opoku was interviewed on 2 June 2021 by Mr Filho who undertook the supplemental investigation requested by Mr Bolwell and the Respondent's Employee Relations Team. She not only confirmed that she heard the Claimant shouting *'at the top of his voice'* at Michelle and *Marie/Mary* (we take this to be Mhari) but also clarified that her understanding of instructions to security staff is that each one must wait for the supervisor's permission before leaving their post. This statement negates the assertion of the Claimant to Mr Filho that he was entitled to leave his post and go to the security desk in the main hall at the time when he had been told that the taxis were booked to arrive.

- 6.11 The Claimant's witness 'Mr John' was identified as Jonathan Ozen Shan. The emails between the Respondent's staff on page 449 – 451 and the shift record at page 456 confirm that he was the only Jon or John working at NHM on the relevant date. Mr Ozen's contradictory evidence to the investigator was, in the event, so muddled that Mr Bolwell reasonably decided to discount it. Mr Ozen at first said, at page 425 when interviewed on 8 June 2021, that he was not at the NHM on 20 March 2021 but did recall that on other occasions he had witnessed the Claimant being *'very aggressive towards other colleagues few times(sic) and I heard him shouting'*. On 16 June 2021 Mr Bolwell contacted Mr Ozen again, having postponed the disciplinary hearing scheduled for 10 June, because the taxi cab log of 20 March 2021 confirmed that someone named 'John' had been picked up together with the Claimant and that other colleagues recalled Mr Ozen working on that occasion. Mr Ozen apologised for the mix up and mistake on his part but says, at page 426, that he did not recall anything from that day's work- *'whatever happen between these people I was not a part of it. I didn't see what happen with dike or Michelle or mari (sic), I don't even remember working that day either. Dike has been a little aggressive and loud in the past towards staff that's all I know'*.
- 6.12 Thus, the Respondent acted fairly in extending and supplementing the investigation at the Claimant's request. In particular, the disciplinary hearing of 10 June 2021 was postponed on Mr Bolwell's own initiative (despite the non-attendance of the Claimant) to facilitate further evidence gathering. The two additional statements of Ms Boateng-Opoku and Mr Ozen were sent to the Claimant and he made further submissions in an email on pages 443-44 to Ms Livesey on 10 June 2021 predominantly complaining that the note-taker, Steve Bell, assisting Mr Bolwell was a *'racist'* who had been guilty of *'constantly'* harassing the Claimant in August 2019. None of those hyperbolic allegations about the lack of 'neutrality' of Mr Bell as note-taker in June 2021 are contained in the Claimant's witness statement and he did not cross examine any one of the Respondent's witnesses on this subject.
- 6.13 Mr Bolwell decided to issue a final written disciplinary warning against the Claimant for a period of twelve months. This outcome was notified to Mr Uwagwu on 30 June 2021 in a letter on pages 462-463 of the bundle. Mr Bolwell found all three of the allegations against the Claimant, of leaving his post without permission, using offensive language to staff and displaying a poor attitude in the presence of clients, to be substantiated by the consistent evidence of the witnesses (save for Mr Ozen). The Claimant was given the opportunity to appeal this warning and granted an extension of time in which to do so but did not appeal (page 467).

We found Mr Bolwell to be a cogent and honest witness. The Claimant had prepared no cross examination for him and did not challenge the evidence he gave to the Tribunal.

Mr Bolwell told us that he carefully considered the appropriate sanction for the Claimant's conduct and knew that he had the option of dismissal but decided to give the Claimant another chance by issuing the final written warning. This

is not the decision of an employer with a '*racist bias*' determined to defeat and '*get rid*' of the Claimant as he states in his closing submission.

- 6.14 We are certain that, by reference to paragraphs 3.2.6 and 3.2.7 of the List of Issues on page 100 of the bundle there was no biased disciplinary hearing conducted by Mr Bolwell. He conducted the supplemental investigation and the disciplinary hearing in a neutral, conscientious, and un-biased way and reached a fair decision. The Claimant was kept informed of the case he had to answer, saw all the relevant documents and witness statements, and had a full opportunity to state his own explanation and mitigation relating to the events at the NHM on 20 March 2021. He has shown no evidence from which we could conclude that he was less favourably treated than the hypothetical comparator we have identified above.

