EMPLOYMENT TRIBUNALS

Claimants: Mr Marcin Nowak
Mrs Katarzyna Urbanska
Mr Lukasz Koperek
Ms Katarzyna Chuchala
Ms Iwona Krasowska

Respondent: Evtec Aluminium Limited

FINAL HEARING

Heard at: Birmingham

On: 21 (reading day), 22 to 24, 27 & 28, 29 (Tribunal deliberations in private), & 30 November 2023

Before: Employment Judge Camp
Mr Tony Liburd
Mrs S Outwin

Appearances
For the claimants: Dr M Ahmad, counsel
For the respondent: Mr N Brockley, counsel

RESERVED REASONS

Introduction, background and issues

1. These are the reasons[1] for our unanimous decision of 30 November 2023 that the whole of the claimants' claims failed.

2. The respondent is an aluminium castings company, with sites in Coventry and Kidderminster. Apart from Mrs Urbanska, they were employed by the respondent and one or more TUPE predecessors as machine operatives. Mrs Urbanska was in the Quality Team. All them worked in Coventry. All of them are Polish nationals.

[1] After discussions with the parties, and with their agreement, we took the unusual step of giving our decision orally without full reasons and formally reserving them, to be given in writing later; although we orally summarised our reasons. We reserved our reasons mainly because most of the claimants required an interpreter and, even with an interpreter (interpreting at speed), they would not be able fully to follow oral Reasons and would be wanting a written decision that they could, if necessary, get translated into Polish at their leisure.

They started their employments on various dates from 2015 onwards. One or two of them remain employed by the respondent.

3. There is an agreed[2] chronology and cast list, copies of which are at the end of this decision, from page 26. They should be deemed to be incorporated into these Reasons and we refer to them. What we meant in the previous paragraph by "TUPE predecessors" were the companies, mentioned in the chronology, that ran the Coventry site[3] and employed the claimants before the respondent did: up to March 2004, King Automotive (this company did not employ any of the claimants, but was the employer of comparators); from then to July 2017, Amtek; from then until November 2021 (when the respondent, Evtec, took over), Liberty Aluminium Technologies. Unless otherwise indicated, when we refer to the "respondent" in these Reasons, this is shorthand for "the respondent and/or one (or more) of its predecessors".

4. There are two claims.

5. In the first claim – 1304380/2020 – the only claimant is Mr Nowak. He could fairly be described as the lead claimant in the litigation as a whole and has acted as the spokesperson for the other claimants and has a good command of English. His claim is broadly about two things: allegedly discriminatory pay and additions to pay (attendance bonuses and shift allowances); allegedly racially-motivated mistreatment by a manager, Mr Mather, in 2019 and a grievance of November 2019 about that.

6. The second claim – 1302502/2022 – is brought by the other four claimants[4] and concerns: the same pay (and bonuses / allowances) issue; a "collective grievance" brought by them, Mr Nowak, and a number of others in December 2021 about that issue; and a temporary lay-off in January 2022.

7. After (at various stages of these proceedings) clarification, withdrawals and applications to amend, just two types of claim are being made:

   7.1 direct race discrimination, based on the claimants' Polish nationality[5];

   7.2 victimisation, relying as the protected acts, in relation to the first claim, on Mr Nowak's November 2019 grievance and an appeal against the grievance decision and, in relation to the second claim, on the collective grievance and the appeal against the decision on that collective grievance.

8. The issues potentially arising in relation to those claims are set out in an agreed list of issues, a copy of which follows immediately after these Reasons, from page

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[2] Possibly one or two points of detail in the Chronology are not agreed, but nothing of importance to our decision.

[3] Probably the Kidderminster site too; but we are not entirely sure about that.

[4] Originally there was another claimant – Mr Pyda – but he withdrew his claim before this final hearing.

[5] What the claimants clearly mean is their Polish nationality and/or Polish national origins. On the facts here, it makes no difference whether we consider either or both. Also, in practice, in relation to some complaints at least, the claim is based more on the claimants' non-British national origins: see paragraph 55.3 below.

23, and which forms part of this decision. That list was finalised and approved by claimants' counsel.[6]

The law

9. So far as concerns the relevant law, which is reflected in the wording of the List of Issues, we have not had to go very much further than considering the relevant legislation, in particular: sections 13, 23, 27 and 136 of the Equality Act 2010 ("EQA").

10. We note that for there to be direct discrimination in accordance with EQA sections 13 and 23, it is not enough for the claimants to have been treated badly: they must have been treated worse than others were or would have been treated; and there must be no material difference between the circumstances of those others and the claimants' circumstances.

11. We also note that for both the direct discrimination and the victimisation complaints to succeed, the claimant has to have been subjected to a detriment. As to what a detriment is, we have referred ourselves to **Jesudason v Alder Hay Children's NHS Foundation Trust** [2020] EWCA Civ 73, at paragraphs 27 to 28.

12. In addition, we have, in terms of case law, considered paragraph 17 (part of the speech of Lord Nicholls) of the House of Lords's decision in **Nagarajan v London Regional Transport** [1999] ICR 877 and paragraphs 9, 10 and 25 of the judgment of Sedley LJ in **Anya v University of Oxford** [2007] ICR 1451.

13. In relation to complaints of discrimination and victimisation where the question is less what happened than why did it happen (i.e. all complaints other than those about alleged mistreatment of Mr Nowak by Mr Mather), we have tried to identify the 'reason for the treatment', as recommended by appellate courts on many occasions, e.g. by the EAT in **Islington Borough Council v Ladele** [2009] ICR 387, at paragraph 40(5).

14. As to the burden of proof and EQA section 136 more generally, we have sought to apply the law as set out in paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913.

The facts

15. In this section of these Reasons, we are simply going to outline the basic facts, which are largely uncontentious. We shall deal with the most contentious matters later, when considering and deciding the claimants' individual complaints.

16. A great deal of evidence has been put before us. This included: written and oral witness evidence from all five claimants and, on their behalf, from three others who worked for the respondent – Mr Pyda, Mr Samelczak, and Mr Byrne; written and oral witness evidence for the respondent from Mr Mather, from Mrs H Martin,

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[6] If the direct access barrister in question was not Dr Ahmad, who was representing the claimants at this final hearing, it was a Mr Wilson, who represented the claimants at a case management preliminary hearing in August 2023. The claimants have been legally represented at all three Tribunal hearings there have been.

who was involved in looking into the collective grievance, and from Mr P Cruse, a General Manager (formerly Operations Manager, amongst other things), whose evidence mainly concerned his – relatively limited – involvement in Mr Nowak's complaints / grievances of 2019, and his – rather greater – involvement in dealing with the collective grievance; a 638 page file or 'bundle' of documents.

17. One of the difficulties the respondent – Evtec – has evidently had in defending parts of the claims is that it is a relative newcomer to the scene, having taken over in late 2021, nearly 2 years after Mr Nowak presented his claim form. Evtec inherited pay anomalies and an opaque grading system and finds itself having to explain and defend things when many of the individuals who could provide the necessary explanations and whose actions are to be defended left some time ago, and finds itself having to do so when much of the paperwork one would expect to see has gone missing (in so far as it ever existed).

18. Apart from in relation to Mr Nowak's allegations of discriminatory mistreatment by Mr Mather, very few facts are genuinely and substantially in dispute. When we refer to things not being "genuinely and substantially in dispute", what we particularly have in mind are the facts relevant to the complaints about pay, attendance bonuses, shift allowances, and the lay-off. Although in closing submissions, claimants' counsel was not, on instructions, willing to make concessions in this respect, it seems to us that any relevant factual dispute that is said to exist connected with these complaints is purely theoretical. In terms of what happened concerning them, the claimants are in no position to contradict the respondent's witness and documentary evidence. And in terms of what motivated the respondent's actions, the claimants have no knowledge at all and can only theorise based on what happened, just as we can.

