

Mr A Mackowski -v- Network Rail Infrastructure Limited

APPENDIX 1 to the Tribunal's Written Reasons

1. This appendix sets out the Tribunal's findings in relation to each of the allegations. The format used by the parties in their agreed Scott Schedule is followed and the content of that schedule is reproduced.
2. In the third column the alleged act/omission is reproduced from the schedule and is highlighted in **yellow**. The Tribunal's findings are set out below without any highlight.
3. The initials NR refer to the respondent, Network Rail Limited.

Allegation N	Date	Act/Omission (short statement of what the Respondent is said to have done/not done) The Tribunal's findings.	By whom	Where	What form of discrimination (e.g. direct discrimination, harassment,
1.	26/05/2021	<p>The Claimant had to sit within an office environment where there were occasions and discussions taking place about a dislike of foreigners. A comment was made about Polish being referred to as being "Gypsies".</p> <p>The Claimant is a British National of Polish descent.</p> <p>Factual Allegation: Did Peter Frampton refer to Polish people being "gypsies"?</p> <p>The claimant said in his statement that racist or xenophobic comments "have always been frequent" and that he challenged Peter Frampton about this on one occasion. He also says in his statement that a comment was made about Polish people being "gypsies" and he found this offensive, discriminatory and harassing. He says he raised this with Peter Frampton, but nothing was done about it.</p> <p>The claimant is a person of Polish heritage which he says would be reasonably obvious to most people from his surname.</p> <p>Mrs Ursula Mackowski refers to this in her statement but of course she was not there to witness the matter in question and has been told by her son that it occurred. Mrs Mackowski gives general evidence as to her son's anxiety and depression while working at NR and she feels that NR failed to treat her son fairly.</p> <p>In his statement, Peter Frampton accepted that there had been an incident involving the use of the word "gypsies", but this was in 2017. In February 2017, the claimant had complained to him about another member of staff saying, "there were Polish gypsies in the car park" and this led to an investigation. There was an apology from that member of staff who was</p>	Peter Frampton	The Respondent's office, Reading	Direct discrimination Harassment

