EMPLOYMENT TRIBUNALS

Claimant: Mr Jamshid Aslam

Respondent: Abellio London Limited

Heard at: London South Employment Tribunal, Croydon

On: 13, 14 and 15 December 2023

Before: Employment Judge Abbott, Mr R Singh and Dr S Chacko

Representation
Claimant: in person, representing himself
Respondent: Miss R Jones, barrister

JUDGMENT

1. The complaint of victimisation is not well-founded and is dismissed.

2. The complaint of direct discrimination because of race is not well-founded and is dismissed.

REASONS

Introduction

1. The claimant, Mr Jamshid Aslam, applied for a job with the respondent, Abellio London Limited, and successfully received a conditional job offer. The offer was subsequently withdrawn. In this claim, the claimant says that the withdrawal of the job offer and certain other acts amounted to victimisation and/or direct race discrimination contrary to the Equality Act 2010 (***EqA***).

2. The claim came before the Tribunal for Final Hearing on 13-15 December 2023. The hearing was held in person at the Tribunal venue in Croydon.

3. We delivered our decision orally on 15 December 2023. In our initial decision, we dismissed the complaint of direct discrimination because of race but upheld the complaint of victimisation. However, immediately after we had provided our oral reasons, Miss Jones for the respondent asked us to reconsider on the basis that we had found in favour of the claimant on an

unpleaded issue. Specifically, we had found that the respondent subjected the claimant to a detriment because it believed that the claimant may do a protected act, contrary to section 27(1)(b) EqA, and Miss Jones argued that the claim was pleaded only on the basis of section 27(1)(a) EqA. For the reasons elaborated upon below, on further consideration, we accepted that Miss Jones was correct. We accordingly reconsidered our initial judgment in accordance with Rule 70 of the Employment Tribunals Rules of Procedure 2013, it being necessary in the interests of justice to do so, and varied our disposal of the complaint of victimisation so that it would be dismissed as the pleaded case had failed. This was explained to the parties orally on the day.

4. At the end of the hearing, the claimant asked for written reasons. This judgment concerns the decision as varied following the reconsideration referred to in the previous paragraph.

5. The claimant represented himself at the hearing. The respondent was represented by counsel, Miss Jones. We thank them for their assistance throughout the hearing. The Tribunal was also provided with a 297-page bundle, and two other documents (an Equality & Diversity Policy and a Grievance Policy) which were provided during the hearing.

The issues

6. The parties agreed a list of issues, which is reproduced below.

Direct Discrimination because of Race – Section 13 EqA 2010

1. What are the elements of the Claimant's race he relies upon as his protected characteristic?

a. The Claimant's ET1 at paragraph 1 states he is a British, Asian Pakistani male.

2. Did the Respondent subject the Claimant to less favourable treatment because of his race?

a. The Claimant at paragraph 23 of his ET1 relies on the following alleged acts of less favourable treatment:

i. Withdrawal of the job offer/dismissal from employment;

ii. Failure/refusal to offer or accept the Claimant for shifts and hours before completing an induction;

iii. Failure to accept a personal reference;

iv. Failure to take further steps to obtain a reference;

v. Failure to wait 3 months to obtain a reference as per the conditional offer;

vi. Failure to amend reference policy and make a reasonable adjustment to the reference policy on this occasion;

vii. Failure to respond to the Claimant's grievance or complaint of discrimination.

b. At paragraphs 21-38 of its ET3, Respondent denies that such allegations amount to less favourable treatment and further or alternatively, that they were

because of the Claimant's race. To summarise its response:

i. The Respondent contends the conditional job offer was withdrawn having not been able to obtain a reference;

ii. No new recruits are allocated shifts prior to attending an induction;

iii. The Respondent does not accept personal or character references due to possibility of inaccurate references;

iv. Sufficient attempts were made to obtain a reference (5 in total) to no avail;

v. This is not a minimum waiting period and the Respondent was satisfied it was not going to get a reference for the Claimant, as Metroline had provided references for other applicants;

vi. The Respondent contends its policy to make job offers on a conditional basis to be reasonable, particularly in roles which are high pressure and of a safety critical nature;

vii. The Respondent contends the first complaint of discrimination from the Claimant was received by his legal representative by letter dated 8 July 2019 which was post withdrawal of the job offer. It denies the Claimant's email of 11 June 2019 amounted to a grievance.