The issue of a final written warning was, in all the circumstances a proportionate and reasonable sanction which was carefully weighed in the balance by Mr Bolwell and it did not consist of direct race discrimination against the Claimant. The Claimant has failed to discharge his burden of proof in relation to the involvement of Mr Bolwell in these matters and his claims of race discrimination fail.

- 6.15 Paragraph 3.2.8 List of Issues in claim 2- that on 22 August 2021 Ms Deleon instructed the security control room at the Science Museum not to give the Claimant any more shifts.

Ms Deleon admits that she gave this instruction. The matter is not, as we state above, dealt with in her witness statement but she responded to questions about it from the Claimant and from the Tribunal. Those questions were based on the late admission of the emails at pages 503A and 504A of the bundle.

The Claimant was asked no questions about this issue in cross examination. Upon the late disclosure of pages 503A and 504A the Respondent's representative was given time to take instructions and to re-examine the Claimant on the third day of the Hearing at 10 am on 19 October 2023. In the event Mr Chadwick had no further questions for Mr Uwagwu.

- 6.16 It is our understanding from Ms Deleon's verbal evidence that it was normal procedure for the control room security 'hub' at the Science Museum to allocate shifts to individual security officers with the knowledge of the line manager. However, Ms Deleon told us that she did not know that the Claimant was working shifts at the Science Museum in mid to late July and during August 2021 and in hindsight she guessed that the Claimant was being contacted directly and informally by the Museum via text and messaging to come in and do extra shifts which she knew nothing about. On Sunday 22 August 2021 she did have contact from the Museum who asked her if the Claimant could take on yet more emergency shifts whereupon she understood the situation and rang to inform Museum staff '*that cannot happen, I rang to tell them to give no more shifts, he's moved jobs.*'

Case Numbers: 3202027/2020 and 3206097/2021

Her instruction, once communicated to the Claimant, prompted him to write the email dated 23 August 2021 on page 503A stating that he had never accepted the job at BAT, that he regarded himself as still having his previous contract as a member of the Events Security Team available for 'gallery shifts' at the Museum and referring to a telephone conversation '*last week*' (which must refer to mid- August 2021) with Emily Swain '*Head of HR Shared Services*' allegedly informing her that he did not want the job at BAT, had not accepted it and, he says, obtaining her assurance that she would notify BAT of his '*withdrawal*'.

There is no correspondence disclosed by either party in the bundle from Ms Swain to the Claimant, to BAT or to Ms Deleon. Ms Deleon is not copied in to the Claimant's emails to Ms Swain on page 503B.

Ms Deleon told us that she received no contact from Ms Swain or her HR colleague Ms Arrowsmith referred to on page 503B.

We have therefore seen very limited evidence in relation to this issue 3.2.8.

- 6.17 The Claimant makes two arguments as set out in paragraphs 13-13.6 in his witness statement about the 23 August 2021 email from him to Ms Deleon. First, he says that her instruction on 22 August to the Science Museum was an act of direct race discrimination and victimisation against him consistent with a long running campaign of ill treatment against him because he is black, email combined with her desire to get rid of him.

Secondly, he says that if Ms Deleon or anyone else from the Respondent's organisation had brought his email of 23 August 2021 to the attention of the dismissing officer, Mr Tarquin Halse on or before the date of dismissal on 13 October 2021, and communicated that the Claimant denied and refuted any transfer of his work to BAT then the dismissal would not have occurred. We make further findings about this point below.

- 6.18 Ms Deleon did not respond to the Claimant's email and she did not show it to anyone else at the Respondent. This may have been somewhat discourteous and not best possible practice. However, she told us clearly that the reason for her lack of response was that she was no longer the Claimant's manager, he was no longer part of her team and she was certain that he had a new line manager at BAT to whom he could direct his queries. Her reason for this belief was that she recalled seeing what she calls a 'post adjustment document' which is in the bundle. She said that she must have pressed the 'approve' button on the HR document headed 'APPROVED' and named as a Post Adjustment Ticket on pages 473-475. That document states the effective date of the change of post to be 22 July 2021 and records the Claimant's new job title as Relief Security Officer under the management of Mr Copley at site F245 BAT Globe House.