19. At the centre of this case are what we have been referring to as "old contracts" and "new contracts". All of the claimants are on new contracts and their comparators – in particular a Mr Tranter and Mr Byrne – are on old contracts. Those on old contracts got better pay, attendance bonuses and shift allowances. The respondent[7] switched from using old contracts to new contracts in 2012. We do not know the breakdown of the workforce in terms of nationality in 2012, but the only individuals we know about employed before then were British nationals. Based on the evidence we have, it seems that a large majority of those employed at the claimants' level from 2015 (when the first of the claimant's started their employments) onwards were Polish nationals, although a small-but-significant minority of British and other non-Polish nationals were employed after then too. What this has meant is that from 2015 onwards there have been a number of British nationals, on old contracts, getting better pay, attendance bonuses and shift allowances than many Polish nationals (and a few British nationals), on new contracts, doing the same jobs.

20. Mr Mather has been continuously employed, in various roles, since 2001. He was Mr Nowak's team leader or group leader throughout Mr Nowak's employment, from January 2016 to April 2022. On 12 February 2019, Mr Nowak made a written complaint that on the face of it was against Mr Mather and Mr Cruse. We shall go into that complaint in more detail later, but it was essentially about not getting a

[7] Its predecessor, Amtek.

pay rise when a colleague had got one. In so far as this complaint was dealt with, it was by the then Production Manager, Mr Waite. Shortly afterwards, Mr Nowak was given a pay rise.

21. Mr Nowak's complaints about alleged discriminatory mistreatment by Mr Mather, as set out in the list of issues, relate to the period February to November 2019.

22. Mr Nowak raised a complaint or grievance about Mr Mather's "*unfair and discriminating behaviour towards me*" by a letter of 13 November 2019. He seemed particularly exercised about what he perceived as a British national colleague called Mr Mosey being allowed to get away indolence in the workplace. We refer to that letter, which is at pages 248 to 249 of the bundle. The respondent accepts that the letter, which contained allegations of race discrimination on the grounds of nationality along similar lines to those made as part of Mr Nowak's claim, was a protected act in accordance with EQA section 27(2).

23. During November and December 2019, there was an investigation of sorts into the grievance. It was handled by Mr Waite, with assistance from the then Personnel & Payroll Manager, a Ms Swann. This is another thing we shall go into in more detail later in these Reasons, but the significant points for the purposes of this overview of the facts are:

    23.1 in or around late November 2019, Mr Waite decided that Mr Nowak should be moved to a different 'line' so that he and Mr Mather would not be working together and this was communicated to Mr Nowak. Mr Nowak was told that the move would be permanent;

    23.2 at a meeting with the claimant and his trade union representative in November or December 2019, Mr Waite decided that in the absence of corroborating witnesses the grievance should be 'closed', a decision that was confirmed in a letter from Ms Swann of 3 January 2020.

24. Mr Nowak appealed the grievance outcome by a letter dated 8 January 2020, which is also admitted by the respondent to have been a protected act. There was an appeal hearing on 22 January 2020 involving the claimant, Ms Swann and Mr S Hemming, the respondent's [Liberty Aluminium Technologies'] then new Managing Director. There are partial notes of that meeting. Two potentially relevant things emerge from those notes: the claimant was told that the reason he had been moved to a different line was "*to take you out of the situation*" and that he could move back (which he made clear he would not do unless Mr Mather was moved); Mr Hemming said he would look into the claimant's allegations.

25. It is unclear how matters were left at the end of the meeting, but it does seem that the claimant never received a formal outcome to his appeal, and there is no evidence that anything significant happened in relation to it after the meeting on 22 January 2020.

26. Having gone through early conciliation from 21 to 28 January 2020, Mr Nowak brought his claim – the first claim – on 20 February 2020. It was then caught up in Covid-related and other delays for a significant period.

27. The next relevant thing that happened was the collective grievance of 3 December 2021. It was from 23 individuals, including all of the claimants and a number of British nationals. Mr Nowak was the spokesperson. It was about, "*our hourly rates, shift allowance, attendance bonus and our terms and conditions being different from our colleagues*" and about "[break] *entitlement for 7 hours work on Friday*".

28. The issue to do with break entitlements was, as best we understand it, that back before any of the claimants' employments began, the workforce (heavily unionised at the time) was given the choice between leaving early on Fridays but having a shorter break and working later but having a longer break and they, acting through the trade union(s), chose the former. The grievance was to the effect that they should have a longer break on Fridays – the same break as on the other days of the week.

29. The respondent has conceded that the collective grievance was a protected act for the purposes of the claimants' complaints of victimisation. Although we are far from sure that that concession was rightly made (see paragraph 106 below) we have based our decision on an assumption that it was.

30. There was a meeting between Mr Nowak and Mrs Martin about the collective grievance on 6 January 2022. Neither side produced evidence about what was said and discussed. Our findings about what happened next are set out below in the section where we deal with the discrimination complaint about delay in relation to the collective grievance, but there is no dispute that there was a meeting between Mr Nowak and Mr Cruse and someone from finance on 10 February 2022 where the collective grievance outcome was communicated. That outcome, confirmed in writing on 17 February 2022, was: that the differences in pay (etc), "*are of a historical nature and we will seek to review pay rates over the next few weeks*"; "*You also raised concerns regarding an insufficient break on a Friday. Given that this shift is 6 hours long there should be a longer break than what is currently operating. The company therefore propose to introduce a twenty-minute unpaid break to all shifts that are six hours and over. …. However, we would be prepared to establish a Joint Working Party to look at alternative solutions to this.*" In short, the grievance was not upheld.

31. Meanwhile, between 17 and 21 January 2022, most of the workforce at the Coventry site, including all of the claimants and many individuals who had not brought the collective grievance and/or who were not Poles, were temporarily laid off. Those laid off were on new contracts, which included a lay-off clause. The old contracts did not have such a clause.

32. Mr Nowak, on behalf of all the claimants and the others who had brought the collective grievance[8], appealed the collective grievance outcome by a letter of 22 February 2022, which is at pages 286 to 288 of the bundle and speaks for itself. Again, the respondent has conceded that that was a protected act and again we

[8] Apparently, a couple of those who put their names to the collective grievance did not participate in the appeal. The appeal outcome was sent to 19 people out of the original 23, with Mr Nowak and Mr Koparek having resigned between 22 February and 19 April 2022.

are not convinced the concession was merited, but we nonetheless proceed on the basis that it was.

33. An appeal meeting took place on 24 March 2022 with Mrs Martin and Mr Billson, Commercial Director. Nothing of significance seems to have happened at that meeting.

34. Following Mr Nowak's resignation with effect on 8 April 2024, Mrs Urbanska became the spokesperson for those pursuing the collective grievance appeal. The outcome was provided by a letter of 19 April 2022 from Mr Billson, which had been drafted for him by Mrs Martin. We refer to that letter, which is at pages 302-3 of the bundle. The appeal was unsuccessful.

35. Part of the collective grievance appeal outcome was a commitment to review and harmonise employees' terms and conditions. However, although this was apparently attempted, the attempt was unsuccessful. Why it was unsuccessful was not really explained to us, but the impression we get is that those on old contracts could not be persuaded to forego their advantages and that the respondent was not prepared to give those advantages to those on new contracts.

Pay, attendance bonuses & shift allowances

36. We shall now go through each of the complaints in the list of issues, making further findings of fact, as necessary, along the way.

37. We start with the race discrimination claims about pay, attendance bonuses and shift allowances, which we consider to be the main claims being made by all of the claimants. These are the complaints numbered 2.2.4 and 2.2.5 in the list of issues.

38. In short, the differences in the pay, attendance bonuses and shift allowances paid to the claimants versus those paid to the comparators were due to the claimants being on new contracts and the comparators being on old contracts. In turn, the reason why the claimants were on new contracts and the comparators were on old contracts was that the former started their employments after 2012 whereas the latter started before then.

39. We agree with the claimants that the grading system or systems used by the respondent was/were opaque. There was, though, no correspondence or correlation that we can discern between grade and pay; and there is no claim about grading. Grading is, in our view, a 'red herring'. Likewise, on the evidence, there was no discernible correspondence or correlation between the work that the claimants were doing day-to-day in practice and the work at least some higher paid people were doing; in other words, some people doing the same work as each other were paid differently and some were paid roughly the same.

40. Mrs Urbanska is in a category of her own – her claim is not really about pay as she was relatively high-paid and doing a different job from the other claimants; there does not seem to be an 'old-contract person' doing her job; her claim relating to pay is more about attendance bonuses and shift allowances, although we accept it is quite likely that if any person on an old contract were doing the same job as Mrs Urbanska, they would be paid more than her.

