# EMPLOYMENT TRIBUNALS

**Claimant:** Mr H Shauri

**Respondent:** Bidvest Noonan (UK) Limited

# RECORD OF A HEARING

**Heard at:** London Central

**On:** 23, 24, 25, 28, 29 and 30 April 2025 and 23 May 2025 and 9 and 30 June 2025 (in chambers)

**Before:** Employment Judge Joffe

**Appearances**
For the claimant: Mr M Gachuba, lay representative
For the respondent: Ms A Arya, counsel

# JUDGMENT

1. The complaints of victimisation are not well-founded and are dismissed.
2. The complaints of direct race discrimination are not well-founded and are dismissed.
3. The complaints of unauthorised deductions from wages are not well-founded and are dismissed.

# REASONS

**Claims and issues**

1. The issues in this case were agreed at and after a case management preliminary hearing in front of Employment Judge R Russell on 15 July 2024 and were as follows:

Claims

1. The Claimant has brought complaints of:

(a) Direct racial discrimination pursuant to section 13 of the Equality Act 2010 ("EqA");

(b) Victimisation pursuant to section 27 EqA;

(c) Unlawful deduction of wages;

(d) Unlawful deduction of statutory sick pay; and

(e) Owed holiday pay.

Jurisdiction

2. Were any of the Claimant's complaints presented outside the primary limitation period (taking the relevant early conciliation dates into account)?

2.1 It is the Respondent's position that any alleged conduct which happened prior to 9 July 2023 is out of time in respect of the discrimination claims pursued under Case No. 2216684/2023.

(a) Were the Claimant's complaints presented within the time limits set out in section 123 EqA?

(b) Was there conduct extending over a period such that the act or omission can be said to have occurred at the end of that period?

(c) Would it be just and equitable to extend the time limit?

2.2 It is the Respondent's position that any alleged conduct which happened prior to 15 December 2023 is out of time in respect of the claim pursued under Case No. 2216683/2024, subject to receipt of an ACAS early conciliation certificate.

(a) Were the Claimant's complaints presented within the time limits set out in section 23(2) Employment Rights Act 1996?

(b) What was the date that the payment was owed to the Claimant?

(c) Was there an unbroken series of deductions? If so, what was the last date of the series?

(d) If the Claimant did not present his complaint within the time limit, did he present his claim as soon as it was reasonably practicable for him to do so?

Victimisation

3. Did the Claimant do any of the following:

(a) It is the Claimant's position that he sent a grievance to the First Respondent and Second Respondent on 11 December 2022 (the "First Alleged Protected Act"). The First and Second Respondents do not accept that this occurred.

(b) It is the Claimant's position that he lodged complaints of being disadvantaged and isolated at the new site (S3 building) to the First Respondent on 14 July 2023 (the "Second Alleged Protected Act").

(c) It is the Claimant's position that the Claimant sent a grievance on 24 July 2023 to Mr Russell Penton of the First Respondent (the "Third Alleged Protected Act").

4. If so, did this amount to a protected act within the meaning of section 27(2) EqA? i.e.

(a) Did the Claimant bring proceedings under the EqA?

(b) Did the Claimant give evidence or information in relation to proceedings under the EqA?

(c) Did the Claimant do any other things for the purpose of or connection to the EqA?

(d) Did the Claimant make an allegation that a person had contravened the EqA?

(e) Was the information/evidence/allegation give or made in good faith?

5. Did any of the incidents relied upon by the Claimant amount to a 'detriment' for the purposes of EqA? The Claimant relies on the following:

(a) In relation to the First Alleged Protected Act:

(i) on 11 December 2023 the Claimant was denied access to the grievances procedure by David Machado and Chris Jones after doing the first protected act;

(ii) On 31 March 2023, there was a predisposition against the Claimant over the alleged lost key by David Machado and an un-named person at the Second Respondent;

(iii) On 31 March 2023, Mr Machado humiliated the Claimant in front of an employee of the second Respondent;

(iv) On 15 April 2023, Mr Machado refused to pick up the Claimant's phone call but did pick up a call from a Polish colleague;

(v) On 17 April 2023, Mr Machado of the first Respondent subjected the Claimant to unwarranted investigations when the outcome was pre-determined in advance;

(vi) On 17 April 2023, Mr Machado denied the Claimant relevant evidence before and during the investigation meeting;

(vii) On 18 April 2023, Mr Machado and an undisclosed employee of Second Respondent issued the Claimant's P60 form;

(viii) On 19 April 2023, Mr Machado and an undisclosed employee of Second Respondent suspended the Claimant from work which was unwarranted;

(ix) On 19 April 2023, Mr Machado and an undisclosed employee of Second Respondent issued a circular that the Claimant was no longer part of the Kings Cross Estate contract;

(x) On 18 May 2023, Mr Lavell Green and an undisclosed employee of Second Respondent subjected the Claimant to a disciplinary process where the outcome was pre-determined;

(xi) On 1 June 2023, Mr Lavell Green and an undisclosed employee of Second Respondent found the Claimant guilty of an allegation, and, or allegations he was not aware of;

(xii) On 18 May 2023, Mr Lavell Green and an undisclosed employee of Second Respondent, refused to disclosure relevant evidence to the Claimant before and during the disciplinary meeting;

(xiii) On 15 June 2023, Mr Johnny Kempster and an undisclosed employee of the Second Respondent, denied the Claimant the relevant evidence for the appeal hearing;

(xiv) On 4 July 2023 and 17 August 2023, Mr Johnny Walker and Sarah Lawrence of the First Respondent and unknown person/s of the Second Respondent, forced the Claimant to attend an appeal meeting whose outcome was meaningless;

(xv) On 10 July 2023, Mr Johnny Kempster, Sarah Lawrence and Ellen Tye of the First Respondent and an undisclosed employee of the Second Respondent, evicted the Claimant from the 4PQS site despite the Claimant being innocent of the allegation he was made aware of;

(xvi) On 11 July 2023, Mr Johnny Kempster, Sarah Lawrence, Mr Moore Haldane [sic] and Ellen Tye of the First Respondent and an undisclosed employee of the Second Respondent placed the Claimant at a disadvantage at the S3 building and isolated him;

(xvii) On 12 July 2023 and 17 August 2023, Ellen Tye and Sarah Lawrence of the First Respondent and an undisclosed employee of the Second Respondent denied the Claimant the opportunity to work at night to escape the humiliation and hostility at S3 building;

(xviii) On 12 July 2023, Mr Haldane Moore and Sarah Lawrence of the Frist Respondent denied the Claimant the right to wear a medical cap without providing the relevant policy at the new site (S3 Building).

(b) In relation to the First, Second and Third Alleged Protected Act:

(i) On 14 July and 24 July, that the Claimant had a hostile reception at the S3 building and was denied holiday;

(ii) On 17 August 2023 to 28 January 2024, Sarah Lawrence and Hillary Price of the First Respondent and undisclosed employee from the Second Respondent forced the Claimant to apply for unknown jobs when he should not have been evicted from 4PQS and should not have been disadvantaged at the S3 building;

(iii) From 11 December 2022 Mr David Machado, Chris Jones, Ellen Tye, Sarah Lawrence, Mr Lavell Green, Mr Kempster and Mr Russell Penton of the First Respondent and undisclosed person/s from the Second Respondent stressed the Claimant out and forced him to take sick leave between 14 July

2023 and 28 January 2024. The first Claim (number 2216684/2023) was presented on 23 November 2023;

(iv) On 14 July 2023 and 20 October 2023, the First Respondent's payroll department delayed and withheld sick pay, underpaid sick pay, denied pay slips and gave HMRC figures which did not tally with the bank deposit;

(v) On 12 October 2023, Sarah Lawrence of the First Respondent and undisclosed person/s from the Second Respondent determined it was for the Second Respondent to hire and allocate the Claimant's rota.