		<p>offered training and told that any further issues may result in a formal process.</p> <p>Peter Frampton was not the claimant's line manager by May 2021 and has, he said, had limited interaction with him since 2020. He says that the claimant did not complain to him of a racist incident in 2021.</p> <p>The bundle includes a number of documents referring to the 2017 incident.</p> <p>On 21/7/21 the claimant raised a grievance by letter. He refers to "discriminatory behaviour" but there is no reference to this alleged incident. The letter is primarily, before and after the use of that phrase, about pay, hours and recognition.</p> <p>A grievance meeting took place on 19/8/21 and notes of that meeting are exhibited in the bundle. The claimant raises a number of matters but not this alleged incident.</p> <p>The Tribunal is faced with the claimant's account that this incident happened and Mr Frampton's account that it did not. The documents indicate no reference to such an incident in 2021.</p> <p>In cross-examination the claimant referred to it being recorded in his diary, but no diary has been disclosed.</p> <p>We find on the balance of probabilities that this alleged incident did not take place because we are left with the evidence of one witness against another and in our view the non-mentioning of this incident in any of the grievance letter or interview in the summer of 2021 suggests it did not happen. We would expect the claimant to mention it had it happened.</p> <p>It may be that the claimant is now confused with the incident that took place in 2017.</p> <p>The claimant has not put his case as relying on the incident in 2017 and if he had done he would face a problem in regard to the old age of that incident and it clearly being many years out of time.</p>			
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2.	Around 26/05/21	<p>The Claimant made a verbal complaint about the behaviour detailed in box 1. directly to Peter Frampton, but nothing was done about the racist behaviour within the Network Rail Reading office.</p> <p>Mr Frampton was sitting near where an open conversation of a dislike of foreigners was taking place where Caroline Williams was referring to Polish as being gypsies. The Claimant challenged this racist comment stood up from his desk and told Ms Williams that Polish are not gypsies. Ms Williams stated to the Claimant "Yes they are". The Claimant then told Mr Frampton that you need to sort that out. Mr Frampton did not do anything at all about this. These conversations of a dislike of foreigners took place on many occasions particularly of foreigners stealing jobs and a dislike of foreigners and Brexit.</p> <p>The Claimant made a further complaint about racist behaviour directly to Mr Frampton again in a 1-2-1 meeting where the Claimant's former line manager, Helen Benson, was present. The Claimant stated to Mr Frampton that the racist behaviour in the office has to stop. Mr Frampton smirked and stated to the Claimant "What racist behaviour".</p> <p>Factual Allegation: Did Mr Frampton fail to deal with the Claimant's complaints?</p> <p>This allegation is obviously closely connected with allegation 1.</p> <p>Peter Frampton gave evidence in his statement that Helen Benson moved to Australia in 2018 so any involvement of her (and she was not called as a witness by either party) must have been long before the alleged incident in May 2021.</p> <p>As with allegation 1 above, we can see no evidence, particularly no documentary evidence from 2021 of this taking place and being raised with Peter Frampton by the claimant.</p> <p>We are bound to find it is not proved, on the balance of probabilities, that this allegation is true.</p>	Peter Frampton	The Respondent's office, Reading	Direct discrimination Harassment
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3.	21/07/2021	<p>The Claimant made a formal grievance in relation to Mr Frampton's harassment, discrimination, and Unequal Pay and whereby the claimant's dignity was violated where Mr Frampton disclosed confidential personal details of the Claimant's family bereavement breaching the Respondent's policy. The Respondent took a period of over 6 months to give the Claimant an outcome nothing had been adequately addressed. The Claimant was provided this outcome on 13th January 2022 a period of over 6 months later. This is unacceptable and breaches the ACAS Code.</p> <p>The Claimant submitted a formal grievance on 21/7/21. As mentioned above most of this letter referred to pay issues. His equal pay claim has been struck out by the Tribunal at an earlier hearing.</p> <p>He referred to "discriminatory behaviour" but did not explain in detail what this was. He also referred to Peter Frampton having shared with other people, details of the claimant's bereavement (his father had died). This information sharing was around April 2020.</p> <p>The evidence is clear that it did take about 6 months to fully respond to this grievance. The respondent contends that this was reasonable in all the circumstances.</p> <p>The grievance was investigated by Rob Breckon. He met with the claimant on 19/8/21 and interviewed four members of staff between September and November 2021. He completed his report on 21/12/21 – exactly five months after the complaint was made by the claimant.</p> <p>He met with the claimant relatively quickly (about four weeks after it was made, and in the summer period) and then interviewed three witnesses in September. There was a two month delay before the final witness, Mr Frampton, was interviewed and we heard no evidence as to why there was that delay. Neither Mr Brecon nor Mr Frampton were asked about this when they gave evidence and we cannot speculate one evidence we did not hear.</p> <p>The claimant was on leave for three weeks at the turn of the year and the outcome was given to him at a meeting on 13/1/22.</p>	<p>Danielle Pound</p> <p>Peter Frampton</p> <p>Network Rail HR</p> <p>Robert Breckton</p>	<p>Network Rail office, Reading</p>	<p>Harassment, direct discrimination, victimization. Breach of the ACAS Code.</p>
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		<p>ACAS guidance states decisions should be conveyed “without unreasonable delay”. What is reasonable is context specific.</p> <p>Rob Breckon gave evidence. He said the investigation had taken place at the busiest time he could recall in his career. He also pointed out that the investigation concerned complaints that were not simple. There were three areas of complaint. The pay aspect of the complaint required him to make several enquiries about the company’s approach to pay.</p> <p>In all the circumstances, we consider that the time taken to investigate the complaint was just within reasonable bounds, given the complexity of the issues in the complaint, the number of people spoken to, and allowing for the claimant’s own leave period at the end of 2021.</p> <p>We therefore do not uphold this allegation.</p>			
4.	13/01/20 22	<p>The Claimant was invited to a hearing where the Grievance the Claimant made 6 months earlier was discussed. The outcome was that nothing was done about the harassment, discrimination, and Unequal Pay. The fact that Mr Frampton breached the Respondent’s policy by disclosing confidential information of the Claimant was only dealt with by telling Mr Frampton to send the Claimant a one line apology email and to familiarise Mr Frampton with the Respondent’s bereavement handling policy.</p> <p>Factual Allegations: (i) did the Respondent take six months to address the Claimant’s grievance; and (ii) did the grievance outcome fail to address the Claimant’s grievance adequately?</p> <p>We have dealt with the time issue further above.</p> <p>We now consider the adequacy of the response.</p> <p>The claimant’s grievance in relation to sharing of details of his bereavement was upheld. The respondent accepted that the claimant’s line manager should not have shared this with others without the claimant’s permission.</p>	Robert Breckton Network Rail HR	Hearings held via Microsoft Teams	Harassment, direct discrimination, victimization. Breach of the ACAS Code.