41. The thing that everyone agrees **does** affect pay, attendance bonuses and shift allowances is not workers' grades or the work that they were doing day-to-day, but – once again – whether they were on old contracts or new contracts.

42. On the basis of the evidence put before us, it seems that everyone employed by the respondent or its predecessors after 2012 was on a new contract. "*Everyone*" includes a significant number of non-Polish people. Mrs Urbanska, in her oral evidence, did say something to the effect that there were rumours that one individual employed after 2012 was employed on an old contract. However, that was just a rumour and, moreover, that individual was apparently Polish, so if the rumour were true, it would undermine rather than support the claimants' race discrimination claim.

43. The majority of people on the new contracts were Polish. But that does not signify any kind of anti-Polish racism. All it means in practice is that the majority of people employed after 2012 by the respondent and its predecessors were Polish. There is no claim about discriminatory recruitment, and we can see such a claim getting off the ground only as a claim by non-Poles claiming that there was a bias **in favour** of Polish people.

44. During the hearing, much has been made on the claimant's behalf about the failure to harmonise old and new contracts since 2012. It does indeed appear that no thought was given to harmonising terms and conditions prior to the respondent's [Evtec's] takeover of its predecessor and the claimants and others putting forward their collective grievance towards the end of 2021.

45. Although we can't be absolutely sure about this – because Ms Martin wasn't asked about it in cross-examination – it seems to be the case that the respondent was prompted to think about discrepancies between employees' pay and possible harmonisation of terms and conditions by the collective grievance. During 2022, up until at least around June of that year, there does seem to have been a desire to harmonise, but, for whatever reason, there has still not been harmonisation even now.

46. The differences between the old and the new contracts are set out in a document that appears at page 418 of the bundle. They are significant. Consistently, since 2012, the pay and conditions of those employed after then have been appreciably worse than those already in post. There is, though, no claim before this employment tribunal to the effect that the failure to harmonise was in and of itself an act of race discrimination or victimisation, nor is there any basis in the evidence for such a claim to be made.

47. We do not have any direct evidence as to the reasons for Amtek deciding to change the contracts for newly engaged workers in or around 2012, but in all likelihood it was a purely commercial decision. We note that that decision was made well before any of the claimants started working for the respondents; the new contracts had been in place for more than two years when the first of those claimants started.

48. The key question is: why were the claimants paid less than their comparator non-Polish employees were? For us, the answer to this question is obvious: because

they were employed after 2012 and their comparators were not, and everyone employed after 2012, whatever their nationality, was on a new contract. Nationality, national origins and any other aspect of race was and is totally irrelevant.

49. The comparators put forward by the claimants, all of whom were on old contracts, are not valid for that reason – their circumstances were materially different from the claimants' as their employments began before 2012. Valid actual or hypothetical comparators would be people employed at the same time the claimants were employed, doing the same job the claimants were doing, but who were not Polish nationals. There is no doubt whatsoever that such people would have been paid the same as the claimants were. We can say this because we know of a number of individuals who fit that description and who we know were paid the same as the claimants were (i.e. on the basis of the new contract rates and not the old contract rates), namely the non-Poles who brought the collective grievance with the claimants.

50. In summary:

    50.1 there was no less favourable treatment – a valid comparator in accordance with section 23 of the Equality Act 2010 would have been treated exactly the same as the claimants; and valid comparators were treated exactly the same as them;

    50.2 neither the claimants' nationality nor the protected characteristic of race more generally had anything to do with what they got in terms of pay, attendance bonuses and shift allowances.

Alleged mistreatment of Mr Nowak

51. We move onto Mr Nowak's complaints relating directly to Mr Mather's alleged conduct. These are paragraphs 2.2.1 to 2.2.3 in the list of issues.

52. In issue paragraphs 2.2.1 and 2.2.2, the date specified for when Mr Mather allegedly started mistreating Mr Nowak was February 2019.

53. The claim is broadly to the effect that Mr Mather didn't like Mr Nowak because he is Polish. It was also, as presented in tribunal, both orally and in writing, that the mistreatment started well **before** February 2019. Mr Nowak's oral evidence was to the effect that the significance of February 2019 was that that was when he put in a grievance about Mr Mather's supposedly racist behaviour; and that putting in that grievance resulted in the behaviour getting worse. In other words, the claim had changed quite markedly from what it was in the list of issues.

54. Before proceeding further, we note that there was no application to amend to add the claimant's letter of 12 February 2019 to the list of alleged protected acts being relied on, nor to allege that it was victimisation for Mr Mather (supposedly) to treat Mr Nowak worse after it was sent. The claim before the Tribunal remained as in the list of issues.

55. With all that in mind, we turn to the claimant's letter of 12 February 2019, which is at page 246 of the bundle and which is now said by Mr Nowak to be a grievance

about Mr Mather's behaviour of February 2019 which resulted in a worsening of that behaviour. We note the following about that letter in particular:

55.1 according to its first sentence, the letter is about "*unfair and discriminating behaviour towards*" Mr Nowak. Reading the letter as a whole and looking at it in its context, we find that Mr Nowak was using the word "*discriminating*" in a non-technical sense, to mean singling him out rather than discriminating against him because of a protected characteristic in accordance with the EQA;

55.2 before this final hearing, it had not been suggested within these proceedings that the letter was or might have been a protected act in accordance with the EQA. The claimant has been professionally represented for most of the proceedings, including at the hearings where the issues were clarified and the protected acts were defined. We infer that Mr Nowak did not, in fact, think in February 2019 or subsequently that what he was complaining about was something that an employment lawyer would recognise as a breach of the EQA, for example an allegation that he was being treated worse than someone else because of his Polish nationality. Had he thought that, this would have come out during his discussions with his professional advisers and this letter would have been included in the list of issues as an alleged protected act, and it wasn't;

55.3 substantially, the letter of 12 February 2019 is purely about the fact that Mr Nowak was not given a pay rise whereas a particular colleague was. The colleague in question was of Romanian national origins. We mention this because, although the complaints of race discrimination are on paper specifically about Mr Nowak's Polish nationality, they seem in practice (in his own mind at least, judging from various things he said during this hearing) to be about him being a non-British national and/or not of British national origins;

55.4 in Mr Nowak's statement, he suggests he was complaining about promotion in this letter, but he wasn't – it was about pay.

56. It has been suggested that it was suspicious or peculiar that Mr Waite, the Operations Manager at the time, to whom the letter was addressed, did not put this letter before Mr Mather or Mr Cruse, who were accused in it of engaging in "*unfair and discriminating behaviour*". Bearing in mind what the letter was actually about, this omission is in fact unsurprising. The letter was, as we have already mentioned, as a matter of substance about the lack of a pay rise. Neither Mr Mathers nor Mr Cruse had any authority to give the claimant one. In addition, it was not being alleged in this letter that either Mr Mather or Mr Cruse was being racially discriminatory towards Mr Nowak. The letter was simply to the effect that it was unfair that a worker called Alin, who happened to be Romanian, had got a pay rise when Mr Nowak had not got one.

57. We know that what Mr Waite did do in response to this letter was to give Mr Nowak a pay rise, on 25 February 2019, backdated to 1 February 2019 (albeit, seemingly, not the level of pay rise Mr Nowak had wanted).

58. Logically, if Mr Mather were prejudiced against Mr Nowak because of the latter's nationality, we would have expected Mr Mather to have been mistreating him all along. From the evidence we have, we understand Mr Mather to have been Mr Nowak's line manager or his line manager's line manager from when Mr Nowak started, in 2016. Certainly, there is nothing in the evidence to suggest that in or around February 2019 Mr Mather's role vis-à-vis the claimant changed. This is relevant not just because it would be odd for Mr Mather suddenly to have developed racist feelings towards Mr Nowak and/or to have started acting on them in February 2019, but also because, if it is true that Mr Mather was racially bullying Mr Nowak from well before February 2019, it would surely have been mentioned in this letter of 12 February 2019 and, equally, February 2019 would not have been picked as the date from which discriminatory behaviour allegedly started in the claim form and the list of issues.