(c) In relation to the Second and Third Alleged Protected Act (in respect of the First Respondent only):

(i) On 14 July and 24 July 2023, that the Claimant was denied access to the grievances procedure by Ellen Tye on 14 July and Russell Penton on 24 July after doing the first protected act;

6. If, so what was the reason for the alleged detriment? Was this because the Claimant did the alleged protected act?

Direct race discrimination

7. The Claimant is Black African.

8. Did the following incident occur as alleged:

(a) On 11 December 2022, 14 July 2023 and 24 July 2023, was the Claimant was denied access to the First Respondent's grievance procedure;

(b) On 17 March 2023, the predisposition against the Claimant i.e. pre-judging the Claimant as guilty without hearing his account and for undisclosed reasons;

(c) On 17 March 2023, subjecting the Claimant to unwarranted investigations;

(d) On 18 April, the issuance of the P60 which the Claimant understood was part of the dismissal process;

(e) On 19 March 2023, suspending the Claimant due to predisposition against the Claimant over undisclosed allegations;

(f) On 19 April 2023, the issuance of a circular that the Claimant was no longer part of the Kings Cross Estate contract;

(g) On 17 March 2023, subjecting the Claimant to an unwarranted disciplinary hearing while refusing to investigate how the key was used on 20 March 2023 and other relevant evidence;

(h) On 1 June 2023, finding the Claimant liable because the Second Respondent wanted and not because of the lost key since it had been found;

(i) On 18 May 2023 and 14 June 2023, refusal to disclose the relevant evidence before and during the investigations;

(j) On 4 July 2023, continuing to hold the Claimant liable despite the Claimant's exoneration;

(k) On 14 June 2023 and 15 June 2023 the denial of evidence before the appeal;

(l) On 4 July 2023, 10 July 2023 and 11 July 2023 the decision to evict the Claimant from 4PQS when the Claimant was innocent of the only allegation he knew about;

(m) On 11 July 2023, the decision to place the Claimant at a disadvantage and isolation in the new site (S3) despite promises to the contrary;

(n) On 12 July 2023, Ellen Tye and Sarah Lawrence of the First Respondent and undisclosed person/s from the Second Respondent denied the Claimant night shifts;

(o) In July 2023, the Respondent's hired a White Brazilian (Paul S Neto) to replace the Claimant at 4PQS;

(p) On 12 July 2023, the denial of the right to wear a medical cap without disclosing any policy which allowing comparators to do so;

(q) From 7 December 2022 to 20 October 2023, causing the Claimant to suffer stress and forcing him to take sick leave from work;

(r) On 14 July to date, denied the Claimant access to the grievance procedure over hostile environment at S3;

(s) From 16 July 2023 to 28 January 2024, the continuous and unreasonable denial of holiday contrary to the First Respondent's policy and the Claimant's statutory right;

(t) From 4 July 2023 to 28 January 2024, forcing the Claimant to apply for new positions when:

(i) There were no disclosed reasons to warrant eviction from 4PQS;

(ii) When a hostile environment had been deliberately created at the S3 building;

(iii) Not responding to the Claimant's applications;

(iv) Providing the Claimant with non-existent vacancies.

(u) From 14 July 2023 to 28 January 2024, delaying sick payment, withholding the sick pay, underpayment of the sick pay, denial of pay slips and giving HMRC figures not tallying with the bank deposit;

(v) The Claimant's hiring and rota was dependent on the good or ill will of the Second Respondent.

9. If so, in respect of each/any incident, did the Respondents treat the Claimant less favourably than an appropriate comparator?

10. Who is the appropriate comparator?

11. Are the facts from which the Tribunal could decide in the absence of any other explanation that the Respondents treated the Claimant less favourably than the appropriate comparator because of the Claimant's race?

~~Owed holiday pay~~

~~12. What is the Claimant's statutory and contractual entitlement to holiday pay? The Claimant asserts he is entitled to 4 days unpaid holiday pay that he was unable to take in 2023/2024.~~

~~The First Respondent submits that the Claimant remains employed by the First Respondent and has no entitlement to be paid in lieu of accrued untaken holiday.~~

~~13. Is the Claimant entitled to any outstanding accrued but untaken holiday?~~

~~14. If so, did the Claimant receive pay owed in respect of accrued untaken holiday?~~

~~15. If not, what is the value of that owed holiday pay?~~

Non-payment of wages

16. Has the Claimant properly presented a claim for owed wages, or does this relate to remedy regarding the complaints of victimisation and discrimination?

17. If an unlawful deductions from wages claim has been presented, was the Claimant entitled to pay for overtime between 20 October 2023 to 28 January 2024? The Respondent notes that the Claimant did not work overtime in this period.

18. If so, did the Claimant receive this pay?

Unlawful deductions of Statutory Sick Pay

19. What pay was the Claimant entitled to during his period of sickness absence between 20 June 2023 and 19 January 2024?

20. What pay did the Claimant receive in respect of this period?

21. What, if any, is the Claimant owed in respect of Statutory Sick Pay?

Remedy

22. If the Claimant's claims are upheld, in whole or in part, what remedy is the Claimant entitled to?

23. If the Claimant is entitled to a financial award of compensation:

(a) What actual financial losses has the Claimant suffered?

(b) Should any future losses be awarded?

(c) Has the Claimant mitigated his losses?

(d) Should any uplifts or reductions be applied to any compensation?

(e) Should any deductions or reductions be applied to any compensation? In particular:

24. Is the Claimant entitled to an award of injury to feelings?

25. Is the Claimant entitled to an award for personal injury?

**Findings**

The hearing

2. This hearing was listed to be heard by a full tribunal panel. On the first day non legal members were not available and the parties did not object to the case being heard by a judge sitting alone. Having considered the nature of the issues and the very significant delay which would have occurred had I not proceeded to hear the case without members, I concluded that it was in the interests of justice to proceed with the hearing.

3. I had a hearing bundle running to some 678 pages. I had a witness statement and heard evidence from the claimant on his own behalf. For the respondent, I had witness statements and heard evidence from:
    a. Mr J Kempster, key account director;
    b. Mr D Machado, estate control room manager;
    c. Ms S Lawrence, people and culture partner.

4. On the first day of the hearing I discussed with the parties my concerns that certain issues in the list of issues were not particularised and that the claimant’s statement did not provide the level of detail which would enable me

to find the appropriate facts in relation to those allegations. In particular these were the following from the list of issues:

(*t) From 4 July 2023 to 28 January 2024, forcing the Claimant to apply for new positions when:*

*…*

*(iii) Not responding to the Claimant's applications;*

*(iv) Providing the Claimant with non-existent vacancies.*

[Applications and vacancies not particularised]

…

*(iii) On 14 July 2023 and 20 October 2023, the Respondent's payroll department delayed and withheld sick pay, underpaid sick pay, denied pay slips and gave HMRC figures which did not tally with the bank deposit;*

*Unlawful deductions of Statutory Sick Pay*

*19. What pay was the Claimant entitled to during his period of sickness absence between 20 June 2023 and 19 January 2024?*

*20. What pay did the Claimant receive in respect of this period?*

*21. What, if any, is the Claimant owed in respect of Statutory Sick Pay?*

[No particularisation of dates and amounts]

5. I questioned whether I would be in a position to decide these issues and whether the respondent was in a position to deal with these issues although the respondent had not raised a concern itself. It seemed to me that this was a case where a request for further information would have been appropriate.

6. I explained to the parties that it would be very difficult for me to determine these issues in the absence of better particularisation and identification of the evidence in support. I was mindful that the claimant did not have representation from a practising lawyer and considered that it was appropriate to explore whether the deficiencies in the issues and evidence could be addressed in a way which accorded with the overriding objective. There were a number of considerations: giving a litigant without professional legal representation an opportunity to properly present his case, not disadvantaging the respondent by requiring it to respond to evidence it did not have time to deal with and retaining the existing hearing dates without going part heard, which was very much in the parties' interests and those of other Tribunal users.

7. I explained what details seemed to be missing from the evidence. In some instances, which was particularly unhelpful in respect of the claims about sick

pay, the claimant simply referred in his statement to a number of pages in the bundle. It was not possible to discern by looking at these documents exactly what the claimant's case was nor was it an appropriate or safe way to attempt to glean the claimant's case. It was said on behalf of the claimant that part of the problem was that the respondent had not provided documents which had been asked for, in particular payslips, but I was not taken to any relevant correspondence.