		<p>The respondent's response was to require the manager in question to give an apology and to make themselves aware of company policy on supporting bereaved colleagues.</p> <p>The complaint about pay disparity was not upheld. The reasoning for this is explained in the report letter from Rob Breckon. He explained that pay is affected by role, years of service and other factors.</p> <p>Mr Breckon also dismissed the complaint of "discriminatory behaviour" briefly saying that the claimant had not identified any evidence of discriminatory behaviour.</p> <p>At a meeting on 13/1/22 the Claimant raised his Polish heritage as a basis on which he said he had been discriminated against. He had not raised this when he met with the investigator Mr Breckon earlier.</p> <p>In our view, Mr Breckon's decision on the grievance and the steps taken (including requiring an apology and training) were reasonable based on what was presented to him. Even if that was not the case, we do not see any evidence that Mr Breckon's decisions were motivated by or related to the claimant's race.</p>			
5. A	21/01/22	<p>The Claimant was suffering from severe anxiety and depression and was invited to a disciplinary hearing in relation to performance. The Claimant made the hearing manager aware of all the issues yet these were subsequently ignored and the Claimant was issued with a written warning in relation to performance whilst suffering from severe anxiety and depression.</p> <p>The Respondent accepts that the Claimant was invited to a disciplinary/performance meeting and was issued with a first written warning on 3 February 2022.</p> <p>The claimant said in his witness statement that he was suffering from stress and anxiety.</p> <p>The respondent agrees that it invited him to a meeting about his performance in January 2022 and issued him with a first written warning on 3/2/22.</p>	Danielle Pound Dominic Gorton	The Respondent's office, Reading	None – constructive unfair dismissal claim only