59. One thing that this letter of February 2019 from Mr Nowak does show is that Mr Nowak was not 'shy in coming forward'; he was not scared to raise issues with the respondent.

60. That brings us to the November 2019 grievance. This is contained in a letter dated 13 November 2019, which runs from page 248 of the bundle. The question we have in relation to this is why, if things were consistently as bad as Mr Nowak now alleges they were, was no grievance raised before then? In cross-examination, he sought to explain this by reference to the fact that he **had** previously bought a grievance, in February 2019, that he had hoped that something would have been done about his mistreatment, and that he could hardly be expected to raise a grievance every week or month.

61. That would be a reasonable answer if any of the alleged mistreatment by Mr Mather that is part of Mr Nowak's claim in these proceedings had been raised in February 2019. However, as we have just explained, none of it was; that was not what the 12 February 2019 letter was about. We therefore have no plausible explanation for why, if things really were as bad as all that, Mr Nowak didn't raise a grievance until November 2019.

62. All of this adversely affects Mr Nowak's credibility, and the credibility of his claims.

63. We have little difficulty in answering the question: why did Mr Nowak raise a grievance in November 2019 and not before? It is, first, that his allegations about Mr Mather's supposed mistreatment of him are at the very least exaggerated and, in all probability, largely untrue; and second that early November 2019 was when an incident concerning Mr Mosey, described in the grievance letter of 13 November 2019, occurred. That incident came on top of Mr Nowak's increasing concerns about the pay and benefits inequalities that are at the heart of his and the other claimants' claims in these proceedings. In Mr Nowak's perception: those pay and benefits inequalities were discriminatory on the grounds of nationality; Mr Mather was somehow responsible for them.

64. Similarly, Mr Nowak evidently perceived that Mr Mosey, a British national, was being more favourably treated than Polish colleagues, in that he was seen to be getting away with "*walking around doing nothing*", as Mr Nowak put it. That is clear from the face of the letter of 13 November 2019. Mr Nowak thought that Mr Mather and Mr Mosey were close and that Mr Mather had done nothing when Mr Nowak

complained to him, whereas in fact Mr Mather did not think much of Mr Mosey and did take some action, albeit there was little that he could do in the absence of more solid evidence than that provided by Mr Nowak.

65. From some point in mid to late 2019, before November, we think Mr Nowak convinced himself that Mr Mather was against him and was against him because of his Polish nationality. This would undoubtedly have affected how Mr Nowak perceived not just what Mr Mather said and did going forward but also how Mr Nowak remembered incidents from the past.

66. A further thing that causes us concern about Mr Nowak's credibility is his account – given for the first time in his oral evidence – of how he had made notes of what was happening during 2019. That evidence came in the context of questions as to why his witness statement, prepared in 2023, contained lots of details about what allegedly happened that were not contained in the grievance of November 2019. Those notes had not been disclosed. Mr Nowak, in mid cross-examination on 22 November 2023, told us he thought he had his notebooks at home. We adjourned for the day so he could go home and get them and bring them to the Tribunal the following day. The following day, he arrived empty-handed and told us that he had been unable to find them.

67. Mr Nowak has been professionally represented for most of the duration of these proceedings, including at all preliminary hearings. His professional representatives will undoubtedly have explained to him his disclosure obligations and in any event the disclosure orders that had been made were in the plainest of English. We think that if Mr Nowak had contemporaneous or near-contemporaneous notes and if those notes supported his case, they would have been disclosed.

68. Even if we did accept Mr Nowak's version of events, none of the facts he told us of which he had personal knowledge was evidence from which we could infer that the reasons Mr Mather (supposedly) treated him in the way he alleges was his Polish nationality.

69. In addition, there is a contradiction at the heart of Mr Nowak's case: his core allegation is that he, Mr Nowak, was picked on. Given that the majority of the respondent's workforce was Polish, if Mr Mather's treatment of him was because of his Polish nationality, his evidence would be of mistreatment of Polish staff generally rather than – as the gist of it was – of Mr Nowak being singled out for mistreatment.

70. That brings us to Mr Samelczak's evidence. Mr Samelczak was the one and only witness who gave evidence which might realistically have provided a basis for us to infer that Mr Mather was prejudiced against Polish people. In translation, Mr Samelczak's statement included the following, in its paragraph 15: *"In June or July 2019, Craig* [Mr Mather] *came up to the two of us and Marcin Nowak explained something. Marcin started to complain to me what was going on, I only understood a little, not everything. At one point, Craig loudly said "English!". Marcin answered him "in a minute" and continued to explain to me in Polish what Craig had said previously. When he finished, he started talking to Craig and they argued about something, and Craig left. Marcin told me that Craig wanted me to say something and then he wanted to force Marcin Nowak to speak English.*"

71. We are not satisfied that anything like that occurred. First, if that had happened, it would have been front and centre of Mr Nowak's grievance and of his claim and it wasn't. Secondly, Mr Samelczak's evidence about what he could and could not understand of what was said was inconsistent. On the one hand, he seemed to have needed Mr Nowak to translate all and any instructions Mr Mather gave to him. On the other hand, in his statement, he (for example) suggests that he overheard Mr Mather making specific threats to sack Mr Nowak.

72. Also, Mr Samelczak gave very far-fetched evidence about how he had kept a diary of sorts, parts of which were not kept contemporaneously but were written months after the events supposedly described, and in that diary he described what had happened at work rather than other things and what had happened not to him but to others and to Mr Nowak in particular. He wasn't really able to explain why he had kept such a diary at all. Asked to explain what had happened to it, he suggested: that he had taken it back to Poland with him in late 2019 and, again for no discernible reason, he had stored it for several years; and that he located it when Mr Nowak asked him to do a statement around the start of 2023; and that as soon as he had prepared the statement, even though he had kept it for over three years at that point, he immediately discarded it; and the reason he did so was that there was a coincidence of timing – which we find to be implausibly convenient – between him preparing a statement and him moving in with his fiancée, who apparently was intolerant of his clutter.

73. We are also of the view, based on our collective workplace experience, that if the kinds of incidents detailed by Mr Nowak were happening with anything like the frequency he describes, everyone on the shop floor would know about it when it was happening, even if they were out of site and/or earshot. Yet the only corroborating witness Mr Nowak has of Mr Mather's allegedly discriminatory behaviour towards him is Mr Samelczak; and this is not withstanding the fact that we heard evidence from many other people who worked alongside Mr Nowak at the relevant time, such as Mr Byrne.

74. Further credibility points were made in submissions, in particular contradictions between Mr Samelczak's evidence and that of Mr Nowak were highlighted. We think those points were well made.

75. Suffice to say that: we do not accept any of Mr Samelczak's evidence where it is not corroborated by someone or something other than Mr Nowak's evidence; and we do not accept any of Mr Nowak's evidence relating to Mr Mather where it is uncorroborated by someone or something other than Mr Samelczak's evidence.

76. We do not uncritically accept Mr Mather's evidence, but we would say that we have far fewer reservations about that than about Mr Nowak's or Mr Samelczak's evidence. Consequently, where Mr Mather's account of events is different from either of their accounts, we prefer his evidence to theirs.

77. In those circumstances, we are not satisfied that Mr Nowak's account of events on which he bases the claim set out in paragraphs 2.2.1 to 2.2.3 of the list of issues is true. That claim therefore fails on the facts. And even if we had decided that Mr Mather did what Mr Nowak had accused him of doing, as we have found Mr Samelczak not to be a credible witness, there would be no substantial basis in

the evidence for us to decide that the reason Mr Mather behaved in that way was anything to do with Mr Nowak's Polish nationality.

Mr Nowak's grievance & appeal

78. Issue 2.2.6 in the list of issues is a series of complaints of direct race discrimination summarised as a failure *"to investigate Mr Nowak's grievance and appeal"* and demonstrating *"bad attitude towards Mr Nowak in this process"*, including (2.2.6.2) "*On or around 25 November 2019, moving Mr Nowak to another workstation*".

79. It is worth noting that in relation to this set of complaints, the only evidence we have from individuals with direct personal knowledge of what happened is that from Mr Mather and Mr Nowak and that Mr Mather's knowledge of what happened is scant. There is, though, no dispute that there was a limited investigation. There is also no dispute – although no doubt there is some small dispute around the timing of events – that Mr Nowak was moved from the workstation or line he had been on to a different one as a direct result of the November 2019 grievance, and he was told something the gist of which was that he was being moved for his own good.