8. I asked the parties to seek to resolve the issue about the documents between them overnight.

9. We returned to this matter on the second day of the hearing at which point it was apparent that the claimant's representative did not have full instructions on these issues. He confirmed that the relevant payslips were in fact in the bundle and he had not asked the respondent for further documents. I explained again and more fully what details I felt were missing. I said that I needed to understand what sick pay was said to have been delayed and when, what pay was withheld and when, when payslips were not provided. Mr Gachuba was able to point me to some documents in the bundle which he said showed examples of jobs which the claimant said turned out not to exist and jobs where he had received no response to his application. He was not able to confirm however that these were the only such jobs on which the claimant sought to rely in support of the relevant allegations.

10. The claimant's representative made it clear that he required time to clarify the issues and the evidence in support. There were difficulties with timetabling in that we had commenced with Mr Kempster's evidence on the first day. It would not have been possible for Mr Gachuba to continue to take instructions once the claimant had started his evidence. An enquiry was made as to whether Mr Machado could attend on the afternoon of the second day but he was on leave. I rose after Mr Kempster's evidence was completed just before 1:30 pm to allow the claimant and his representative time to clarify his case

11. I explained to the claimant and his representative that if they did flesh out the claimant's case and possibly provide further documents in support, Ms Arya would need an opportunity to take instructions from her client. There was only so much Tribunal time which could be absorbed before an unacceptable risk developed that the claims could not be heard in the time set aside for them. Given that these were a few issues in a long list and given the effect on the parties and other Tribunal users if the case were to go part heard, I said that it was questionable whether it would be proportionate and in the interests of justice to adjourn the hearing the evidence further. I encouraged the claimant to provide his particulars to the respondent by 4 pm that day to ensure that any necessary instructions could be taken before the start of the third hearing day (Friday 25 April 2025).

12. That afternoon and evening, the claimant sent through some 40 plus further pages of documentation which related to the issues identified and a submission which set out a large number of further job applications in respect of which it was said that the claimant had not received a response and a significant number of vacancies which it was said did not exist. It was not clear which of the 'new' documents were already in the bundle.

13. On the third day of hearing, Ms Arya said that there was simply too much material for the respondent to take instructions about in the available time.

14. I was concerned to be fair to both parties. I invited Mr Gachuba to identify which documents were new and to make an application for those documents to be introduced either at that point or later in the hearing. Ultimately there was never any such application and I was not able to consider those documents further. In an effort to gauge the extent of the assistance he was able to provide the claimant. I asked Mr Gachuba if he had any experience of employment tribunal proceedings. He told me that he studied law in South Africa but was not a practising lawyer. He had appeared in something like ten employment tribunal cases, many in Scotland but at least one in London. This was relevant because it showed that Mr Gachuba would have had at least some understanding about the importance of disclosing relevant documents.

15. I did not allow the documents to be introduced in the form provided for reasons I gave orally at the hearing or for further evidence in chief to be adduced insofar as that was what was set out in the written submissions. Ms Arya reported that her client continued to investigate SSP issues and she was instructed that there may have been late payments of some SSP when there were delays in sick certificates but that the respondent believed that the claimant had been paid all of the SSP he was entitled to.

*Issues in relation to witness evidence*

16. On the second day of the hearing, Ms Arya raised with me an issue that had been communicated to her by her instructing solicitor. She had received a message that Mr Kempster, who had commenced giving his evidence on the first day of the hearing, had been in contact with an employee of the respondent named Mick [Moran] and made remarks about documents in the bundle having been fabricated.

17. Mr Kempster told me that he had not spoken with anyone about his evidence during the adjournment overnight and had complied with the warning I had given him not to speak about the case with anyone.

18. Ms Arya was subsequently able to take some further instructions which suggested that in fact it was not being said that Mr Kempster had spoken directly with Mr Moran. He had spoken to a Ms Taylor in HR. It was not clear whether that was before or after he commenced his evidence. Ms Taylor could

not be questioned further that day as she was not at work. It was not possible to make any further progress with this issue on the second day. Ms Arya said she would email the claimant and the Tribunal with any further information she obtained.

19. On the third day of the hearing, I was provided with witness statements from Ms Taylor, Mr Moran and Mr Alex Watson, a partner at Ms Arya's instructing solicitors. It appeared from this evidence that Mr Kempster had spoken to Ms Taylor before giving his evidence on the first day of the hearing to express a concern about documents in the bundle having been doctored by the claimant.

20. I was satisfied, for reasons I give orally, that no further action was required.

21. A further incident occurred on 28 April 2025 when it became apparent that the claimant had spoken to Mr Gachuba over the weekend, despite being in the middle of his evidence and despite the importance of complying with the warning given to witnesses on oath having been made clear by the earlier events and by explicit warnings given to the claimant.

22. After both Mr Gachuba and the claimant produced short statements at my request I was satisfied that it did not appear that there had been anything beyond a brief interchange which Mr Gachuba had shut down. I was sympathetic to the difficulties presented by the fact that Mr Gachuba was staying at the claimant's home whilst representing him.

23. Also on 28 April 2025, the claimant sought to introduce some new documents and made a request for specific disclosure. I refused the applications for reasons I gave orally at the hearing.

24. A further issue which arose was as to what comparators the claimant was relying on. The list of issues referred to Mr Paul Neto, a white Brazilian man, as the person who replaced the claimant at the site 4PQS. It also referred to Mr Machado picking up the phone to a Polish colleague, but not to the claimant.

25. In further information which the claimant had provided before the list of issues was finalised at a case management heraing he mentioned three people who were allowed to wear hats / caps:

- John Henry, a contractor engineer;

- Kartek Patel, an Indian dock officer;

- Eke Thepa Magar, a Nepalese break relief officer.

26. In his further information, the claimant also named the Portuguese colleague in respect of the phone incident as Mr M Gorzedowski.

27. The claimant named in his further information and his witness statement some people he said were allowed to work nights shifts only: Natnael Mebrahtu, (Eritrean), Rachid Amrouche (Algerian), Carolina Tobar (Colombian) and Mr Neto.

28. In his witness statement, the claimant gave evidence about Mr Gorzedowski. He named the same individuals whom he had said in the further information were allowed to do night shifts and the same individuals who were allowed to wear caps.

29. The respondent did not address potential comparators in its evidence save that Mr Machado spoke about Mr Gorzedowski and the phone call issue. In the circumstances, I did not allow Ms Arya to lead further evidence about comparators from Mr Machado but I pointed out to Mr Gachuba that he needed to put his case on comparators to Mr Machado insofar as they were people about whom Mr Machado could give evidence. Mr Gachuba declined to cross examine about potential comparators apart from Mr Neto and Mr Gorzedowski.

*Management of time*

30. In terms of timing, cross examination of the respondent's witnesses took longer than Mr Gachuba had estimated so I sat earlier on the final day of evidence (from 9 am) so Mr Gachuba would have sufficient time with Mr Machado.

Findings in the claim

*Policies and procedures*

31. The claimant's contract of employment made reference to the respondent's disciplinary procedure as follows:

> *Full details on the Company's Disciplinary Process are outlined in the Employee Handbook. The Company may rely on CCTV and Audio Recordings in a Disciplinary Process.*

32. I saw a policy entitled 'Client Removal (Site Ban) Policy'. This made clear that a client removal would occur when an employee was no longer permitted by the client to work on a client's site. Reasons for such a removal included: 'Request for removal with no reason provided'. The policy set out a process to be followed which included considering temporary redeployment and suspension on full pay if temporary redeployment could not be arranged. In cases where the respondent's disciplinary process had concluded that there was no disciplinary case to answer but the client still insisted that the

employee be removed from site, there was provision for redeployment to be considered over a two week redeployment period.

33. On 1 March 2022, the claimant started working for the respondent as a fire control centre officer, which is a security position. The claimant worked at St Pancras Square for the respondent's client Savills UK Ltd, former second respondent in these proceedings.

34. This was part of the larger King's Cross estate, which I understood the respondent also provided security services for, the client also being Savills. I was told that the respondent had some 200 staff across the estate. The building the claimant was assigned to when he started employment was known as 4PQS. He was later assigned to a building known as S3 which I was told was a couple of hundred metres from 4PQS.