	<p>The claimant's manager at this time was Danielle Pound.</p> <p>It is common ground between the parties that the claimant's role was to produce plans for safe, deliverable, non-disruptive disconnections of power from parts of the railway to enable engineering work to be completed.</p> <p>Danielle Pound's evidence was that the claimant was producing low quality work that was unsafe, undeliverable or excessively disruptive. The claimant vigorously contests that.</p> <p>Danielle Pound says that checks were made on the claimant's work which revealed problems. She also says that his attitude was poor, and he would not accept, when given feedback, that he had made a mistake.</p> <p>There had been performance improvement plans in 2018 and 2019.</p> <p>On 21/9/21 Danielle Pound initiated a performance investigation. This led to a report.</p> <p>It is important to note, in the context of the claimant's case involving considerable attack on Danielle Pound for treating him (he alleged) unfairly, that she gave evidence that he was confrontational towards her and she was traumatised by how he spoke to her on a number of occasions.</p> <p>On 3 February 2022, a formal performance improvement plan was put in place.</p> <p>Another manager, Dominic Gorton, was asked to undertake a performance review. This led to a meeting of Mr Gorton with the claimant. The claimant made clear to Mr Gorton that he disputed that his performance was problematic and said that his workload was excessive. He asked for James Sealy and Mathew Breakspear to be witnesses.</p> <p>Mr Gorton spoke to Mr Breakspear, to Danielle Pound and another member of the team of which the claimant was a part.</p> <p>Mr Gorton's evidence is that at no time did the claimant tell him he was unwell with anxiety and depression when they met on 3/2/22 but they did discuss a number of matters and Mr Gorton asked the claimant to tell him about any problems he was having.</p>			
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5. b	24/03/2022	<p>Mrs Pound failed to conduct a risk assessment.</p> <p>Danielle Pound did undertake an assessment of the claimant using the "Wellbeing discussion tool". This was on 24/3/22 and was produced in the bundle. Her evidence was that this incorporated consideration of stress.</p> <p>The document states that "stress related illness and anxiety" is why it was being prepared.</p> <p>The document identifies several actions, such as for the claimant to inform Ms Pound if worksites were acting unreasonably towards the claimant, for him to</p>	Danielle Pound	Pret a Manger, Reading Station	None – constructive unfair dismissal claim only

		<p>prioritise and not multi-task and to speak to the NHS. It identified sources of support for the claimant.</p> <p>The claimant gave evidence that he does not consider this to be a stress risk assessment but could not clearly explain to the Tribunal what should have been done that was not done in the tool that was used.</p> <p>We conclude that the claimant has not proved to us on the balance of probabilities that an adequate assessment of his stress risk was not carried out.</p>			
6.	21/04/20 22	<p>The Claimant was invited to an appeal hearing regarding bullying harassment and unequal pay whereby the appeal hearing was heard by Daniel Collins. The way in which the hearing was dealt was that the Claimant was asked to stand outside the meeting room whilst Mr Collins telephoned HR to advise on what to do. The outcome was that nothing was done about the Claimant's grievance or appeal in relation to discrimination, bullying, harassment and unequal pay.</p> <p>Factual Allegations: (i) did Mr Collins seek advice from HR during the grievance appeal hearing; and (ii) did Mr Collins fail to address the Claimant's complaints?</p> <p>Mr Collins is a senior manager in the company and was tasked with dealing with Mr Mackowski's appeal against his grievance. The grievance appeal hearing took place on 21 April 2022.</p> <p>During that meeting, Mr Collins accepts that he phoned the HR department before giving his decision. He said this was to talk through his proposed decision and rationale. Mr Collins said this was following an established policy that a manager should do this.</p> <p>The claimant in his statement describes this as "HR advising what to say". In our view, it is reasonable for a manager dealing with an HR issue (such as a grievance appeal) to speak to their organisation's HR department in the course of doing so.</p> <p>The claimant also alleges that Mr Collins failed to properly address matters. There are detailed notes of Mr Collins' meeting with the claimant in the bundle.</p>	Danielle Pound Daniel Collins	The Respondent's office Reading Delivery Unit Room 1	Harassment. Direct discrimination.