3. Has the Claimant identified appropriate comparators?

a. The Claimant relies on Mr Powell and Mr Flashey as comparators in relation to point 2.a.ii.

b. The Respondent in paragraphs 25-27 of its ET3 contends that these are not appropriate comparators as they had worked for the Respondent previously as agency staff and had therefore already been inducted.

c. The Claimant relies on Mr Powell, Mr Flashey and a female who attended the induction on the same date as him (who was of Black African origin) in relation to point 2.a.iv.

<u>Victimisation – section 27 EqA 2010</u>

4. What are the protected act(s) the Claimant relies upon for the purposes of this claim?

a. Paragraph 25 of the Claimant's ET1 confirms he relies on the following alleged protected acts:

i. Paragraph 3 of the ET1 - pursuing a claim in the Employment Tribunal against Metroline;

ii. Paragraph 5 of the ET1 - at interview stage, informing the Respondent that he had been dismissed on capability grounds by Metroline and that he had an employment tribunal claim ongoing re his disability;

iii. Paragraph 12 of the ET1 - not receiving a response to his email of 11 June 2019 asking why the comparators identified were not asked to wait for shifts until after an induction, and whether this was because they are of a difference race;

iv. Paragraph 16 of the ET1 – Claimant sending a further email on 25 June 2019 chasing the above response; and

v. Paragraph 17 of the ET1 – Claimant's representative sending a letter on 24 July 2019.

b. Paragraphs 39-47 of the Respondent's ET3 deal with their contentions on the above. In summary:

i. Whilst the Respondent accepts the Claimant advised he had been dismissed on capability grounds and further that he had a pending claim against his former employer at interview stage, the nature or basis of his claim was not discussed and the Respondent denies it had knowledge the claim was one brought under the EqA 2010.

ii. Further, the Respondent does not consider that the emails of 11 & 25 June 2019 amount to a protected act because it was a question/query, not a reasoned allegation that the Equality Act had been breached.

iii. The Respondent contends any alleged protected acts that post date the withdrawal of the offer of employment on 20 June 2019 must fail.

5. What is/are the detriment(s) that the Claimant alleges to have suffered and which he relies upon for the purposes of this claim and, did the Respondent subject him to the same?

a. Paragraph 27 of the Claimant's ET1 states the Claimant was dismissed and was left feeling subservient, distressed and very anxious, had his depression exacerbated and incurring loss of earnings.

6. If so, was this because the Claimant carried out a protected act(s)?

7. Notwithstanding the order of the issues identified above, given how the hearing developed, we decided to determine the victimisation complaint before the direct discrimination claim and the reasons below reflect that.

<u>The facts</u>

8. We heard oral evidence from the claimant in support of his case, and from Ms Aafreeda Merican, Ms Karen Morrison and Mr Jay Merchant for the respondent. Each witness was cross-examined on the contents of their witness statements.

9. The role of the Tribunal is to consider all of the evidence, and the documentary materials we have been referred to, and form a view as to what is most likely to be the true position. It is important to say that, simply because we may disbelieve the evidence of a witness on a particular point, does not mean that we consider they are deliberately seeking to mislead, nor does it mean we must automatically disbelieve them on other points. Ultimately we have to weigh up all the evidence on all different points and assess it on its merits.

10. The relevant facts are, we find, as follows. Where it has been necessary for us to resolve any conflict of evidence, we indicate how we have done so at the relevant point. We have only made findings of fact relevant to the issues in the List of Issues. We have not referred to every document we have read

and/or were taken to during the hearing, but we have considered all such documents.

11. For approximately 17 years up until 30 January 2019, the claimant was employed by Metroline Travel Limited (***Metroline***). On 30 January 2019 he was dismissed from that employment. Thereafter, and prior to his contact with the respondent, he has commenced Tribunal proceedings against Metroline for unfair dismissal, direct disability discrimination and victimisation.

12. On 13 April 2019 the claimant applied for a position as London Rail Replacement Controller with the respondent. The role was advertised as being a "zero hours" position, with a proposed salary of £16.32 per hour plus holiday pay allowance. Within his application form, the claimant disclosed that he suffered from 90% hearing loss in his right ear and that he suffered from depression, anxiety, insomnia and stress. He identified two former employers as references: Metroline (where he identified as the relevant contact Darren Hill) and Plumb Center.