We have seen no correspondence in the bundle sent by the Claimant to any colleague in the Respondent's organisation or at BAT between 22 July and 23 August 2021 in which he notifies his objection to the post and site transfer. He was sent by post on 23 July 2021 a letter confirming an amendment to his contract of employment and to his line of report. That letter on page 472 unfortunately contains little detailed information but it does show that a change of manager was notified.

6.19 In fact, despite Ms Deleon's recollection, the post adjustment document seems to have been approved on 29 July 2021 (page 474) by Mr Copley himself whereupon Ms Swain writes to him on the same day at the foot of page 474 '*Hi Andy, This has now been processed so you can roster Dike for his shifts*'. We do not conclude that Ms Deleon is not telling the truth about the approval process, only that the document does not support her recollection and it may be that the complete HR record has not been disclosed. This failure would be consistent with other gaps in the information supplied by both parties.

6.20 In conclusion, we find that the Claimant has failed to show evidence from which we could conclude that Ms Deleon gave the instruction for no more shifts at the Science Museum because of his race and would not have treated a hypothetical comparator the same way. We find that the reason why Ms Deleon ignored the Claimant's 23 August 2021 email is that she had a genuine belief that she no longer had managerial responsibility for him and his work as a member of her team. She believed that he had transferred his role and work place to BAT in Westminster after 22 July 2021 and that he was under the management of Mr Andrew Copley.

A more conscientious manager, and perhaps one who had not been subjected by the Claimant to such a level of accusation and dispute over a period of more than twelve months, may have taken the trouble to reply to him and/or passed his email on to Mr Copley. The fact that Ms Deleon did not do either does not, in our determination, show that she discriminated against the Claimant because he is black British of Nigerian origin. The Respondent has shown that there was another reason for her omission which is that '*I did not do anything because I was not his manager any more.*' She just left it at that.

7. Victimisation. Each of the nine events (including the Claimant's dismissal) of alleged direct race discrimination in the List of Issues for the second claim on page 100 of the bundle is also said to be victimisation of the Claimant under section 27 of the 2010 Act. We find that none of the claims of victimisation succeed.

7.1 We are satisfied, by reference to our findings of fact above, either that the detrimental acts alleged by the Claimant did not occur. Thus, 3.2.1, 3.2.3, 3.2.4, 3.2.6 were not acts or omissions of the Respondent which in fact took place. Secondly, the remaining events 3.2.2, 3.2.5, 3.2.7, 3.2.8 and the dismissal itself (3.2.9) did not result in the subjection of the Claimant to detriment because he did the protected act of issuing the first set of proceedings in 3202027/20. The Claimant has shown no evidence of this

causal link, he has not queried or questioned the Respondent's evidence in this respect and he makes no closing submissions to this effect.

8. Unfair Dismissal

8.1 The Claimant was dismissed on notice (in his absence from the disciplinary meeting on 7 October 2021) on 13 October 2021, for reasons relating to his conduct. He did not appeal the dismissal.

8.2 The letter of dismissal, which the Claimant concedes he received, is at page 527 -528 of the bundle and the basis of Mr Halse's decision is explained under eight headings which reflect the Disciplinary Hearing Summary on page 525.

The first four matters relate to the findings of Mr Halse that the Claimant accepted a new job as Relief Security Officer at BAT but failed to attend the notified rostered training or work shifts and told no one that he would not be attending; upon his non-attendance being queried he was found to be verbally aggressive to the BAT managers, namely Mr Andy Copley and the supervisor Mr Phil Foster.

The second four matters relate to the unchallenged existence on the Claimant's file of a live final written warning taken together with a failure by him to engage in any way with the most recent investigation and disciplinary process and further instances of poor conduct including unsupported accusations of lying by the BAT managers and *'behaved in direct contravention to the company's vision and values again despite being sanctioned for similar conduct issues in June 2021'*.

For example, there is an allegation from an HR Officer, Ms Taryn Greenwood on page 519 that not only refers to the Claimant shouting at her throughout a call on 24 September 2021 but also sends apologies from her to Reception staff (Suzie and Helen) for the *'difficult experience'* both had when talking to Mr Uwagwu on the telephone that day.