		<p>In relation to the pay disparity, Mr Collins notes that the claimant was £3,000 below the average pay for his role but also notes that he had three performance plans and concluded that in all the circumstances his pay position was reasonable.</p> <p>In relation to the bereavement information, Mr Collins upheld the decision of Mr Breckon that an apology and guidance for the manager concerned was an appropriate response and it did not merit a more draconian sanction for the manager as the claimant said was called for.</p> <p>In relation to discriminatory behaviour, Mr Collins considered that the incidents raised by the claimant were old.</p> <p>The Tribunal finds that in all the circumstances the decisions made by Mr Collins were reasonable based on the evidence available and, if that were not the case, there is no evidence that they were motivated by race or related to the claimant's race in any way.</p>			
7.	12.05.2022	<p>The Claimant was issued with a written warning in relation to his performance.</p> <p>Mr Cooper Watson did not deal with the issuing the first written warning in February but heard an appeal against it on 12/5/22. The identification of Mr Cooper Watson and the date indicate that this allegation concerns that handling of the appeal against the first written warning.</p> <p>This appeal was held after the claimant returned to work from a period of sick leave.</p> <p>There was an appeal outcome meeting where Mr Cooper Watson explained his findings on the appeal.</p> <p>Mr Cooper Watson spoke with Mr Gorton and with Ms Pound about the distribution of work in the team.</p> <p>Like Ms Pound, Mr Cooper Watson said he found the claimant quite aggressive in his demeanour towards him.</p> <p>Mr Cooper Watson's evidence was that he went through all the claimant's grounds of appeal and concluded that he "had no doubt" that Mr Gorton had</p>	Danielle Pound Adam Cooper Watson	Microsoft Teams	Harassment. Direct discrimination.

		<p>reached the correct decision but would look further into the matter of stress affecting the claimant's performance.</p> <p>Mr Cooper Watson reconvened the appeal hearing with the claimant on 9 June 2022 and said he was satisfied that the evidence showed several attempts by his line manager to support him and that the PIP and warning would be upheld.</p> <p>Mr Cooper Watson's evidence was that he was unaware of the claimant's Polish heritage until the claimant mentioned it and it played no part in his consideration of the appeal.</p> <p>We find there is no evidence that Mr Cooper Watson's approach to the appeal was unreasonable or was in any way affected by the claimant's race.</p>			
8.	11/05/20 22	<p>Mr Frampton fell out with Josh Aspinall Project Manager Change and made a bullying comment in front of Mr Aspinall and the Claimant. Mr Frampton stated to Mr Aspinall that "If you don't sort your attitude out I will give your job to someone that's looking for a Project Manager role" then Mr Frampton in front of Mr Aspinall looked towards the Claimant.</p> <p>In this allegation, the claimant says he was present when Peter Frampton made the quoted remark to another person (Josh Aspinall). The Tribunal accepts that in principle a bullying remark to one person in front of another could have an effect of creating an unpleasant working environment for that other person as well.</p> <p>The claimant says this happened on 11 May 2022.</p> <p>The claimant accepted in cross examination that this was "not race related". It is therefore hard to see how the incident can be part of the claimant's harassment claim given (per the list of issues) the conduct complained of must relate to race.</p> <p>Neither party called Mr Aspinall as a witness. There is no documentary evidence presented to support the allegation.</p>	Peter Frampton	The Respondent's Reading office	Harassment.

		<p>Mr Frampton denied all knowledge of the incident and said he was on holiday in Cornwall at the time.</p> <p>The claimant has not proved to us on the balance of probabilities that this incident occurred.</p>			
9.	15/06/2022	<p>Factual Allegations: (i) was the Claimant unsuccessful in his application for an Incident Controller role without being called to interview; (ii) was the Claimant given a low score for motivational fit?</p> <p>The claimant gave evidence that he applied for “about 1,600” jobs in the respondent company including the incident controller role.</p> <p>Mr Cooper Watson was the manager recruiting for this role. His evidence is that a blind sift of CVs was used with names removed from the process. This sift was done by HR. Applicants’ answers to questions were then presented anonymously and scored. He said the claimant did not get past this stage. His scores were not high enough.</p> <p>There was no evidence to undermine Mr Cooper Watson’s account and he was not in fact challenged on it in cross examination.</p> <p>The claimant was unsuccessful in his application and given a low score, but we are not persuaded that the respondent adopted an unfair process or that it can be said to have undermined the trust and confidence between claimant and respondent.</p>	Danielle Pound Adam Cooper Watson	The Respondent’s Reading office	None – constructive unfair dismissal claim only
10.	26/08/2022	<p>The Claimant was told by James Sealey that Danielle Pound stated to him not to show the Claimant anything he was unsure of whilst on annual leave. On another occasion Mick Murphy the Network Rail ATIL Training Assessor picked up on the fact that the Claimant wasn’t being provided with isolation diagrams/tools that he needed to perform his job properly and advised the Claimant that he had told Danielle Pound to do so.</p>	Danielle Pound	The Respondent’s Reading office	None – constructive unfair dismissal claim only