13. On 14 May 2019 the claimant was interviewed for the role by Ms Aafreeda Merican. During the interview, the claimant disclosed to Ms Merican in response to an 'ice-breaker' question about why he had left Metroline, that he had been dismissed on capability grounds and was pursuing a Tribunal claim against Metroline. This was not recorded in the notes of the interview. There was a dispute on the facts as to whether the nature of the claim (i.e. whether or not it involved Equality Act issues) was discussed. The claimant said he did disclose that at the interview and that in the pre-employment health questionnaire, he had confirmed he had mental health issues. Ms Merican's evidence was that it was not discussed. On the balance of probabilities, we consider the claimant did mention to Ms Merican that his claim was related to his disability.

14. Ms Merican concluded that the claimant had a lot of experience and was an ideal candidate for the role and recommended to the respondent's HR advisor, Mr Jay Merchant, that the claimant be successful in his application.

15. By an email sent on 20 May 2019, Mr Merchant confirmed to the claimant that he was successful in his application and a conditional job offer was made. Three conditions were imposed, the relevant one for present purposes being "receipt of satisfactory references within three months of your start date". The claimant was also sent a link to an offer letter and the statement of terms of employment, which confirms the "zero hours" status of the role and the hourly rate, consistent with the advertisement.

16. The reference to "satisfactory references" (plural) is consistent with the respondent's recruitment policy and reflects that at least two satisfactory references are normally required. In the case of the claimant, given his very long service with Metroline, the respondent agreed that only one satisfactory reference would be required and they would not follow-up with Plumb Center.

17. On 21 May 2019, Mr Merchant sent a request for a reference for the claimant to Coral Johnson at Metroline. Mr Merchant understood from his colleagues that Coral Johnson was the appropriate contact at Metroline for obtaining references, notwithstanding that the claimant had identified Darren Hill. In the

absence of a response, Mr Merchant sent further emails to Coral Johnson on 24 May 2019 and 29 May 2019.

18. On 29 May 2019, the claimant enquired with Ms Morrison what shifts he had been allocated. Ms Morrison responded the following day to inform the claimant that he would not be allocated any shifts until after he attended an induction.

19. On 31 May 2019, a colleague of Mr Merchant, Kasha Ingle, forwarded his requests for a reference again to Coral Johnson. Mr Merchant sent a further email to Coral Johnson on 4 June 2019 again chasing a response.

20. The claimant was ultimately booked in for his induction on 6 June 2019. He attended that induction and was, in due course, paid accordingly for 4 hours work. There was further correspondence between the claimant and Ms Morrison regarding shifts and training, but as things transpired, the claimant was never allocated any shifts.

21. By 10 June 2019, the lack of a response from Metroline was raising concerns with Mr Merchant, as he summarised in a tracker table entry that was emailed to Ms Morrison on that date. Though he recorded there was "something not right about this", he did not propose or take any steps to explore alternative options, whether that would be approaching other individuals at Metroline (including Darren Hill) or going back to the claimant to discuss the matter.

22. On 11 June 2019 at 16:49, the claimant sent an email to Ms Morrison and Mr Merchant headed "Question/complain in regards to Abellio". In summary, it questioned why two other new recruits (Mr Powell and Mr Flashey) who as a matter of fact are of a different race to the claimant (Mr Powell and Mr Flashey being Black British and the claimant being British Asian Pakistani) had been allocated shifts before they had attended an induction, but the claimant had not been. The email concluded with this: "Is this because they are of a different race?". Despite the use of the word "complain" in the subject, neither recipient interpreted it to be a complaint or grievance.

23. Ms Morrison did, however, forward the email on to her team manager, Jason Dyett later that day. Mr Dyett sent two responses within 6 minutes of receiving the email, one reading "Is he for real?" and one saying "He cannot work for us". We accept that Mr Dyett was not involved thereafter in the decision-making process that led to the withdrawal of the claimant's job offer and nor were his emails forwarded (or their content communicated) to others who were involved. However, in our judgement, Ms Morrison will have been influenced, at least subconsciously, by Mr Dyett's reaction.