8.3 The dismissing officer was Mr Tarquin Halse (to whom the Claimant did not object at the time of appointment) and there was investigation material prepared and presented to Mr Halse by Mr Andy Copley of BAT who was not a witness at this Hearing. Mr Halse gave evidence to the Tribunal but because the Claimant did not attend and was not represented on 20 October 2023 (day 4 of the Hearing) there was no cross examination of him. At the time of the Claimant's dismissal Mr Halse was the Security Account Director at the Broadgate site near Liverpool Street Station. He did not know the Claimant, Messrs Copley and Foster or anyone else involved in the disciplinary allegations made against the Claimant and set out originally on pages 517 -8 in anticipation of a disciplinary meeting on 29 September 2021 which the Claimant did not attend.

Case Numbers: 3202027/2020 and 3206097/2021

- 8.4 In fact the Claimant did not attend any investigation or disciplinary interviews or meetings at all for the period from 27 August 2021, when Mr Copley first invited him to an investigation interview (page 507 then page 509 followed), until the date of dismissal. The Claimant is adamant that he did not receive the relevant invitations or enclosed documents relating to at least four scheduled meetings. We do not believe that this is the case.

By this time, the Claimant had a third email address dikeuwagwu4th4@indeedemail.com. This is because he applied in July 2021, by his own admission, via a jobs website named 'Indeed' for a job at BAT where Mr Copley would be his line manager. The website allocates to job applicants a personalised email address for use in connection with the application, interviews, and appointments. The Claimant, we find, received all emails sent to this address and also to his personal yahoo account and his ess.wilson james email. He chose for whatever reason not to access the 'indeed' account and/or to ignore and/or delete the emails from all three accounts.

The invitation and letter on pages 516-518 dated 24 September 2021 asking the Claimant to attend a disciplinary hearing with Mr Halse on 29 September 2021 was sent to all three emails and we find that the same documents were sent by post to Mr Uwagwu's home address. The documents on pages 520-522, regarding the rescheduled meeting, were sent in the same way. The Claimant was fully and properly notified of the arrangements for the disciplinary meeting, of the case he had to answer and the range of sanctions which might be applied to him in all the circumstances.

- 8.5 We have reminded ourselves by reference to section 98 (4) Employment Rights Act 1996 that once the employer has established one of the potentially fair reasons for the dismissal, in this case a reason relating to the conduct of the employee, we must then ask ourselves whether in all the circumstances, taking into account the size and administrative resources of the employer and considering equity and the substantial merits of the case, we find that the dismissal is fair or unfair. In this case we find the dismissal to be fair and we are satisfied that the Respondent acted reasonably in all the circumstances because it had a genuine belief, on reasonable grounds following a reasonable investigation, that the Claimant was guilty of the alleged misconduct or such a significant and substantial part of that conduct as to justify the dismissal.
- 8.6 We are satisfied that Mr Halse had all the relevant documents and information to permit him to reach a decision despite the absence and lack of participation by the Claimant. The disciplinary pack was prepared by Mr Copley and included a copy of the final warning together with the post adjustment documents at pages 472-474 to which we have referred in paragraphs 6.18 and 6.19 above. There is also an unsigned new contract of employment on pages 484-495 in the bundle sent out to the Claimant on 6 August 2021. Mr Halse saw this.
- 8.7 He also had a copy of the original email of complaint dated 4 August 2021 on page 483 sent by Mr Foster, BAT Security Supervisor to Mr Copley expressing

Case Numbers: 3202027/2020 and 3206097/2021

serious concerns about the Claimant's aggressive conduct, *'Hi Andy, sorry but I do not want this guy here. I called him up to see what was happening and why he did not show, he basically had a go at me because he was put into training shifts without being asked. He blamed you for this. I asked him why he did not reply to the emails or call me back and he just reiterated the above...he was very aggressive throughout. I had to shout at him to stop talking so I could talk...in the end I told him I am cancelling the call and he can take this up with you.'*

We note that Mr Foster's record of this conversation makes no mention of the Claimant saying that he had not accepted or no longer wanted the BAT job. It makes no mention of the Claimant's concern that he may not have received relevant emails.