80. There is also no dispute that in or around late November 2019 – again with some difference of view as to the precise timing – Mr Nowak was told that the move was permanent or most likely would be. That conversation took place before the respondent had concluded its investigation and reached its conclusions in relation to the claimant's complaint / grievance of November 2019. According to some of the respondent's own notes, Mr Nowak was told this on 21 November 2019. The earliest date we have for the conversation in which he was told that the respondent's investigations were at an end is 29 November 2019.

81. Similarly, the following is in practice not materially in dispute:

    81.1 the respondent's investigations into Mr Nowak's grievance, such as they were, consisted of speaking just to Mr Mather and to Mr Nowak. There is no suggestion from the evidence that anyone else was spoken to about it in a significant way by the respondent;

    81.2 on or around 29 November and/or 18 December 2019, Mr Nowak was told something to the effect that in the absence of any witnesses to Mr Mather's mistreatment of him other than Mr Nowak himself, the matter was considered to be closed.

82. There are two potentially material factual disputes. The first is as to what happened at the meeting with Mr Mather. The respondent's contemporaneous – or purportedly contemporaneous – notes are very brief indeed. (Generally, it would be fair to say that the respondent's [Liberty's] paperwork from this time is deficient). In light of the brevity of the notes of the meeting with him, it was put to Mr Mather that there was no detailed discussion of Mr Nowak's grievance letter, and therefore that there was no discussion of discrimination. Mr Mather's evidence was that, although he wasn't asked detailed questions about the letter and was not taken through it by Mr Waite, he himself went through it at the meeting and commented on it.

83. It is obvious to us that the seven-sentence note of the meeting we have was not remotely comprehensive. We have no good reason to disbelieve what Mr Mather told us about what was discussed. Even on his version of events, it was not an investigation meeting worthy of the name, in that he was not asked questions about what had occurred but merely, it seems, was presented with the letter and in a general way invited to comment upon it.

84. The second factual dispute that might be important is as to whether Mr Nowak volunteered a potential witness at the meeting on 29 November 2019 (or at a subsequent meeting in December, in so far as there was one). He says he put forward Mr Samelczak and was told that Mr Samelczak was unsuitable because he was no longer employed by the respondent. If this were true, we would not think it unreasonable for the respondent to take the view that an ex-employee was not a suitable witness. But in any event, we are not satisfied that it is true. There was an exchange of correspondence between the respondent and Mr Nowak in January 2020 following the meeting in November/December 2019 at which Mr Nowak was told that the grievance would not be taken further. There was a letter to Mr Nowak from the respondent on 3 January 2020 confirming that the grievance case was closed in which an account was given of a December 2019 meeting that had apparently taken place in the presence of Mr Nowak, Mr Waite, someone from personnel, and someone called Jason Baker, of Unite [the union]. In the letter, it was stated that, "*Richard Waite asked… if there were any witnesses to the alleged behaviour by Craig Mather to which he responded that you didn't know and couldn't remember if anyone had heard things said to you.*" By a letter dated 8 January 2020, Mr Nowak replied to that letter appealing against the decision not to uphold his grievance. In this reply Mr Nowak stated: *"In letter I received it is stated that I do not remember any witnesses of behaviour of Craig Mather but I was never told I needed to look for any."* We do not think that is how Mr Nowak would have replied if he had in fact put forward Mr Samelczak as a witness and had been told that Mr Samelczak was not suitable.

85. In addition, we note paragraph 47 of Mr Nowak's witness statement. In that paragraph, he stated: *"… on 29 November 2019… Richard Waite… came to see me on the new line informed me that there would be a further investigation into my concerns. During that time, I was asking my colleagues if anyone had been questioned about the situation. There was no investigation started, nobody was questioned. I have asked Tomasz Pyda, Jarek Dombrzalski, Many and Alin Stancu. All of them stated that nobody has questioned them.*" The impression Mr Nowak was clearly trying to give in that part of his statement was that the respondent failed to speak to potentially relevant witnesses. The respondent could hardly be criticised for that in circumstances where, even on his own case as presented at this hearing, he was asked to name potential witnesses and did not name any of the individuals he mentioned in that paragraph, but only Mr Samelczak.

86. In conclusion on this point, we are not satisfied that Mr Nowak suggested to the respondent any witnesses to his alleged mistreatment at the time.

87. Moving onto the specific subsidiary allegations under paragraph 2.2.6 of the list of issues, we start with 2.2.6.1. This is an allegation that Mr Nowak was put under pressure to drop the allegations made in his grievance. Based on what is in

paragraph 43 of his witness statement, his true case is in fact that he *"**felt like** he was being forced to drop the allegations*" [our emphasis], rather than that he was actually being pressurised to do so. Looking at the substance of what Mr Nowak is alleging happened, we are not satisfied that, objectively judged, Mr Waite was doing anything other than making sure Mr Nowak was aware of the potential seriousness of what he was alleging and was sure that he wanted to go through with the formal grievance. We don't think there was a detriment here (in that we don't think anything was said that a reasonable person in Mr Nowak's position could consider to be to their detriment); and there is no basis in the evidence for us to decide that any valid comparator – real or hypothetical – would have been treated differently, nor that race had anything to do with it.

88. This was a process that on the evidence was driven by Mr Waite, so if there was unlawful discrimination here, it can only be on the basis that Mr Waite was racially prejudiced against Polish people, consciously or unconsciously. There were no facts highlighted to us from which we could infer that he was. This was not something said on the claimant's behalf, but perhaps it could be argued that Mr Waite did not take the claimant's grievance of discrimination as seriously as he should have done and that we should infer racial prejudice from that. We would not have accepted such a submission, had it been made. On the evidence we have, we are satisfied that Mr Waite conducted an inadequate investigation of the claimant's grievance, but not that he would have done a better job had the claimant's grievance been about something other than race discrimination.

89. The allegation in sub-paragraph 2.2.6.2 is about moving Mr Nowak to another workstation or line. There can be no doubt that the immediate reason for the claimant being moved was that he had brought a grievance against Mr Mather, but there is no basis on any of the evidence before us for finding a comparator – a non-Polish person who had brought a similar grievance – would have been treated any differently, nor for finding that the claimant's Polish nationality was a factor.

90. Complaint 2.2.6.3 is that on 18 December 2019, Mr Nowak was called into a meeting and informed that as there were no witnesses, there was no case and therefore that his grievance was being closed. Although there is a dispute as to the date when this meeting took place, there is no dispute that the substance of the complaint is factually correct. However, once again, we are not satisfied there was any less favourable treatment here in accordance with EQA sections 13 and 23, let alone less favourable treatment because of Mr Nowak's Polish nationality. We are not satisfied that had Mr Nowak been British and had brought a similar grievance, he or it would have been treated any differently. Although the lack of evidence from the respondent's decision-maker(s) makes it impossible to say why the respondent closed down the grievance, the most likely explanation is the one given: the claimant failed to suggest witnesses and absent witnesses the grievance could, from the respondent's point of view, go nowhere.

91. Allegation 2.2.6.4 is *"failing to update Mr Nowak on the progress of his grievance appeal and on 22 January 2020 being called to a meeting by Steve Hemmings, the Managing Director, to inform Mr Nowak to wait before taking any action in order for him to carry out his own investigation.*"

92. Precisely what Mr Nowak is complaining about here is unclear to us. However, it appears to be about not being told how the grievance appeal was progressing and that, at the meeting on 22 January 2020, Mr Hemmings is said to have discouraged the claimant from taking matters further, i.e. by bringing a Tribunal claim, until he had investigated it. There is no complaint about the apparent failure to provide an appeal outcome *per se*.

93. From what we have, all we can say is that, however unsatisfactory what happened is from Mr Nowak's point of view, there is no basis in the evidence for us to find that the respondent would have behaved towards a valid comparator any differently, nor for finding that what happened had anything to do with the protected characteristic of race.