	<p>The respondent accepted that James Sealey covered for Danielle Pound when she was on leave in August 2022.</p> <p>A handover email on various matters is produced in the bundle. Ms Pound refers to training and says, "I don't want you doing any training of anyone while I am on leave".</p> <p>Ms Pound did not say why she wanted training to await her return.</p> <p>She emailed the claimant to say that in her absence James Seely would be "colouring up" work for him which we understand from the evidence to mean allocating it in a shared inbox and she set him a number of priorities for work while she was away.</p> <p>The emails are brief and to the point.</p> <p>The claimant says he learned of the instruction to Mr Sealey from Mr Sealey.</p> <p>We take the view that as a more senior member of the team (indeed one who had been asked to review the claimant's work) Mr Sealey's starting point would have been to give the claimant basic advice and assistance.</p> <p>The email instruction appears to be not to deliver training and in our view that is not the same as "not to show the claimant anything he was unsure of".</p> <p>Indeed, there was a note in the email to the claimant that Mr Sealey would help him with one particular matter (the launch of a Sharepoint).</p> <p>In relation to diagrams/tools, Ms Pound goes into some detail in her statement about steps taken to provide the claimant with these (pages 6 and 7 of her statement). She was not challenged about this in cross-examination. Mr Gorton had raised with the claimant whether it would be helpful for him to come into the office to access resources.</p> <p>This matter is not referred to in the Claimant's own statement.</p>			
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		We are not persuaded that the claimant has proved to us on the balance of probabilities that the respondent failed to provide necessary diagrams/tools to him,			
11.	02/09/2022	<p>The Claimant was given a written warning without a stress risk assessment being properly completed or the workplace issues being resolved.</p> <p>The wellbeing discussion tool was used in March 2022 and was completed again on 13/9/22.</p> <p>On 5/8/22 Ms Pound closed the PIP and concluded that the quality of the claimant's work was still below the required standard.</p> <p>On 2/9/22 the claimant was given a final written warning for performance. This was communicated to him in a letter from Rebecca Hicks. Her letter sets out in some detail issues with the claimant's quality of work.</p> <p>She referred to support given to the claimant and the mental health wellbeing toolkit.</p> <p>The claimant, as before in relation to stress risk assessment, takes the view that the toolkit was not a sufficient assessment of his stress but does not appear to us the able to explain how his stress should he been assessed that was not done by this tool.</p> <p>In all the circumstances we do not find the claimant has proved this allegation on the balance of probabilities.</p>	Danielle Pound	The Respondent's Reading office	None – constructive unfair dismissal claim only
12.	08/09/2022	<p>Factual allegation: did Ms Pound threaten the Claimant with disciplinary action for having "an attitude" following the Claimant enquiring when a stress risk assessment would be carried out?</p>	Danielle Pound	Telephone.	Constructive unfair dismissal