35. The claimant described his race for the purposes of the proceedings as African.

36. I saw a contract for the claimant attached to a conditional offer of employment dated 2 March 2022. In evidence the claimant suggested that he had not received the terms and conditions. If that were the case he would have had a document which finished mid-sentence and did not set out important parts of his contract such as holiday entitlement. He said that he had read that page but that it did not come to his mind that it appeared to stop mid-sentence. It would have been surprising, if the claimant really had only received the first page of his contract, that he had not asked for the rest of it. I was told and accepted that in any event the standard terms and conditions applicable to the claimant's employment were available on the respondent's portal, 'Timegate'. The claimant said he had not looked for it on Timegate, which he said contained hundreds of documents. I concluded that the claimant had received the full contract and that his memory in this respect was selective.

37. Clause 4 was as to locations and mobility. It said that it was a condition of the claimant's employment that he be willing to locate to sites other than his starting site as required. He would be given as much notice of a change of site as reasonably possible. It said:

'If the Client informs the Company that they no longer permit you to work at their site, then the Company will remove you from that site and endeavour to place you in an alternative position. The Company's obligation to do so takes second place to any disciplinary that may follow such a removal from site.

38. As to shift pattern, the contract stipulated: 'You may also be expected to work any system of work or shift pattern that the Company may notify you of from time to time.'

39. Holiday entitlement was set out. The leave year was 1 April to 31 March. There was no provision for carryover from year to year of unused holiday allowance.

40. There was a clause requiring the claimant to report for duty in his uniform.

41. Relevant policies were contained on the Timegate portal.

42. I saw a uniform policy for the King's Cross Estate which described what uniform was authorised for security staff. The policy said:

    'All staff must be mindful that the uniform items on site have been through a design and approval process with senior KCES members to ensure that they suit the image of the Estate. For this very reason nonstandard issued items of clothing are prohibited on the Estate.' Some items were reserved to employees working outside. There was no uniform hat for any employees, but Mr Machado gave evidence that employees working outside were permitted to wear hats.

43. I saw a sickness absence policy which said that unauthorised absence could lead to disciplinary action.

44. The claimant told me that at the outset of his employment there were two people in the office where he was based: himself as FCC and a colleague who was a break relief officer. At some point, Mr Machado, building security supervisor, also came to be located in that office.

45. The shift pattern for the claimant was two days on day shift, two on night shift and then four days off. Other colleagues in the FCC role worked a similar shift pattern to ensure constant cover.

46. On 7 December 2022, the claimant said that Mr Horvath, a dock officer at 3 Pancras Dock, confronted him and asked if he had read the standard operating procedure, why was he not wearing winter uniform and why he was wearing a King's Cross estate hat. The claimant said that he asked if he could explain and Mr Horvath said no. The claimant in fact wore a hat because it helped with his sinus condition.

*First alleged protected act*

47. On 11 December 2022, the claimant emailed Mr Machado with the subject line 'Bullying and Harassment'. He attached a long written account which related the incident with Mr Horvath and complained that he had been harassed and bullied by Mr Horvath. He said: 'In contrary [sic] to the obligations conferred upon both employers and employees by the Equality (2010) Act and Human Rights legislation (1998), everyone has the right to be treated with consideration, fairness, dignity, and respect.'

48. There was no reference in this document to any protected characteristic of the claimant or indeed of anyone else.

49. One of the claimant's allegations is that Mr Machado failed to act on his complaint / grievance.

50. Mr Machado said that he passed the complaint to Mr Ayodele, building security manager, and discussed the matter with witnesses but determined no further action was required. The claimant told me that Mr Ayodele was African and from Nigeria.

51. I was provided with emails which showed that on 12 December 2022, Mr Machado had forwarded the claimant's complaint to Mr Ayodele. Mr Ayodele replied:

*Please like I said in our conversation, treat this officially and lets possibly seek a professional advise [sic] from Russell and HR.*

*I see this coming back to us like the [redacted] incident if not properly handled and escalated.*

*Mudie will not stop, and I won't be surprised if he's already informed HR himself based on my experience with him in the past.*

*Put [redacted] in the know also.*

52. On 14 December 2022, Mr Machado emailed Mr Ayodele saying that he had followed up on the complaint. The witness he spoke to had said that the claimant was reading into Mr Horvath's advice 'ill intentions that were not present'. Neither the tone nor content of what had been said could be misconstrued. CCTV footage Mr Machado reviewed did not show aggressive behaviour 'nor a menacing face'. He had an informal conversation with Mr Horvath about the boundaries of his responsibility when not covering for a supervisor role. Mr Horvath and the witness said that the conversation Mr Horvath had had with the claimant was intended to help the claimant and not to bully him. Mr Machado said:

'Mudie's report goes heavy on wording that is cause for concern, but it is my opinion after the investigation that these words are misused, and while Mr Horvath's tone and wording is not perfect, I do not believe he must be punished or have any disciplinary action taken against him.'

53. On 14 December 2022, Mr Ayodele wrote*:*

*I agree with you, from my experience with Mudie, he knows how to build in emotions into his reports.*

*Ask to submit you a formal report and signed by him.*

*Afterwards, let Mudie know the outcome of your investigation through an email to him and asked if that satisfies him or he expects to take it further.*

54. Mr Machado said that he discussed the claimant's concerns with him to establish whether he wanted to pursue a formal grievance procedure. He could not remember exactly what was discussed but believed it was resolved. The claimant did not ask for follow up under the grievance procedure. He explained that he did not do everything Mr Ayodele suggested (submitting a formal report signed by the claimant) as he ran and managed about 53-54 employees and could not resolve every disagreement between employees with that degree of formality.

55. The claimant said in evidence that no one had approached him about the complaint at any time. He said that he did not chase it up as he trusted Mr Machado and did not know the procedure in those days. He was not satisfied with the outcome and thought he had been ignored. He said that Mr Horvath was a supervisor who worked closely with Mr Ayodele so what outcome could he expect? It was not appropriate for Mr Ayodele to be the judge.

56. On 17 March 2023, there was an incident where the electrical riser South key was discovered to be missing. I understood this was one of a number of keys in the claimant's charge. An operative from another organisation was seeking to sign out both the North and South electrical riser keys at around 9:12 am and only the North key was available.

57. At 15:49 that day, the claimant wrote in an electronic log on Timegate: *One of Wren's operatives was here this morning to collect electrical risers Keys (N + S) but only the North one was available, the South was not located from the rack. According to the key register, it appears that operative has signed for both, although it is not the case, this is because whenever he comes for the keys he would proceed to sign on before the keys are handed out.*

58. Mr Machado said in cross examination that managers would not habitually have been keeping track of what was in the log so would not have seen this report. They only became aware that the key was missing when the claimant emailed management at 6:57 pm on 17 March 2023. He said in his email that it wrongly appeared that the operative had signed for both keys because he would sign for the keys before they were in fact handed out. The claimant said in oral evidence that the two keys were usually tied together.

59. On 20 March 2023, Mr Ayodele wrote to another officer: *Please check if both the North and South electrical Riser keys are in FCC? Mudie says key is not returned.* He also wrote to Ms C Burchell, property manager Kings Cross Estate at Savills:

*I've just been made aware by email from Mudie in 4FCC that above key is missing and allegedly not returned by WREN Engineer.*

*The onsite WREN engineer spoken to by Rodrigo in his effort to investigate the missing key had confirmed they do not have the key.*

*Key register showed it was last signed out on Tuesday 14th March..*

*Mudie only reported it late Friday evening 17th March to my awareness through an email.*

*David and I will investigate the missing key with Mudie in line with Missing and Unreturned Key SOP and update you.*

60. I did not see the Missing and Unreturned Key Standard Operating Procedure ('SOP'). Mr Machado said there was an SOP but it could not be relied on in disciplinary proceedings as most staff had not signed it.

61. The claimant accepted in evidence that it was necessary for Mr Ayodele to inform the client about the loss of the key.

62. On 20 March 2023, the claimant said that the register showed someone signed out the key, so it was not lost at that point. This was a point he raised in the disciplinary proceedings.