94. Reading between the lines of Mr Nowak's statement, a much more likely explanation for what happened than what Mr Nowak alleges is that: Mr Hemmings, as the new Managing Director, had many other things that subjectively (and quite possibly objectively too) appeared more important than dealing with Mr Nowak's grievance and appeal in a timely manner; this meant it hadn't been dealt with by the time the pandemic and 'lockdown' intervened, resulting in Mr Nowak being sent home, presumably on furlough and, in all probability, his grievance appeal being forgotten about.

95. Complaint 2.2.6.5 is *"Failing to progress the investigation to waste time and allow the deadline to bring a claim to pass".*

96. The "*deadline*" being referred to is the expiry of the time limit for bringing an employment tribunal claim.

97. The allegation that the respondent had any such motive for not dealing with the claimant's grievance appeal more promptly is pure speculation on Mr Nowak's behalf and, although it may be what he believes, that belief has no basis in the evidence.

Lay-off

98. The next complaint is 2.2.7 in the list of issues and is the allegation that the reason the claimants in the second claim were laid off in January 2022 was that they were Polish nationals.

99. Factually, what happened at the Coventry plant where the claimants worked was that everyone on a new contract was laid off. The reason they were laid off was to save money, because there was a downturn in work. The people who were laid off included a number of non-Poles and the majority of people laid off had not brought a grievance. At the same time, at the sister plant to the Coventry plant in Kidderminster, everyone without exception was laid off. The idea that this was done to get at Polish employees in particular, or – looking ahead to the victimisation complaint – to get at those who had brought a grievance is fanciful, to say the least.

100. As with the claim about pay and benefits, we have ready-made comparators – people in the same position as the claimants, working in Coventry, on new contracts, and not Polish – and we know that they received the same treatment

the claimants did; we know this not least because they were parties to the grievance appeal of 22 February 2022 complaining about (amongst other things) the lay-off.

Delay in investigating the grievance

101. 2.2.8 concerns "*Delay in investigating the grievance raised by the claimants in the second claim*". In summary: there was no untoward delay; such delay as there was is almost all accounted for; there is no good reason to think that any delay was due to race or anything else that would make it unlawful.

102. The collective grievance was raised on 3 December 2021. The relevant people at the respondent – Mrs Martin in particular – wanted to meet with Mr Nowak about it before Christmas, on 13 December 2021, but he was away, so the meeting was arranged for the earliest mutually convenient date, which was 6 January 2022. It was reasonable and understandable (and not detrimental) for the respondent not to start its investigations into the collective grievance until after the meeting with Mr Nowak.

103. In substantially unchallenged evidence, which we accept, the people dealing with the collective grievance – Mrs Martin, Mr Cruse and a Mr Buttree – looked into the grievance and met at least twice during January, on the 13th and the 27th, and they had reached a conclusion about the grievance by the end of January / start of February 2021.

104. There was, then, no delay at all in investigating the grievance after 6 January 2022: the investigations began virtually straight away and they were completed within around 3 weeks.

105. Mrs Martin had been intending to meet with Mr Nowak to give him feedback on the investigations on 7 February 2022. Unfortunately, she was ill and so the meeting didn't take place until 10 February 2022 , and in the end didn't take place with her. The outcome of that meeting was confirmed by a letter of 17 February 2022.

106. Mr Cruse was cross-examined, and submissions were made on the back of that cross-examination, to the effect that he didn't see this collective grievance as a grievance of discrimination at all and that he is to be criticised for this. Looking at the grievance ourselves, we are bound to say that we can well see why he didn't see it as a grievance about discrimination; substantially, it was not one. Instead, it was about one group of employees on one type of contract getting worse pay and benefits than another group of employees on a different contract. As the collective grievance was about new contracts versus old contracts, and as the 23 signatories to the grievance included at least five non-Polish employees, Mr Cruse would have had no reason to think it was anything to do with race. He knew – just as we have found (see above) – that whether a member of staff was on a new or an old contract depended purely on when they started working for the respondent's predecessors, and had nothing whatsoever to do with whether they were Polish / non-British nationals or British nationals.

107. On the face of it, this complaint is not about any delay in dealing with the grievance appeal. We shall nevertheless examine it as if it were about that. The grievance

appeal was made on 22 February 2022. The reason there was a delay from then until a grievance appeal meeting on 24 March 2022 was that Hazel Martin – the only individual engaged in HR by the respondent at that time – was away on a pre-booked holiday until 20 March 2022.

108. The only delay connected with the grievance that is not explained is the delay from 24 March 2022 to the grievance appeal outcome on 19 April 2022. Although that was a longer delay than would be ideal, it is not unusually long for a case of this kind. We have no reason from the evidence to think it was a deliberate delay, nor that it was a result of anything other than Mr Billson, who nominally gave the grievance outcome, and Mrs Martin, being very busy people.

109. Even if, then, this complaint were about delays in the grievance process generally, and not merely about a (non-existent) delay in investigating the grievance, we would find that there was no less favourable treatment and that nothing that happened had anything to do with the protected characteristic of race.

Race discrimination – conclusion

110. In summary and conclusion in relation to all of the complaints of direct race discrimination: there was no less favourable treatment; none of the treatment was because of the protected characteristic of race.

Victimisation

111. The victimisation complaints largely mirror the direct race discrimination complaints. There are, however, some differences.

112. The first victimisation complaint (3.2.1) is – like race discrimination complaint 2.2.6.2 – about moving Mr Nowak to "*another workstation which had less benefits*" in November 2019.

113. As we have already noted, Mr Nowak was undoubtedly moved in response to his complaint or grievance of 13 November 2019 and his complaint was undoubtedly in part a complaint about discrimination. However, this was, as Mr Nowak himself accepted during cross-examination, a situation where, in practice, one or other of him and Mr Mather had to be moved. We think the majority of employers, however seriously they took allegations of discrimination of the kind Mr Nowak was making, would have chosen to move Mr Nowak rather than Mr Mather, given the extent of Mr Mather's responsibilities and the disruption that would have resulted from moving him. It seems to us that Mr Nowak was moved not because he had complained of discrimination in particular, but because he had made allegations that needed to be looked into and that – by his own admission – made it impracticable for him and Mr Mather to work in the same area while they were being investigated. Were we looking at in isolation the allegation that this was detrimental treatment because the claimant did a protected act – which is on the face of it what this complaint set out in the list of issues asks us to do – it would be a non-starter because that was not the reason for the treatment.

114. We also note that, as Mr Nowak also agrees, after the initial grievance process concluded, Mr Nowak was told that he could move back to his old workstation or line and he refused to, because that would mean working under Mr Mather. It

follows that even if we had upheld this complaint, there would be no or very little compensation in addition to damages for injury to feelings.

115. We have already found there is no evidence that this grievance would have been better investigated had it been brought by a Polish person. Equally, there is no evidence that it would have been better investigated had it been about something other than discrimination.

116. The aspect of this that gave us most pause for thought, and which at one point in our deliberations almost led us to concluding that the burden of proof had been 'reversed' by operation of EQA section 136, was Mr Nowak being told that it was a permanent move and being told this before, officially at least, the respondent's investigations into the grievance had been concluded. This suggests there was pre-judgment of the outcome of the grievance, in that it suggests there was a premature decision that Mr Mather was not guilty of what Mr Nowak had accused him of and would be staying in place.

117. However, consistent with what we have already set out about what happened here, there is nothing in the evidence to say or suggest there would not have been exactly the same kind of pre-judgment and premature decision-making had the grievance been about something other than discrimination.

118. We are in effect invited to decide that had the November 2019 grievance been about something other than discrimination it would have been handled better by Mr Waite. We have no other comparable grievance process to compare this grievance process to. A relevant comparable grievance process would have to be one involving Mr Waite, because he is the individual who is alleged to have acted to Mr Nowak's detriment because Mr Nowak did a protected act by complaining about discrimination. No useful comparison can be made with the process followed in 2021 to 2022 in relation to the collective grievance because Mr Waite was not involved in that; we could not logically infer victimisation by Mr Waite from the fact that (arguably; potentially) he handled the 2019 grievance worse than others handled a different grievance 2 years' later.

119. We ask ourselves whether there is any evidence from which we could conclude, in accordance with EQA section 136, that Mr Waite acted as he did, consciously or unconsciously, because this was a grievance about discrimination rather than about something else. Upon analysis, there isn't. Mr Nowak has therefore failed to discharge the burden of proof on him in proving a prima facie case of victimisation.