24. At some point between Mr Dyett's emails at around 6pm on 11 June 2019 and 7.22am on 12 June 2019, Ms Morrison spoke to Ms Merican about the claimant's email. In our judgement, it is clear that the email was part of the conversation, as evidenced by Ms Morrison's email to Mr Dyett at 7.22am on 12 June 2019, despite oral evidence to the contrary. During the conversation, Ms Merican mentioned to Ms Morrison that the claimant had a Tribunal claim against Metroline, but on the balance of probabilities we find there was no discussion of the nature of that claim.

25. In the course of the morning of 12 June 2019, Ms Morrison and Mr Merchant

had a discussion about the next steps to take. We find that the claimant's email of 11 June 2019 was discussed, as it is evident from Ms Morrison's email to Mr Merchant early on the morning of 12 June 2019 that it would be (the email states that "I will catch up with you regarding Jamshid's email later"). We also find that the difficulties obtaining a reference from Metroline were discussed, and Ms Morrison informed Mr Merchant that he had a pending Tribunal claim against Metroline. That is evident from the entry that Mr Merchant subsequently put into the Harbour system, which reads "Reference from Metroline has not come back after multiple attempts at chasing this up. Karen has made me aware that he currently has a pending tribunal case open against them." The same Harbour entry also confirms the outcome of the meeting: "Karen wants to withdraw the offer and she is going to speak to Jason and Adrian about this."

26. As already set out above, Ms Morrison had already been in contact with Mr Dyett and knew his views. She also sought the input of her immediate line manager, Adrian Tigreros, both by way of a discussion and an email exchange on the afternoon of 12 June 2019. Ms Morrison's email, in summary, identifies three points: (1) the claimant's email of 11 June 2019, (2) the difficulties in obtaining a reference for the claimant from Metroline and (3) the fact of the claimant having a Tribunal claim against Metroline. Mr Tigreros replied at 14:26pm confirming he agreed "to stop this process with immediate effect". We find that, in effect, Mr Tigreros was the decision maker, albeit acting on the information provided to him by Ms Morrison.

27. Mr Tigreros very shortly afterwards emailed Debbie McDonnell, the HR Manager, seeking advice. The first two paragraphs of his email identify the issues obtaining references. It then goes on to say this: "We have found out today that this person is currently dealing with a Tribunal against Metroline, so we have decided to stop the process to make sure we do not get into future issues, but I would like to get your advice to make sure we use the appropriate wording to withdraw the offer."

28. It falls to the Tribunal to determine on the balance of probabilities what the reason for withdrawing the job offer was. We did not have the benefit of evidence from Mr Tigreros as to what was in his mind, though we did have evidence from Ms Morrison and Mr Merchant and the contemporaneous emails. In our judgement, on the balance of probabilities, the true reason for withdrawing the job offer was, as is set out in Mr Tigreros' email, to avoid "future issues". In our judgement, given the overall context included both (1) the fact that the claimant was pursuing a Tribunal claim against his former employer and (2) the fact that the claimant has raised a question around differential treatment on the basis of race, it can properly be inferred that those "future issues" sought to be avoided could include a complaint or claim of race discrimination.

29. From that point, the decision having been made to withdraw the job offer, Mr Merchant was instructed to take no further steps in respect of pursuing a reference from Metroline, notwithstanding that the conditional offer contemplated a period of 3 months within which a satisfactory reference could be sought. References for other recruits were pursued.

30. Mr Merchant responded to Mr Tigreros' email on behalf of Ms McDonnell and

advised on appropriate wording for the withdrawal letter. His concern was to avoid the claimant believing that a reference had, in fact, been received when it had not been.

31. The offer withdrawal letter was ultimately sent to the claimant on 20 June 2019.

32. In response the following day, the claimant asked the respondent to consider taking personal references from two present Abellio employees who the claimant had previously worked with at Metroline. Mr Merchant advised Mr Tigreros to respond to say that personal references were not acceptable under the recruitment policies, and Mr Tigreros did so on 25 June 2019. The email concluded with the following: "Please consider this matter closed and that we will no longer be proceeding with your application."

33. Although it was not communicated to the claimant prior to the withdrawal of his job offer, we accepted the evidence of Ms Morrison that Mr Powell and Mr Flashey were able to work prior to their induction because of their previous engagement as agency workers, and that was the reason for any difference in treatment between them and the claimant. Ms Morrison's explanation was a credible one.