		<p>Ms Pound made a threat towards the Claimant. The Claimant asked his Line Manager after a team morning call when will the stress-risk assessment be carried out as Optima Health have advised and which also is a legal requirement. Ms Pound stated that she would be opening disciplinary action against the Claimant for having “an attitude”. A Formal Grievance was made by the Claimant about this to the Head of Planning this Formal Grievance in relation to victimisation and discriminatory behaviour has not been dealt with or investigated by the Respondent to date.</p> <p>The claimant alleges in his statement that in response to asking for this assessment he was threatened with disciplinary action. Ms Pound gives a very different account of their conversation on 8/9/22.</p> <p>She says the claimant shouted at her and said she was not competent to manage him, which according to her evidence he would say on many occasions.</p> <p>She describes him behaving aggressively towards her “day after day” and escalating in his level of aggression. He would not accept that the assessments done were a stress risk assessment. She did then say she would ask for a disciplinary investigation for his abusive behaviour towards her.</p> <p>The Tribunal is confronted with two different and competing accounts.</p> <p>There is no independent evidence to corroborate one side over the other.</p> <p>The claimant brings the case and has the burden of proof of showing that what he alleges happened did happen.</p> <p>The claimant has not proved to us on the balance of probabilities that Ms Pound improperly threatened him as he alleges</p>			Harassment and Victimisation.
13.	15/09/2022	<p>Factual allegation: did Ms Pound email the Claimant recording that he used the ‘do not disturb’ sign on MS Teams and that he should not do so?</p> <p>Ms Pound sent the claimant an email on 15/9/22 (a copy appears in the bundle) to the effect that he was using the “do not disturb” function on MS</p>	Danielle Pound	Email	None – constructive unfair dismissal claim only

		<p>Teams excessively. She said he could use this when focussing on a specific piece of work but needed to be available at other times.</p> <p>There does not appear to be further correspondence about this that might enable us to analyse whether this was a reasonable management instruction or not.</p> <p>In all the circumstances the claimant has not proved to us that he was given an instruction in relation to this that could properly be said to cause a fundamental breakdown of trust between him and the respondent.</p>			
14.	04/10/20 22	<p>Factual allegation: did Ms Pound invite the Claimant to a disciplinary hearing despite the Claimant being signed off from work?</p> <p>The respondent agrees that Andrew Bromley (one its managers) invited the claimant to a meeting as part of a disciplinary investigation on 4/10/22.</p> <p>The claimant attended this (virtual) meeting with Mr Bromley. He did not ask for it to be postponed.</p> <p>In all the circumstances we cannot find it was inappropriate for the respondent to seek to progress matters, especially where the claimant felt able to attend a meeting and did not ask for it to be postponed.</p>	Danielle Pound	The Responden t's Reading office	None – constructive unfair dismissal claim only
15.	04/10/20 22	<p>Factual allegation: did Ms Pound invite the Claimant to an appeal hearing despite the Claimant being signed off from work?</p> <p>The claimant appealed Ms Hicks's decision to impose a written warning on 5/9/22.</p> <p>The claimant was signed off work from 15/9/22 until his resignation without notice on 28/10/22.</p>	Danielle Pound	The Responden t's Reading office	None – constructive unfair dismissal claim only

		<p>He was invited to an appeal hearing that took place on 5/10/22. He did not attend, nor did he ask for it to be re-arranged.</p> <p>The claimant said he was offered his new job (at a different employer) in August and was going through vetting.</p> <p>The respondent says it was entitled to continue with disciplinary matters and there is a difference between being unfit to attend work and unfit to attend a disciplinary appeal meeting. The claimant could have asked for a postponement of the meeting.</p> <p>The respondent says it is also apparent by this time the claimant had decided to leave.</p> <p>It is factually correct that the claimant was invited to a meeting while he was signed off but in all the circumstances we do not consider this can amount to a destruction of the parties' mutual trust and confidence or any other repudiatory breach of contract. In any event, the claimant waited a further 21 days from the invitation to that meeting until his resignation and did not resign immediately.</p>			
16.	13/10/2022	<p>Factual allegation: Was the Claimant given a Final Written Warning arising from allegation 12?</p> <p>The date given in the schedule is the date of the interview with Andrew Bromley. Mr Bromley ended his investigation with a conclusion that the matter should proceed to a formal disciplinary hearing which resulted in a final written warning on 14/12/23 (which is referred to further below). The giving of a final written warning on that date is addressed further below.</p>	Danielle Pound	MS Teams	None – constructive unfair dismissal claim only
17.	28/10/2022	<p>The Claimant resigned with immediate effect due to the long ongoing bullying, harassment, discrimination, and unequal pay as this had become intolerable. A comment was made by the office receptionist towards the Claimant that she knows what they had done to the Claimant.</p> <p>Claimant's resignation/assertion of constructive unfair dismissal. No separate factual allegation.</p>	Danielle Pound	The Respondent's Reading office.	Harassment. Direct discrimination