- 8.8 Both Mr Copley and Mr Foster gave clear and unequivocal witness statements for the purposes of the disciplinary process and Mr Halse saw these. The witness statements reflect the notes made by Mr Copley on the Respondent's HR log headed 'ATC-Disciplinary Investigation Meeting' on page 502-503 which make it clear that Mr Copley believed that the Claimant ('Dike') had been offered and accepted the BAT job and had agreed training dates via the medium of email and during telephone conversations. Mr Copley went on annual leave on 30 July 2021 *'I return today and find out DU[Dike Uwagwu]not coming into work and having an argument with my supervisor[Phil Foster]..he has not turned up for any shifts nor did he contact anybody. I have since called him up today-verbally aggressive saying we did not confirm dates. My response is that we spent 16 minutes on the phone... going through everything including the dates. It is apparent that he has a terrible attitude- he has been calling myself and my supervisor liars and hung up the phone on me. Because of the above he is not welcome on site.'*
- 8.9. Mr Copley's formal witness statement dated 10 September 2021, seen by Mr Halse and sent to the Claimant as can be seen on page 517, is on pages 513-515 and supports this account of events. It confirms that, during their conversations before Mr Copley went on holiday on 30 July 2021, *'there was no push back or issues ... in my mind everything was set for dike to start his shift while I was away.'* Mr Copley goes on to describe, following his return from annual leave on 9 August 2021, a *'very aggressive'* and unproductive telephone call with the Claimant-*'I said why did we spend fifteen minutes discussing it. He kept on saying he didn't agree. It went round in circles-until he hung up on me.'*
- 8.10 Mr Foster's formal witness statement was also seen by Mr Halse and sent to the Claimant. It is on pages 510-512 and is signed and dated 10 September 2021. It confirms the content of his conversation with the Claimant set out in paragraph 8.7 above.
- 8.11 The witness statements are supported by emails (which we are satisfied the Claimant received) at pages 479-480 from Mr Copley to the Claimant on 30 July 2021 offering the Claimant specific training and work shifts commencing

Case Numbers: 3202027/2020 and 3206097/2021

1 August 2021, with dates and times and sending him directions to get to BAT in Globe House from Temple tube station. There is then an email on page 481 dated 2 August 2021 from Mr Foster enquiring politely why the Claimant has not attended the first training shift and asking if he will attend the second scheduled training date. These emails were placed in evidence before Mr Halse at the dismissal meeting in the Claimant's absence.

- 8.12 Finally, Mr Halse also had sight of the telephone records from Mr Copley's mobile on pages 477-478 of the bundle which show that Mr Copley telephoned and spoke to the Claimant for 15 minutes 58 seconds on 30 July and then again for 7 minutes 15 seconds on 9 August 2021 on his return from holiday. The content of those calls is not of course recorded but clearly the conversations described in Mr Copley's statements did take place.
- 8.13 We reiterate that no input to the disciplinary process was provided by the Claimant in any format and no documents were sent by him. He therefore did not ever explain the position upon which he now relies which is that, although he applied for the job at BAT and discussed it with Mr Copley, he never accepted the new post because he decided that the additional travel and the nature of the duties were not suitable for him and he wanted to stay within the events/museums and galleries security team. We repeat, no part of that decision was conveyed to Mr Halse at the time because the Claimant never wrote to him, sent documents, made a statement, or met with him.
- 8.14 We have asked ourselves whether there was any failure of reasonable investigation by the Respondent when Ms Deleon failed to send to Mr Halse, or any other colleague connected with the disciplinary proceedings, a copy of the Claimant's email on page 503 A explaining his position as it was on 23 August 2021. First, we have heard and seen no evidence that Ms Deleon even knew that these disciplinary proceedings were ongoing. Certainly, the Claimant does not tell her on page 503A. Secondly, even if Mr Halse had known that the Claimant alleged that he had not accepted the BAT job he could have done no more than weigh in the balance the evidence he had from Mr Copley's investigation as against the Claimant's (often angry) denials. The omission from his disciplinary pack of the Claimant's written denial would have added little. The Claimant did not and, on balance, would not have attended any disciplinary meeting with him or any investigatory meeting with Mr Copley to add further information.