63. Mr Machado investigated the lost key and produced an investigation report on 29 March 2023. This report covered the key incident and an allegation of unauthorised absence by the claimant. So far as the key was concerned, Mr Machado concluded that there was evidence the claimant waited for an unreasonable amount of time before escalating the key issue.

*The unauthorised absence issue*

64. From 22 to 30 March 2023, the claimant did not attend work.

65. The claimant said that the background was that he had had previous holiday requests refused but it had been suggested to him that a refusal of some requested holidays in February 2023 would be revisited by Mr Machado. After the refusal of the February holiday, he said he was expecting Mr Machado to get back to him as Mr Machado had told him it was an automatic refusal. He had been chasing Mr Machado up.

66. On 5 March 2023, the claimant wrote to Mr Machado saying that he had requested holiday for February 2023 which had not been granted. He had to use up his holiday entitlement that month or he would lose it so he was requesting 22, 23, 24, 25 and 30 March 2023. He was about to make travel arrangements so he said that he would appreciate a response by the end of 8 March 2023. If he received no response by then, he said that he would proceed to book his travel.

67. The claimant said in oral evidence that he had not chased Mr Machado after the 5 March request however he considered the 5 March 2023 email his 'last

ultimatum'. He said that he had checked the respondent's portal five minutes before 7 pm on 8 March and there was no refusal of leave. He did not look at the portal again between 8 and 22 March 2023.

68. On 22 March 2023 the claimant wrote to Mr Machado by text message saying that he would be away until 31 March 2023. Mr Machado replied to the claimant saying that his holidays had not been approved and he was meant to be on shift that night. He asked him to confirm that he would be in. The claimant then wrote to Mr Machado, referring him to his correspondence of 5 March 2023 and said: *By not responding at the deadline, it was assumed that my holiday was nevertheless approved by default*.

69. Ms E Tye, administration assistant and scheduler, then wrote to the claimant by email:

*Your email was rejected on the 08/03/2023*

*Your portal would have notified you of this*

*You will be expected to attend your shifts starting tonight so if you don't, this will be listed as an unauthorised absence which is actionable by misconduct in the Disciplinary Policy,*

70. The claimant then was absent for the dates. It was put to the claimant in cross examination that he was aware of the requirement to give 28 days notice of leave dates and that he had not given that notice, The claimant said that he was simply 'rekindling' his request for holiday in February 2023 in respect of which he had given enough notice.

71. Mr Machado found in his investigation report that there was a case to answer in respect of both the key allegation and the unauthorised absence allegation.

72. On 31 March 2023, the claimant alleged that Mr Machado said in front of a Mr Coyne from Savills, who had the next door office to that in which the claimant was based, that the claimant had lost the key. That claimant said that he requested to speak in private but Mr Machado refused.

73. In oral evidence the claimant said that what happened was that Mr Machado said: 'We are missing one of the keys. It was lost during Mudie's shift. We are still checking but haven't been able to find it. We hope to find it. That key is very important as it opens so many doors and we would have to break those doors.' The claimant believed that Mr Coyne had persuaded Ms Burchell of Savills to have the claimant removed from 4PQS.

74. The claimant's account of this incident given at the disciplinary meeting in front of Mr Green on 18 May 2023 was that: 'David M told me that the FCC room was turned upside down since the key wasn't found. I was offended

because he spoke in front of the Savills team. I asked if I could have a meeting…'

75. The claimant was cross examined about this account. It was put to him that if it had happened as he said and he had been offended by it, he would have mentioned it to Mr Green in the meeting. The claimant said that he might not have remembered to tell Mr Green; he was responding to his questions.

76. Mr Machado said in evidence that he did not recall this incident; his general approach when discussing matters of importance with employees would be to speak to them individually and privately but this was not always possible if something was urgent.

77. On 31 March 2023, Mr Machado invited the claimant to an investigation meeting into the lost key incident.

78. On 11 April 2023, Ms C Burchell wrote to the respondent asking for the claimant not to be returned to his post:

*I have previously raised concerns about Mudie Shauri's skillset, and I believe that the recent incident with Mudie losing a key was an incident waiting to happen, highlighting his unsuitability for this role.*

79. On 15 April 2023, the claimant said that he found the missing key in a plastic bottle in a closet in the office and that he tried to phone Mr Machado to inform him. Mr Machado did not answer the claimant's call but the claimant said that he picked up a call from Mr M Gorzedowski, an estate security officer, who is Polish and was in the office with the claimant covering for the break relief officer.

80. Mr Machado did not recall missing a call from the claimant. He said that he receives multiple calls a day from the team he supervises and inevitably may miss some of these calls. He did not answer calls based on who was calling but on his availability to answer the calls. He did not answer another call in preference to the claimant's call. If he received two calls in a row from FCC officers, that would cause him concern and he might well pick up the second call.

81. The claimant did not ring again or message or email Mr Machado. He had wanted to give Mr Machado the good news about the key. When he did not get hold of Mr Machado he decided to wait until the investigation meeting scheduled for 17 April 2023. He accepted that a busy manager would not always be able to answer every call received. He said that Mr Machado could have rung him back. As a supervisor with a missed call from an employee, he would have thought he would want to know what it was about. He felt that Mr Machado did not treat his call as important based on who he was. He said

that the other employee rang less than two hours after he did; it might have been fifteen or twenty minutes.

82. On 17 April 2023, Mr Machado held his investigation meeting with the claimant. Mr Machado said that he did not recall the claimant requesting specific evidence prior to or during the investigation meeting; the claimant had access to relevant evidence he had used for his investigation. It was put to the claimant that he had not asked for CCTV before or during this meeting. He said that he had mentioned that he wanted the issue of why the key was hidden to be investigated and that Mr Machado would have known that the way to do that would be to look at CCTV.

83. Although he had not mentioned this in his witness statement, Mr Machado said in his oral evidence that he had in fact looked at the CCTV footage of the office between 14 and 17 March 2023, that is the date between the last time the key had been signed out and the date the claimant reported it as being lost. He said that he watched it speeded up in sections. He did not find anything useful; the images were unclear and it was not possible to see what was happening in relation to the closet where the claimant ultimately said he found the key. The system the respondent had was that CCTV footage would be kept for a month before being overwritten.

84. On 18 April 2023, Mr Machado forwarded Ms Burchell's email of 11 April 2023 to the respondent's HR Solutions team: 'See below the request from the PM for Mudie's site removal.'

85. The claimant said that Mr Machado issued him with a P60 that day. He thought this was part of process to dismiss him as he said that he had not been issued with a P60 before. He said that Mr Machado asked him in the office that day if he wanted his P60 as he knew the claimant was going to be removed the following day. He did not ask the claimant's colleague if he wanted a P60. He thought that they were trying to clear up everything before suspending him so they would not have to ask him for anything after the dismissal.

86. Mr Machado said that he had no recollection of this incident. He did not usually have any involvement in P60s being issued to employees. A supervisor would only get involved if the automated system was down or an employee specifically requested a form but he did not recall that happening with the claimant.

87. On 19 April 2023, Mr Machado suspended the claimant from work as his removal had been requested by the client. He was told in a letter he would be on paid leave until the investigation and any resulting disciplinary process was concluded.

88. Mr Machado sent an email to various people to say that the claimant was no longer part of the contract at King's Cross, any card issued to him should be disabled and he should not be allowed access to any non-public parts of buildings. Mr Machado said that this was standard procedure when dealing with client removal requests; it was part of standard risk management.

89. On 2 May 2023, the claimant was invited to a disciplinary hearing in respect of both allegations which had been investigated. Mr Machado explained that the investigation into the missing key had been necessary because of the importance of the missing key from a security perspective; the key opened several doors in the building. He had endeavoured to assist the claimant by focussing the investigation on the claimant's failure to report the key earlier rather than on his potential involvement in loss of the key. He prepared an investigation report which went to Mr Green but he did not otherwise have input into the disciplinary hearing.

90. On 18 May 2023, the claimant attended a disciplinary hearing in front of Mr L Green, key account manager. The claimant had previously objected to Mr Ayodele hearing the disciplinary, as the claimant considered that he was not impartial, but he did not object to Mr Green and had never previously encountered him. The claimant accepted he had not asked for CCTV footage in advance of the meeting but said that he thought Mr Machado was 'digging into it'.