120. The next set of victimisation complaints, under paragraph 3.2.2 in the list of issues ("*Fail to investigate Mr Nowak's grievance and appeal and demonstrate bad attitude towards Mr Nowak in this process as follows*"), are identical to direct race discrimination complaints 2.2.6.1 and 2.2.6.3 to 2.2.6.5. They have no more merit than the equivalent direct race discrimination complaints do, for similar reasons. Generally in relation to the 2019 to 2020 grievance process, the limited evidence we have suggests that the respondent was at that time not at all good at dealing with grievances. There is no evidence that they were bad at dealing with grievances of discrimination in particular.

121. Allegations/complaints 3.2.3 and 3.2.4 – lay-off and delay in investigating the 2021 collective grievance – are identical to direct discrimination complaints 2.2.7 and 2.2.8 and, again, fail for the same reasons.

122. The final complaint is 3.2.5: that the respondent failed to *"Inform the claimants in the second claim by letter dated 19 April 2022 that the Company could not change the contracts and if they wanted to have a break of twenty minutes on Fridays they would need to work twenty minutes longer than everyone else.*"

123. This complaint fails for a number of reasons.

123.1 First, the allegation being made is entirely circular, being to the effect that because the claimants brought a grievance, that grievance was not upheld.

123.2 Secondly, there was no difference in treatment between the claimants (and the others who brought the collective grievance) and those who did not. It was simply not the case as a matter of fact, as the claimants had been trying to give the impression it was, that while others could have the breaks the claimants wanted unconditionally, the claimants had to work 20 minutes longer than everyone else to get them.

123.3 There is a single sentence in the letter from Mr Billson of 19 April 2022 that the claimants are in practice complaining about here: *"Should any of the employees who are part of this collective grievance wish to have an unpaid 20-minute unpaid rest break, this would mean that you would finish work 20 minutes later."* In writing this to them, the respondent was not punishing them or treating them any differently from those who had not brought the collective grievance and appealed the collective grievance decision. What they were being told was that from the date of the letter, if they – or anyone else in the workforce – wanted a 20 minute break on a Friday, that would not be a problem, but they would have to work longer. If they didn't want to do this, they could continue to enjoy exactly the same breaks as the rest of the workforce. It follows that if this statement was detrimental to the claimants, it was equally detrimental to everyone else. There was, then, no causal link between the bringing of the collective grievance and appealing the collective grievance outcome and any detriment.

123.4 Moreover, if we compare the claimants' position to the position they would have been in had they not bought this collective grievance and appealed the grievance outcome, they were in fact in a better position (albeit still in the same situation as the rest of the workforce), in that they were being given the option of having a 20 minute break, which would probably not have been offered if they hadn't appealed. They were therefore not being subjected to a detriment at all, but being given an option potentially of benefit to them that would not have been offered had they not brought the grievance. The fact that they were being offered less than they wanted did not make this a detriment.

124. In summary and conclusion, all the complaints of victimisation fail because, to the limited extent that the claimants were subjected to relevant detriments, the reason for this was not that they did protected acts.

Employment Judge Camp

Signed on 26/02/2024

LIST OF ISSUES

1. Time limits

1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Direct race discrimination (Equality Act 2010 section 13)

2.1 The claimants rely on their Polish nationality

2.2 Did the respondent do the following things:

2.2.1 In February 2019, Mr Nowak's team leader, Craig Mather, blamed him for parts being in the wrong place on the production line whether it was the claimant who made the mistake or not and threaten to dismiss him as a result. Comparator: Anthony Mosey or a hypothetical comparator.

2.2.2 Between February 2019 and November 2019, if Mr Nowak was 5 or 10 minutes late in producing some numbers, Craig Mather told him that "if anyone sees this, you'll get sacked". Comparator: Anthony Mosey or a hypothetical comparator.

2.2.3 Between June 2019 and August 2019, if there were any issues with one of the machines, including where machines broke down due to the pressure tests, Craig Mather told Mr Nowak that "he does not need a reason to fire him, he can do that with a click of a finger". Comparator: Anthony Mosey or a hypothetical comparator.

2.2.4 Pay the Claimants less than other colleagues who were not Polish. The claimants estimate their pay was about 30% less than others. Comparator for claimants 1, 3, 4 & 5: Gary Tranter, John Byrne or a hypothetical comparator.

Comparator for claimant 2: A non-Polish CMM or a hypothetical comparator.

2.2.5 Award the claimants less attendance bonus and shift allowance than other colleagues who were not Polish. Comparator for claimants 1, 3, 4 & 5: Gary Tranter, John Byrne or a hypothetical comparator.

Comparator for claimant 2: A non-Polish CMM or a hypothetical comparator.

2.2.6 Fail to investigate Mr Nowak's grievance and appeal and demonstrate bad attitude towards Mr Nowak in this process as follows:

2.2.6.1 On 18 November 2019, Mr Nowak's Production Manager and HR Manager pressurising him into dropping the allegations made in his grievance raised on 13 November 2019. Comparator: Anthony Mosey, Alin Stancu (Romanian) or a hypothetical comparator.

2.2.6.2 On or around 25 November 2019, moving Mr Nowak to another workstation which had less benefits as set out in paragraph 9 of Mr Nowak's particulars of claim. Comparator: Anthony Mosey, Alin Stancu (Romanian) or a hypothetical comparator.

2.2.6.3 On 18 December 2019, calling Mr Nowak to a meeting to inform him that because there were no witnesses, there was no case and therefore, his grievance was being closed. Comparator: Anthony Mosey or a hypothetical comparator.

2.2.6.4 Failing to update Mr Nowak on the progress of his grievance appeal and on 22 January 2020 being called to a meeting by Steve Hemmings, the Managing Director, to inform Mr Nowak to wait before taking any action in order for him to carry out his own investigation. Comparator: Anthony Mosey or a hypothetical comparator.

2.2.6.5 Failing to progress the investigation to waste time and allow the deadline to bring a claim to pass. Comparator: Anthony Mosey or a hypothetical comparator.

2.2.7 Lay off the claimants in the second claim in January 2022. Comparators: Gary Tranter, John Byrne or a hypothetical comparator.

2.2.8 Delay in investigating the grievance raised by the claimants in the second claim. Comparator: hypothetical comparator.

2.3 Was this less favourable treatment?

2.4 If so, was it because of race?

3 Victimisation (Equality Act 2010 section 27)

3.1 Did the claimants do a protected act as follows:

3.1.1 Mr Nowak's grievance raised on 13 November 2019.

3.1.2 Mr Nowak's grievance appeal on 8 January 2020.

3.1.3 The claimants in the second claim grievance raised on 3 December 2021.

3.1.4 The claimants in the second claim grievance appeal on 22 February 2022.

3.2 Did the respondent do the following things:

3.2.1 On or around 25 November 2019, move Mr Nowak to another workstation which had less benefits as set out in paragraph 9 of Mr Nowak's particulars of claim.

3.2.2 Fail to investigate Mr Nowak's grievance and appeal and demonstrate bad

attitude towards Mr Nowak in this process as follows:

3.2.2.1 On 18 November 2019, Mr Nowak's Production Manager and HR Manager pressurising him into dropping the allegations made in his grievance raised on 13 November 2019.

3.2.2.2 On 18 December 2019, calling Mr Nowak to a meeting to inform him that because there were no witnesses, there was no case and therefore, his grievance was being closed.

3.2.2.3 Failing to update Mr Nowak on the progress of his grievance appeal and on 22 January 2020 being called to a meeting by Steve Hemmings, the Managing Director, to inform Mr Nowak to wait before taking any action in order for him to carry out his own investigation.

3.2.2.4 Failing to progress the investigation to waste time and allow the deadline to bring a claim to pass.

3.2.3 Lay off the claimants in the second claim in January 2022.

3.2.4 Delay in investigating the grievance raised by the claimants in the second claim.

3.2.5 Inform the claimants in the second claim by letter dated 19 April 2022 that the Company could not change the contracts and if they wanted to have a break of twenty minutes on Fridays they would need to work twenty minutes longer than everyone else.