		There is not specified sperate allegation here. Whether or not a receptionist made such a comment cannot take the case further one way or another.			
18.	07/12/20 22	<p>After the Claimant had resigned, a letter was received by the Claimant from Gregory Martin inviting the Claimant to a disciplinary hearing on the 14/12/2023. On 07/12/2022 the Claimant responded by email stating that the Claimant will not attend and is not obliged. The Claimant's response was ignored.</p> <p>Factual allegation: did Mr Martin invite the Claimant to a disciplinary hearing after the Claimant had resigned? This is accepted.</p> <p>It is agreed between the parties that the respondent invited the claimant to a disciplinary meeting after the claimant had resigned.</p> <p>It appears to the Tribunal it was reasonable for the respondent to seek to complete its disciplinary process.</p> <p>Gregory Martin's evidence was that the nature of Danielle Pound's allegation (of sustained abuse or bullying of her) required that the process should be pursued to a complete outcome.</p> <p>Mr Martin has stated in his witness statement and when cross examined that he was unaware of the ET proceedings when he invited the claimant to a disciplinary hearing. He stated that he considered that the nature and seriousness of the allegations required them to be fully dealt with and the respondent owed it to the complainant (Danielle Pound) to completely deal with her complaint.</p> <p>The completion of the process would also affect the claimant's HR record such that it would be available to consider if the claimant applied for a job with the respondent in future.</p> <p>We accept the evidence of Mr Martin as to his reasons and consider that these are clearly reasonable grounds to wish to proceed. Ms Pound's complaint was serious, and it behoves a large company of the respondent's size to investigate and complete a process in relation to it.</p>	Danielle Pound Gregory Martin	The Respondent's office.	Harassment and Victimization.

		There is no connection to the claimant's race apparent from any of the evidence about this aspect of the case. There is no evidence that he was treated less favourably than any comparator.			
19.	14/12/20 22	<p>A disciplinary hearing was held by the Respondent without any jurisdiction or witnesses to give the Claimant another Final written warning. The Claimant left the Respondent on 28/10/2022.</p> <p>Factual allegation: was the Claimant given a Final Written Warning after he had resigned? This is accepted.</p> <p>The fact of the written warning after the resignation is accepted. The claimant chose not to attend the disciplinary hearing. Mr Martin's evidence is that he was left to make a decision based on what was available to him which he considered indicated a pattern of behaviour amounting to gross misconduct by the claimant.</p> <p>Mr Martin's evidence in his witness statement was that he did not know about the claimant's heritage, and it had no impact on his decision making. We consider that the claimant's name is suggestive of a Polish or eastern European heritage but there is no direct evidence, nor any evidence on which we could draw an inference, that race affected Mr Martin's approach.</p>	Danielle Pound Gregory Martin	The Respondent's office.	Harassment and Victimisation.
20	06/01/20 23	<p>The Respondent sent the Claimant two recorded letters advising of final written warning alleging bullying and harassment and not living Network Rail Core Values of Care.</p> <p>Factual allegation: was the Claimant given a Final Written Warning after he had resigned? This is accepted.</p> <p>The issues in this allegation are really the same as the above matter, i.e. the continuation of the disciplinary process after the claimant had resigned.</p> <p>It was not suggested to Mr Martin during evidence that his decision to carry on and then issue a written warning were motivated by race or to victimise claimant. Our findings in relation to 19 above apply to this matter to0.</p>	Danielle Pound Gregory Martin Network Rail HR.	Post.	Harassment and Victimisation.