91. I was provided with the respondent's minutes of this hearing. The allegations were that the claimant did not inform the management team that the key was missing until the end of the shift and that he took unauthorised leave from 22 – 30 March 2023.

92. On 1 June 2023, the claimant was sent a disciplinary outcome letter. He received a final written warning live for twelve months. In respect of the key incident, it was agreed that there was no written process for reporting a lost key but the conclusion was that the claimant could have brought the loss to the attention of his line manager as soon as he became aware that it could not be found. The client was upset that the key was lost and there was reputational damage. So far as the annual leave issue was concerned, the claimant had not given 28 days notice as required by the respondent's policy and had been told by 8 March 2023 that he could not take the leave. He had taken the leave anyway.

93. On 8 June 2023. The claimant submitted his appeal against the disciplinary outcome. He also asked for CCTV footage in writing.

94. On 15 June 2023, the claimant attended a disciplinary appeal hearing in front of Mr J Kempster. Mr Kempster had had no contact with the claimant before being appointed appeal manager and his role was limited to hearing the

appeal against the disciplinary sanction. He was not involved in the claimant's removal from site and he said that he was not aware that the claimant had previously brought a grievance.

95. It was put to Mr Kempster that he was part of a conspiracy also involving Mr Machado and Mr Ayodele to victimise the claimant for having brought the grievance or to subject him to a detriment because of his race. The claimant also added later that the conspiracy included Mr Penton, the key account director, and Ms Tye, also Ms Hillary Price, recruitment manager. On the claimant's account, the conspiracy had started with Mr Machado and Mr Ayodele and they drew in others such as Mr Penton and Ms Price. There was also a Mr Hussein 'in the shadows'. He was not directly involved and the claimant did not know exactly what role he was playing. Mr Kempster, although involved in the conspiracy, had had to reduce the sanction because it was obviously too harsh. Mr Kempster denied involvement in any such conspiracy.

96. There were notes of the hearing taken by a note taker; these were not verbatim. The claimant had a representative. The claimant said he was forced to attend the meeting because, having been invited, if he did not attend, he would be caught for unauthorised nonattendance.

97. Mr Kempster started by discussing the key charge. He said that he had identified that the claimant's defence was 'factually incorrect' with respect to the missing key having been used on 20 March 2023 but, because he had identified that there was no set policy for reporting missing keys, he had made it clear at the beginning of the appeal hearing that he was not going to hold the claimant accountable for that charge.

98. It appears from the minutes that Mr Kempster then wanted to move on to the unauthorised absence charge but the claimant continued to try and discuss what key had been signed out on 20 March 2023. The bulk of the hearing was then occupied with discussing the absence issues.

99. There was no indication from the notes that the claimant asked at this stage for CCTV footage to be looked at although the claimant said that he had previously asked for 'information and evidence' which had not been sent.

100. Mr Kempster gave an account of his process. He said that he always looks at the original allegation and the outcome and how that was reached so he could understand the basis of the findings. He would have had the minutes of the disciplinary hearing. He conducted his own investigation of key issue.

101. He was asked about the fact that the appeal letter incorrectly referred to the date the claimant had said the key was used as 22 March 2023. It was suggested that he identified that date to support a predetermined outcome and to hide the conspiracy to frame the claimant because of his December

2022 grievance and/or because of his race. Mr Kempster said that he was not aware of nor part of any conspiracy.

102. It was clear that Mr Kempster had not extensively investigated how the key had gone missing. There was a photograph of the key signing out book which the claimant provided as part of his appeal which recorded that on 20 March 2023 keys described as 'N + S Ele Ris' had been signed out. Also on that day a key described as 'MK1' had been signed out. One entry where MK1 was the relevant key had been underlined in red on the original signing out book or on the photograph, which could have indicated that someone had thought this was the relevant entry. I did not hear any evidence as to the relevance of the underlining.

103. When asked about the entry which referred to 'N + S Ele Ris', in evidence Mr Kempster first said that the 'key legend' would show that was the master key and then that someone on site had said that was the master key used in the area. He agreed that the photograph of a key with a fob describing it as 'Elec Riser South' was not the same key as MK1. The claimant had produced the latter photograph to show which key had gone missing.

104. I concluded that Mr Kempster either had not investigated the issue of which key was in fact signed out on 20 March 2023 very thoroughly or he had forgotten by the time he produced his witness statement and gave his evidence what exactly he had discovered in his investigation. It was not at all clear whether in making his finding he had looked at the correct line on the signing out book, or, if he did look at the correct line, why he identified the key that had been used on 20 March 2023 as the master key. The impression he gave was that, having determined he was not going to hold the claimant responsible for the charge in respect of the key, he had not paid detailed attention to the minutiae of the evidence about the key. In his evidence to the Tribunal he had attempted to stand by a finding about the key which had been signed out on 20 March 2023 which was not supported by the evidence, properly examined.

105. In respect of the CCTV footage, he said that he concluded:

- It was not relevant because he had already identified that he was not going to hold the claimant accountable for not reporting the key;
- CCTV footage in any event no longer existed as it would have been overwritten. He knew this because of how much time had elapsed but he said that he also checked with someone on site, he could not now remember whom, but it would have been someone who had knowledge of GDPR. That site had recently been audited and it complied with GDPR requirements. He said that he did not feel the need to make sure this enquiry was in the form of an email because he had investigated the situation and decided he was not going to uphold the charge anyway.

106. It was put to Mr Kempster that the CCTV footage was available but he had refused to provide it because he knew who had hidden the key and knew that there was a conspiracy to victimise the claimant. He denied that. He had not investigated whether the CCTV footage was available to Mr Machado when the latter conducted his investigation.

107. On 4 July 2023, Mr Kempster wrote to the claimant with the appeal outcome. He said that the claimant was incorrect to say the key had been used on 23 [should be 20] March 2023 as the key signed out was the master key and the claimant's own evidence was that that he found the key himself when he returned to work. However he concluded that it was unsafe to hold the claimant accountable in the absence of a policy or procedure. He reduced the final written warning to a warning in respect of the unauthorised absence.

108. On the issue about the claimant being absent without leave, Mr Kempster believed that the issue with the earlier leave request was that other people had already booked holiday for the relevant period. It was put to Mr Kempster that there had been a policy to deny the claimant's holiday requests and force him into a corner where he had to take unauthorised leave and that Mr Kempster had been involved in this conspiracy. The conspiracy again was said to arise from the claimant's December 2022 complaint and/or his race. Mr Kempster again said that he had no knowledge of the claimant before being involved in his appeal.

109. Mr Kempster in his outcome letter referred to the situation with the client having lost confidence in the claimant. He said in evidence that he had played no role in that issue. He could not remember who had told him about the client's views on the claimant. It was put to him that it was in fact his decision to exclude the claimant from his previous site, taken by him because he wished to victimise the claimant and/or discriminate against him because of his race. He denied that and repeatedly said that he was simply the manager for the disciplinary appeal and played no role at all in the client removal. He pointed out that the client did not have to give any reason for asking for an employee to be removed.

110. Mr Kempster was asked about the reference in his letter to the respondent having appealed to the client about the claimant's removal. He said that he was not involved in that. Mr Machado gave evidence that he also was not involved in that process. Mr Machado's evidence was that this would have happened through Mr Penton or Mr Ayodele and would have been in the form of a conversation. Evidence that such an 'appeal' had happened was

that the client was willing to have the claimant somewhere else on the King's Cross estate, having initially asked for him to be removed altogether.

111. The concern the claimant expressed about the appeal was that he was found not guilty in relation to the key reporting issue but still removed from 4PQS.

112. I heard some evidence about Mr Neto, who replaced the claimant at 4PQS. The claimant said he spoke the same language (Portuguese) as Mr Machado. The claimant said that the role was not advertised; he knew this because he checked the respondent's website and had 'insiders' who told him how Mr Neto was introduced.