34. ACAS Early conciliation was commenced on 4 September 2019 and ended on 18 October 2019. The claim was presented on 7 November 2019.

The law

Victimisation

35. Section 27(1) of the Equality Act 2010 provides as follows:

> 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.

36. Section 27(2) provides that:

> Each of the following is a protected act— (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.

37. Miss Jones drew our attention to the decision in *Aziz v Trinity Street Taxies* [1988] ICR 534, which confirms that for an argument that a detriment was because of a protected act having been done to succeed, the victimiser must be shown to have knowledge not just of the act, but that the act was a protected one. Miss Jones also drew our attention to the EAT decision of *Chalmers v AirPoint Ltd* [2020] UKEAT 0031_19_1612 on the topic of what amounts to a "protected act", drawing a comparison between the alleged protected act in that case (an email that alleged certain acts "may be discriminatory" and was held not to qualify as a protected act) and the

claimant's email of 11 June 2019. We have taken account of both of these cases.

Direct discrimination

38. Section 13 EqA prohibits direct discrimination. Section 13(1) EqA states:

> 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.

39. The protected characteristic relied upon here is race.

40. The primary focus in a direct discrimination case is on identifying why the claimant was treated as he was, before coming back to whether it was less favourable treatment because of the protected characteristic (see e.g. *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11). It is well established law that a respondent's motive is irrelevant and, indeed, the possibility of unconscious discrimination is recognised (see e.g. *Nagarajan v London Regional Transport* [1999] IRLR 572, HL). Moreover, the protected characteristic need not be the sole or even principal reason for the treatment as long as it is a significant influence or an effective cause of the treatment.

41. The bare facts of (i) a difference in status and (ii) 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 (*Madarassy v Nomura International plc* [2007] EWCA Civ 33 at [56], citing *Igen v Wong* [2005] EWCA Civ 142). Something more is needed.

Burden of proof in EqA claims

42. The provisions relating to the burden of proof, which apply to both the victimisation and direct discrimination claims, are found in Section 136(2) and (3) EqA:

> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

43. It is thus for the Claimant to prove facts from which the Tribunal could conclude, in the absence of any evidence from the Respondent, that the Respondent committed an act of discrimination. Only if that burden is discharged is it then for the Respondent to prove that the reason for the treatment was not because of a protected act or characteristic (see, e.g., *Royal Mail Group Ltd v Efobi* [2021] UKSC 33). This will typically be based upon inferences of discrimination drawn from the primary facts and circumstances found by the Tribunal to have been proved on the balance of probabilities. Such inferences are crucial in discrimination cases as it is unlikely there will be direct, overt evidence that a Claimant has been treated less favourably because of a protected act or characteristic (see, e.g., *Anya v University of Oxford* [2001] IRLR 377, CA).

44. Notwithstanding the above, in *Efobi*, Lord Leggatt repeated Lord Hope's reminder in *Hewage v Grampian Health Board* [2012] UKSC 37 that it is important not to make too much of the role of the burden of proof provisions:

> "They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Discussion

Victimisation

45. The first point to address is how the claim is pleaded. Miss Jones submitted that the claim is pleaded solely on the basis of section 27(1)(a) EqA, and this is why the list of issues is framed as it is. On a proper interpretation of the "Details of Complaint" document submitted by the claimant with his ET1 claim form, in particular paragraphs 25 and 27 thereof, we accept the respondent's submission that the claim is pleaded solely on the basis of a protected act having already been done, and does not contemplate a future protected act. In other words, the claim is pleaded on the basis of section 27(1)(a) EqA but not section 27(1)(b). Whilst paragraph 27 does quote Mr Tigreros' "future issues" email (see paragraph 27 above), that part of the email is not emphasised, and the opening words of paragraph 27 ("*Because the Claimant did one or more of the protected acts…*") undermine the suggestion that the pleaded claim is for victimisation on the basis that a potential future EqA claim is in contemplation.

46. Pleadings are important because, as set out in numerous authorities, they set the boundaries of a case. The claim form sets out the claim that the respondent has to answer, by way of its response and evidence. It would be wrong in law to decide a case on the basis of an unpleaded issue. We must therefore determine the victimisation claim solely as one brought on the basis of section 27(1)(a) EqA.