Finally, even if an extended process had provided access to page 503A and even if Mr Halse had accepted that the Claimant was not guilty of accepting the new post at BAT and then not attending the scheduled training shifts, we still find below, based on Mr Halse's unequivocal oral evidence, that he would have dismissed the Claimant for his rude, aggressive and unacceptable behaviour overall, in the context of a live final written warning

- 8.15 One of the non-legal members is not satisfied that Mr Halse could safely conclude that the Claimant had accepted the new role at BAT having been interviewed and offered the post. She therefore does not consider that there

Case Numbers: 3202027/2020 and 3206097/2021

are reasonable grounds for Mr Halse's conclusions at points 1,2 and 3 in the letter of dismissal on page 527. Her conclusion is reached because there is no document in the bundle which, she finds, unequivocally signifies the Claimant's acceptance and consent to the transfer to BAT. As we have said above, neither is there any official statement of approval in writing by Ms Deleon for the transfer of the Claimant from her team to BAT in the bundle.

The Employment Judge and the other non-legal member are content to accept the sworn oral evidence of Ms Deleon that she did approve the transfer of the Claimant from her team into a new post with BAT.

We also find that it was fair and reasonable of Mr Halse to find, on the balance of probabilities, that Mr Uwagwu had accepted the role at BAT having been interviewed and offered the post and that he then failed to comply with his obligation to attend shifts at BAT and did not inform anyone that he would not be attending the rostered training shifts on 1 and 2 August 2021. We make this finding that Mr Halse's points 1,2 and 3 are reasonable conclusions on the basis of the Post Adjustment documentation including the new draft contract of employment, the correspondence between HR and Mr Copley on page 474 and the information passed on to the Claimant by Mr Copley in an email under the subject heading *'Paperwork finished. You are now able to work at BAT* (see page 479). We find that the Claimant arranged to start work at BAT during the 15- minute conversation he had with Mr Copley on 30 July 2021 and that Messrs Copley and Foster expected him to transfer to Globe House. The Claimant, as is cogently and consistently maintained in Messrs Copley and Foster's witness statements, which Mr Halse was entitled to accept as truthful and accurate, knew that he was expected to be there, did not undertake his rostered shifts on 1 and 2 August 2021 and did not tell anyone at the Respondent and specifically at BAT that he would not be attending.

The Claimant did not gainsay any of those conclusions because he did not participate in the disciplinary process.

- 8.16 This is not, we emphasise, a record of any minority judgment in this case; it simply records some difference of opinion within the Tribunal as to the findings of fact. What we are all certain of is that Mr Halse acted fairly in imposing the ultimate sanction of dismissal for each of the five other allegations of misconduct including the existence of a final written warning on Mr Uwagwu's disciplinary record.
- 8.17 Mr Halse was quite clear in his oral evidence that points 4,5,6,7 and 8 in the dismissal outcome letter were enough, in his mind at the time, to justify the dismissal of the Claimant in all the circumstances. Therefore, even if it were the conclusion of the majority or all the Tribunal that points 1,2 and 3 were unsafe answers (which it is not) then we still unanimously hold that the Claimant was fairly dismissed for the misconduct in points 4-8.

Case Numbers: 3202027/2020 and 3206097/2021

The majority of the Tribunal find that the Respondent had a genuine belief based on reasonable grounds and following a reasonable investigation that the Claimant was guilty of all eight types of misconduct and that in all the circumstances the Respondent acted fairly in taking the decision to dismiss him. The minority member finds that the dismissal was fair because the Claimant was guilty of the instances of misconduct set out in points 4-8 of the dismissal outcome letter and that Mr Halse took a decision which was within the range of reasonable responses of an employer to end Mr Uwagwu's employment (on notice) for that reason.

- 8.18 The dismissal was fair and it was not an act of direct race discrimination or of victimisation. We find that there was no treatment of the Claimant in dismissing him which was less favourable because of his race and that a hypothetical comparator in all the same circumstances would also have lost his job. The Claimant was not dismissed because he brought the first set of Employment Tribunal proceedings in case number 3202027/20. He was dismissed for misconduct which Mr Halse reasonably found to be proven and for which he decided that the appropriate sanction was dismissal.
9. The complaints of direct race discrimination, victimisation, and unfair dismissal fail and all the claims are dismissed.

Employment Judge B Elgot
Dated: 24 January 2024