113. On 7 July 2023, the claimant wrote to Mr Machado asking when there would be a detailed investigation into the allegations leading to his suspension from 4PQS. On 8 July 2023, Mr Machado replied that the investigation was handed to HR after the suspension. On 10 July 2023, the claimant emailed Mr Machado to say that he had not heard from HR so could he be told a contact person. That same day the respondent sent an email to the claimant telling him he would be working at a site on the King's Cross estate known as S3, with shifts to start on 12 July 2023. Mr Kempster's evidence was that he had no involvement in the claimant being placed at this site.

114. On 11 July 2023, the claimant wrote to Ms Tye saying he wished to keep to 'back shift' only due to his recent state of mind. On 12 July 2023, Ms Tye wrote to the claimant saying that she was not sure what 'back shift' was and that he was on the exact same shift pattern as before.

115. The claimant worked at S3 on 12 and 13 July 2023 and then sent an email on 14 July 2023 saying that he was not able to attend work 'due to my compelling health reason'. He subsequently submitted a medical certificate saying he was suffering from stress.

116. The claimant said that when he attended his new place of work, the manager, Mr Moore, was not welcoming. When he asked the manager if he should communicate problems with him he was told to communicate with the supervisor, Mr Ahmed. When he arrived and there were no login details for him to use the computer, other officers covered their PINs so he would not use them. Mr Ahmed said that he would get his PIN. The claimant said that login details were being handed over to people covering shifts. He did not reach out to anyone about the login details during the two days he worked before being absent due to ill health.

117. The claimant said that, by contrast, when he came back to work in January 2024 it only took minutes to set him up. Mr Ahmed telephoned for the PIN and said that it took two to three minutes to make login credentials.

118. Ms Lawrence gave evidence that she understood that a new system was being trialled in that building. Mr Moore, the claimant's manager at S3, in

the claimant's wellbeing meeting on 15 November 2024, said that the client wanted to move to individual logins and the system was being trialled at S3 before being rolled out across the estate. Mr Moore explained that it took two to three weeks to set someone up on the system. The floater the claimant mentioned was someone they had known would be coming to S3 and they had obtained his login by the time he started. If the claimant was not able to access the computer during this period, he would be allocated duties he could do which did not require computer use.

119. The claimant said that Mr Moore would not let him wear his red King's Cross logo hat. He said that Mr Henry, contractor engineer, Mr Patel, a dock officer and Mr Magar, a break relief officer, all wore hats. He provided some photographs in the bundle of Mr Henry and Mr Magar wearing hats. Ms Lawrence gave evidence that it was her understanding that the claimant had been allowed to wear a hat at 4PQS but that the reasons why he required a hat had not been communicated to the S3 management at the point when the claimant started work there. He had not provided medical evidence of his need for a hat and this was requested by the site managers so they could explain to the client why the claimant was wearing an item which was not part of the standard uniform.

120. Mr Moore in the 12 October 2023 wellbeing meeting said about the hat issue: 'So I do recall a conversation you and I had, Mudie. And it's more of case where you did mention about your hat situation to me. And I did say I was not aware of such. And it's not a conflict, as in the uniform standards. And I did explain to you because you're not exposed to the elements. Such as the estate officers or the Lord and Bay [sic] officers. And it's not uniform standard for an FCC officer… I also mentioned to you, you could produce me with a doctor's note, which you did the following day, but you were, you were also off sick the following day as well.'

121. The claimant said that the managers were too busy to do his induction training on the two days he attended.

122. On 14 July 2023, the claimant sent an email of complaint to Ms Tye, saying he was not given the scheduled training, not given access to a PIN for the computers even though floaters were given details and was told he could not continue working if he wore his King's Cross red hat. The claimant did not ask at the time for this email to be treated as a formal grievance.

123. On 15 July 2023, the claimant requested CCTV footage relating to9 the key issue. Mr Kempster said that the claimant was not provided with CCTV footage as it had been overwritten by this time and was no longer relevant anyway as Mr Kempster had dismissed the allegation relating to the missing key.

124. On 24 July 2023, the claimant sent an email of grievance raising issues about the lack of training and hostile environment at S3, the refusal to allow him to wear his hat and previous denial of holiday.

125. Ms Lawrence said that at this point she first became aware of the claimant. She acknowledged the claimant's grievance that day and said that it would be discussed when the claimant returned from sick leave. The claimant was signed off ultimately until early 2024.

126. On 8 August 2023, the claimant's GP wrote a letter saying that the claimant wore a hat for his chronic sinusitis.

127. On 17 August 2023, there was a wellbeing meeting between the claimant, Ms Lawrence and Mr S Wells, estate security operations manager. The claimant had asked that Mr Moore not attend and Mr Wells was a substitute. They discussed the claimant's sickness absence and how the respondent could support him to return to work. There were no minutes of this meeting but Ms Lawrence said that she told the claimant he was allowed to wear his hat and the management team at his site had been informed of this.

128. 14 September 2023, Ms Lawrence put the claimant in touch with the recruitment team to explore alternative vacancies. In correspondence with the claimant she explained to him that there were no night-shift only vacancies available on the King's Cross estate.

129. I saw a vacancy tracker which the claimant was sent that day and which contained the following information in respect of available security vacancies: whether the vacancy was temporary, whether the vacancy was open, an ID number for the vacancy, the hiring manager's name, the postcode, salary, hours, shift pattern and contact name as well as what stage the recruitment process had reached,

130. The claimant made a number of complaints about the search for alternative employment. He complained that there were no job descriptions for most of roles so that he could assess their suitability. He complained that no one looked for jobs which were relevant to him and his needs, eg what the commuting time for him was. There were vacancies as far away as Wales; some were part time roles. They just dumped all jobs on him. They should have found a role for him and redeployed him to that role. He said that asking him to make applications was a trap. The claimant raised some of these issues by email with Ms Lawrence on 19 and 20 September 2023 and Ms Lawrence liaised with the recruitment team about job descriptions for roles.

131. The claimant raised the issue that if he input the ID number for jobs in the recruitment website nothing came out. The claimant said that these were non-existent vacancies. It was part of a trick to stop him complaining or to make the claimant accountable for not applying for vacancies.

132. Ms Lawrence said that the ID numbers were for internal use and would not appear on the recruitment website. A vacancy might be taken off the external / internal portal because the respondent had had a lot of applications but the

vacancy might still be live and a CV could be sent to recruitment for that vacancy anyway. There was an example of this happening in respect of a role the claimant expressed an interest in.

133 The claimant said he did not get feedback on roles he had applied for although it was unclear how many roles that was. There was no evidence to the contrary. Ms Lawrence said she copied in the recruitment team to chase up when the claimant raised this with her. She said that sometimes hiring managers did not respond, 'like in any business'.

134. Ms Lawrence gave some evidence about client involvement in recruitment. She said that internal candidates had to apply for roles like external candidates. The applications would then go to the relevant security manager who would conduct interviews. On some sites the respondent would do the initial interview but the client would wish to have a further interview or meet the proposed person. In London, something like 65% of clients would like to meet the candidates – it depended on the sector and the level of security.

135. Ms Lawrence said that the claimant could not be given a nightshift only role at King's Cross as there were no such positions. During the wellbeing meeting on 12 October 2023, she said that they could not offer the claimant a nightshift only role in S3 because the client did not want that. Her explanation in evidence about the client needing to approve a nightshift only role was that if there was only one vacancy and the shift pattern was for days and nights, someone who wished to do only half of the shift pattern would be excess to the establishment and would represent an additional cost.

136. She and Mr Machado accepted in evidence that they had not asked if anyone at the site wanted to do day shifts only.

137. On 9 October 2023, the claimant asked Ms Lawrence for a referral to occupational health. Ms Lawrence said that that the claimant would need to provide some medical evidence first so that the respondent would know what to ask in the referral. After some further correspondence about this issue, Ms Lawrence set up a wellbeing meeting with the claimant. On 10 October 2023, Ms Lawrence emailed the claimant to say that the claimant's need to wear his hat had been explained to management. Because the claimant had said he did not wish to go back to S3, she had put him in touch with the recruitment team.