47. We will examine the alleged protected acts relied upon by the claimant in turn. These are listed in 4.a. of the list of issues.

48. Points 4.a.i and ii concern the Tribunal claim against Metroline. As a matter of fact, those proceedings do include complaints under the Equality Act. However, we have found that Mr Tigreros, Ms Morrison and Mr Merchant did not have knowledge of the nature of the complaints. It is not alleged that Ms Merican, who we have found was aware of the nature of the complaints, was involved in any detrimental act (i.e. the decision to withdraw the claimant's job offer). Accordingly, applying *Aziz*, it is not possible for any of them to have subjected the claimant to a detriment because he had carried out a protected act.

49. Point 4.a.iii is the claimant's email of 11 June 2019. In our judgement, this email does not allege race discrimination, but merely raises a question regarding possible differential treatment on the basis of race. In that sense, it is analogous to the disclosure in *Chalmers*. We therefore accept the

respondent's submission that this was not a protected act within the terms of the Equality Act, so no victimisation claim can be founded upon it.

50. Points 4.a.iv and v both post-date the single detriment relied upon (that being the withdrawal of the claimant's job offer) and cannot therefore be relevant for the victimisation claim as advanced.

51. In light of the above, we cannot find that the claimant was subjected to a detriment because the claimant *had done* a protected act. As this was the only way in which the victimisation claim was pleaded – specifically there is no pleaded case that the claimant was victimised because the respondent believed that he *may* do a protected act in future – the victimisation claim must fail.

52. The claimant may consider this to be a harsh result in light of our factual findings at paragraph 28 above. However, we are bound by law to consider only matters that are pleaded. We note that, although the claimant did apply to amend his claim on three occasions, none of those applications identified a claim of this nature. Whilst the claimant may be able to draw some degree of vindication from the factual findings we have made, because his pleaded case has failed, the complaint of victimisation must be dismissed.

Direct discrimination

53. We will take the alleged less favourable treatments in turn, as identified in paragraph 2 of the list of issues.

54. Point 2.a.i concerns the withdrawal of the job offer. We have found as a fact what the reason for that was: to avoid "future issues" which could include a complaint or claim of race discrimination. There is no credible evidence to suggest that the claimant's race had any influence on the decision, nor was the point put to any of the respondent's witnesses. The claimant has failed to shift the burden of proof in respect of this allegation.

55. Point 2.a.ii concerns the claimant not being considered for shifts before his induction. He identifies a difference in treatment between himself and two others (Mr Powell and Mr Flashey) and a difference of race (Mr Powell and Mr Flashey being Black British and the claimant being British Asian Pakistani), but no 'something more' in the *Madarassy* sense. There is no basis to find that the burden has shifted to the respondent. In any event, we have accepted the evidence of Ms Morrison that Mr Powell and Mr Flashey were able to work prior to their induction because of their previous engagement as agency workers, and that is the reason for any difference in treatment. This allegation fails.

56. Points 2.a.iii to vi all concern failures to take further steps to obtain references beyond the first 5 attempts made to contact Metroline. We have found that this was not done because the respondent had decided to withdraw the job offer. There is no credible evidence to suggest that the claimant's race had any influence on these decisions. To the extent there was any differential treatment between the claimant and any other recruits listed in the table at page 200 of the bundle to which we were referred, it is unclear whether there

was a difference in race (there was no evidence before us that the individuals in that table were in fact the persons identified as comparators in Point 3.c. of the list of issues), but even assuming that in favour of the claimant, there was no sign of a 'something more'. The claimant has failed to shift the burden in respect of these allegations.

57. Point 2.a.vii concerns a failure to respond to the claimant's email of 11 June 2019. Irrespective of how that email can be characterised (and we accept that neither Ms Morrison nor Mr Merchant did, in fact, interpret it as a complaint or grievance), there is no evidence to suggest that the claimant's race had any influence on the decision not to respond, nor was the point put to any of the respondent's witnesses. The claimant has failed to shift the burden in respect of this allegation.

58. In conclusion, we find that none of the allegations of less favourable treatment because of race are made out. The direct discrimination claim fails.

Conclusion

59. For the reasons set out above, both complaints are dismissed.

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Employment Judge Abbott

Dated: 12 January 2024