3.3 By doing so, did it subject the claimant to a detriment?

3.4 If so, was it because the claimant did a protected act?

3.5 Was it because the respondent believed the claimant had done, or might do, a protected act?

4. Remedy for discrimination or victimisation

4.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2 What financial losses has the discrimination caused the claimant?

4.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4 If not, for what period of loss should the claimant be compensated?

4.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

4.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

4.8 Did the Acas Code of Practice on Disciplinary and Grievance Procedures apply?

4.9 Did the respondent or the claimant unreasonably fail to comply with it?

4.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?

4.11 By what proportion, up to 25%?

4.12 Should interest be awarded? How much?

CHRONOLOGY

Abbreviations

R Evtec Aluminium Ltd
C1 Marcin Nowak
C2 Katarzyna Urbanska
C3 Lukasz Koparek
C4 Katarzyna Chuchala
C5 Iwona Krasowska

DATE	EVENT	DOCUMENT REFERENCE IN BUNDLE
13.07.1998	Anthony Mosey commences employment (with King Automotive)	Pg 311
29.05.2001	Gary Tranter commences employment (with King Automotive)	Pg 218-221
March 2004	King Automotive transfers to Amtek (TUPE)	
9.11.2015	C2 commences employment	Pg 191-198
7.12.2015	C4 commences employment	Pg 199-206
27.01.2016	C1 commences employment	Pg 179-188
15.09.2016	C1 Grade review. Pay grade changed from F to E	Pg 445-448
July 2017	Amtek transfers to Liberty Aluminium Technologies Ltd. (TUPE)	
04.12.2017	C3 commences employment	Pg 312
3.12.2018	Patryck Samelczak (witness for the claimants) commences employment	Pg 227
12.02.2019	1st Grievance raised by C1 in relation to not receiving a pay rise	Pg 246
February 2019	C1 alleges that Craig Mather, team leader, blamed C1 for parts being in the wrong place on the production line	
Between February 2019 & November 2019	C1 alleges that if he was 5 or 10 minutes late in producing numbers, Craig Mather would tell him: “if anyone sees this, you’ll get sacked”	
19.02.2019	C1’s Performance review by Craig Mather	Pg 449-451
25.02.2019	C1 Pay grade changed from E to C	Pg 190
29.04.2019	C5 commences employment	Pg 207-217
Between June 2019 & August 2019	C1 alleges that if there were any issues with one of the machines, including where machines had broken down due to pressure tests, Craig Mather told him that he does not need a reason to fire him, he can do that with a click of a finger.	
30.08.2019	Patryck Samelczak’s (witness for the claimants) effective date of termination of employment	Pg 227
13.11.2019	2nd Grievance raised by C1 about his treatment by Craig Mather	Pg 248-249
18.11.2019	Meeting between C1 and Richard Waite, Production Manager.	Pg 250
25.11.2019	C1 is moved to work at another line	
29.11.2019	Meeting C1 with Richard Waite	Pg 251
18.12.2019	Meeting C1 with Richard Waite	Pg 252-253
03.01.2020	C1 grievance outcome letter	Pg 254
08.01.2020	C1 appeals	Pg 255
21.01.2020	ACAS receive EC notification from C1	Pg 1

22.01.2020	Appeal meeting between Steve Hemming, new MD, and C1. C1 alleges that Steve Hemming asked him for time to conduct his own investigation before bringing any further action	Pg 257
28.01.2020	ACAS issue EC Certificate to C1	Pg 1
20.02.2020	C1 files Tribunal claim no.1304380/2020	Pg 2-7
02.06.2021	Liberty files ET3 for claim no.1304380/2020	Pg 23-37
18.11.2021	Liberty Aluminium Technologies Ltd. transfer to Evtec Aluminium Ltd. (TUPE)	
03.12.2021	Grievance raised by all the claimants together with other employees (the “Collective Grievance”)	Pg 263-264
06.01.2022	Grievance meeting. Hazel Martin, HR Director, meets with C1 regarding the Collective Grievance	
17.01.2022 to 21.01.2022	Claimants are laid off	
10.02.2022	Collective Grievance outcome meeting chaired by Paul Cruse (General Manager)	Pg 283-284
17.02.2022	Collective Grievance outcome letter	Pg 285
22.02.2022	C1 appeals outcome of Collective Grievance on behalf of colleagues	Pg 286-288
31.03.2022	C3 resigns	
24.03.2022	Collective Grievance appeal meeting chaired by Neville Billson (Commercial Director)	
08.04.2022	C1 resigns	Pg 299
18.04.2022	ACAS receive EC notification from C2,C3,C4,C5	Pg 48-51
19.04.2022	Collective Grievance appeal outcome letter	Pg 302-303
20.04.2022	ACAS issue EC Certificate to C2,C3,C4,C5	Pg 48-51
14.04.2022	R sends a communication to all employees informing them that those employees who had been laid off and received lay-off pay would be paid their basic pay	Pg 436
May 2022	R sends communication to all employees where they inform them that they have started to align the benefits of “old” and “new” contracts	Pg 437-438
17.05.2022	C2,C3,C4,C5 file Tribunal claim no.1302502/2022	Pg 52-66
15.06.2022	R files ET3 for claim no.1302502/2022	Pg 72-84
25.11.2022	Preliminary Hearing before Judge Meichen	Pg 90-100
12.01.2023	Claimants submit Further & Better Particulars	Pg 8-10 & p119
26.01.2023	R submits Amended Grounds of Resistance in both claims	Pg 38-43 & 85-89
23.02.2023	Claimant, Tomasz Pyda, withdraws from the case	Pg 120
21.03.2023	C2 is summarily dismissed	
11.07.2023	ADR Hearing	
31.08.2023	Preliminary Hearing before Judge Perry	Pg 130-134

CAST LIST

NAME	DESCRIPTION
MARCIN NOWAK	C1 AND SPOKESPERSON FOR OTHER CLAIMANTS NO LONGER EMPLOYED BY R LEFT APRIL 2022. EMPLOYED AS A GENERAL OPERATIVE SINCE 2016.
KATARZYNA URBANSKA (NEE JOZWIAK)	C2 WAS EMPLOYED IN THE QUALITY TEAM AS QUALITY TECHNICIAN NO LONGER IN R'S EMPLOYMENT LEFT MARCH 2023, JOINED NOVEMBER 2015
LUKASZ KOPEREK	C3 EMPLOYED BY R AS A GENERAL OPERATOR FROM MARCH 2017 NO LONGER IN R'S EMPLOYMENT LEFT FEBRUARY 2022
KATARZYNA CHUCHALA	C4 EMPLOYED BY R AS A GENERAL OPERATOR FROM AUGUST 2015 STILL IN R'S EMPLOYMENT
IWONA KRASOWSKA	C5 EMPLOYED BY R AS A GENERAL OPERATOR SINCE April 2019 STILL IN R'S EMPLOYMENT
GARY TRANTER	NAMED COMPARATOR. CONTINUOUS SERVICE SINCE 2001. EMPLOYED AS SETTER/ OPERATOR
JOHN BYRNE	NAMED COMPARATOR. NEVER EMPLOYED BY R, LEFT BEFORE TRANSFER TO R.
ANTHONEY MOSEY	NAMED COMPARATOR. CONTINUOUS SERVICE SINCE 1998. EMPLOYED AS SETTER/OPERATOR
TOMASZ PYDA	WITNESS FOR C, WAS ALSO C6 BUT WITHDREW CLAIM IN FEBRURARY 2023 EMPLOYED BY R AS GENERAL OPERATOR SINCE 2014 AND STILL EMPLOYED BY R
PATRYK SAMELCZAK	WITNESS FOR C NEVER EMPLOYED BY R, LEFT BEFORE TRANSFER TO R. EMPLOYED AS GENERAL OPERATOR FROM DECEMBER 2018 TO AUGUST 2019.
CRAIG MATHER	TEAM LEADER EMPLOYED SINCE 2001. C1's LINE MANAGER.
PAUL CRUSE	GENERAL MANAGER EMPLOYED SINCE 2014
HAZEL MARTIN	HR DIRECTOR FOR R SINCE DECEMBER 2021

AMAYA CORCUERA	GENERAL COUNSEL FOR R SINCE SEPTEMBER 2023