138. On 12 October 2023, Ms Lawrence held a wellbeing meeting with the claimant to discuss a referral to occupational health. The respondent minuted the meeting and the claimant made a covert recording. There was a discussion about the claimant wearing a hat; Ms Lawrence said the claimant that had not provided a medical letter before working at S3 so members of the management team had queried it. The claimant asked to be placed in a

nightshift only position so he could avoid Mr Moore or be found another role. Ms Lawrence said she would refer the claimant to occupational health and speak with the recruitment team about his applications.

139. The claimant gave evidence that he saw people being interviewed by Mr Machado and Mr Ayodele and being appointed without being interviewed by the client, contrary to what was said by the respondent about the client needing to approve appointments. Mr Machado said that, given where the claimant was stationed, he would not necessarily see these further interviews if they happened. He said that the client tended to trust Mr Machado's interviews and approve on his work but generally the client would at least want to meet the appointee. He said that a fairly large number would be interviewed by the client, sometimes twice. The client set the criteria and had a right of veto.

140. On 15 November 2023, there was a meeting between Ms Lawrence, the claimant and Mr Moore to discuss the claimant's occupational health report. The report said the claimant was fit for work if his workplace stressors were addressed. It recommended a stress risk assessment, a phased return and that the claimant work opposite shifts to the individuals perceived to be causing issues whilst the issues were explored and resolved.

141. The claimant raised the hat issue again and suggested that he was being discriminated against, as some colleagues were wearing hats. Ms Lawrence told the claimant that if he was raising race discrimination, that should be addressed through the grievance procedure. She discussed a return to work and the lack of nightshift only positions.

142. On 1 January 2024, the claimant submitted a grievance about the failure to facilitate his return to work and failure to pay full wages and lost overtime. That grievance was heard on 5 and 9 February 2024, together with the claimant's July 2023 grievances.

<u>Subsequent holiday requests</u>

143. There were in the bundle some documents relating to holiday requests made by the claimant in July 2023, December 2023 and February / March 2024. It appears some holiday requests were declined because the claimant was on sick leave. On 16 January 2024, Mr Penton granted the claimant annual leave from 8 February to 3 March 2024, he said in correspondence to ensure he received his full entitlement before the end of the leave year. The claimant said in oral evidence that what Mr Penton granted did not align with his request. He was entitled to 20 days and only received 16. He said that the request was granted for 8 February onward but when he went to work on 5 February 2024 he was told to go home. He said that Mr Penton made a

blunder and so the claimant did not get the benefit of the twenty days and was not paid the balance. Although the claimant referred to pages in the bundles showing the holiday requests and Mr Penton's email of 16 Janaury 2024 in his witness statement, he did not set out in the statement what his complaint about holiday was, as subsequently articulated in his oral evidence. The allegation that he was only paid for 16 and not 20 days was however set out in his second claim form. The response to the second claim said that the claimant had received his contractual entitlement to holiday pay. The response to the first claim was confusing in that it said that the respondent's system would not allow the claimant to book annual leave as he had said he did not want to return to his existing site and 'was nto yet back on shift'. No evidence about this was called.

SSP

144. I have discussed above the difficulty in understanding the claimant's case on SSP and provision of payslips. Ultimately the claimant said that there were missing payslips for June. September and December 2023 so he could not tell if he had received his full SSP entitlement. He said that the respondent was frustrating him and he had gone back and forth on these issues. He did not know what was going on 'behind the curtain'.

Evidence about not bringing claims earlier

145. The claimant had had the assistance of Mr Gachuba from the time he contacted Acas. There had been an earlier COT3 about some payments he had not received from the respondent. He had notified Acas before December 2023 about that complaint, at which point he had had assistance from Mr Gachuba.

146. The claimant said in cross examination that he could not have engaged in litigation earlier as he was ill. He could not attend a grievance meeting due to stress and anxiety, so could not bring his claim.

Evidence about employees and the night shift

147. Apart from their names, the claimant did not give evidence about any of the employees he said worked nightshifts. Apart from cross examination about Mr Neto, no witness was cross examined about any of these employees. Mr Machado's evidence about Mr Neto was that Mr Neto had been working directly for Google at another building on the King's Cross estate. There was another employee on the King's Cross estate looking to work days only. When the claimant's role became vacant, an opportunity was created to fill the role with that employee and another person working nights only. Mr Machado said that he interviewed Mr Neto after he had been brought to his attention by

colleagues who worked on the King's Cross estate. He had been provided with Mr Neto's CV. He was not sure whether the role had been advertised. Mr Machado denied that he offered Mr Neto nightshifts because he was white.

**Submissions**

148. The parties provided written and oral submissions. I have taken these into account in their entirety. Some particular themes of the claimant's submission were that the respondent had not called all of the people accused of detriments as witnesses. The claimant also relied on case law which showed that the 'something more' necessary in addition to a difference in treatment and difference in protected characteristic to shift the burden of proof could be for example, unexplained unreasonable treatment and untruthful and unreliable or inconsistent and inadequate explanations. It was alleged that the respondent's witnesses had lied and behaved unreasonably and given inconsistent and unreliable explanations.

**Law**

Direct race discrimination

149. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key question is the "reason why" the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an 'effective cause': O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.

150. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: "(2) if there are facts from which the Court could decide, in the absence of any other explanation, that person (A) contravened the provision concerned, the Court must hold that the contravention occurred. (3) but subsection (2) does not apply if A shows that A did not contravene the provision. "

151. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:

*(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the*

*claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.*

*(2) If the claimant does not prove such facts he or she will fail.*

*(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.*

*(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*

*(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*

*(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*

*(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.*

*(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*

*(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*

*(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*

*(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.*

*(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*

*(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.*

152. I bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.' The 'something more' need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.

153. The tribunal cannot take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)

154. The distinction between explanations and the facts adduced which may form part of those explanations is not a watertight division: *Laing v Manchester City Council and anor [2006] ICR 1519, EAT.* The fact that inconsistent explanations are given for conduct may be taken into account in considering whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12.

155. In *Chief Constable of Kent Constabulary v Bowler EAT 0214/16,* Mrs Justice Simler said: 'It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal's own findings.'

156. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.

157. I remind myself that it is important not to approach the burden of proof in a mechanistic way and that my focus must be on whether I can properly and fairly infer discrimination: Laing v Manchester City Council and anor [2006] ICR 1519, EAT. If I can make clear positive findings as to an employer's motivation, I need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT.

**Victimisation**

158. Under s 27 Equality Act 2010 a person victimises another person if they subject that person to a detriment because that person has done a protected act or the person doing the victimising believes that person has done or may do a protected act.

159. The definition of a protected act includes the making of an allegation that the person subsequently subjecting the claimant to a detriment (or another person) has contravened the Equality Act 2010 or done 'any other thing for the purpose or in connection with' the Equality Act.

160. A detriment is anything which an individual might reasonably consider changed their position for the worse or put them at a disadvantage. It could include a threat which the individual takes seriously and which it is reasonable for them to take seriously. An unjustified sense of grievance alone would not be sufficient to establish detriment: EHRC Employment Code, paras 9.8 and 9.9.

161. The protected act need not be the only or even the primary cause of the detriment, provided it is a significant factor: Pathan v South London Islamic Centre EAT 0312/13.

162. A claim for victimisation will fail where there are no clear circumstances from which knowledge of the protected act on the part of the alleged discriminator can properly be inferred: Essex County Council v Jarrett EAT 0045/15.

Unlawful deductions from wages

163. Section 13 of the ERA 1996 provides that an employer shall not make unauthorised deductions from a worker's wages, except in prescribed circumstances. Wages are defined in section 27 as 'any sums payable to a worker in connection with his employment', including 'any fee, bonus, commission, holiday pay or other emolument referable to [the worker's] employment, whether payable under his contract or otherwise' with a number of specific exclusions.

164. On a complaint of unauthorised deductions from wages, a tribunal must decide, on the ordinary principles of common law and contract, the total amount of wages that was properly payable to the worker on the relevant

occasion: Greg May (Carpet Fitters and Contractors) Ltd v Dring [1990] ICR 188, EAT.

**Conclusions**

165. I should record that the preparation of the case by the respondent was not as thorough or careful as it could have been but that the respondent was apparently hampered by the fact that many individuals named were no longer in its employment. This included Mr Green, Ms Tye, Mr Moore, Ms Price, Mr Penton, and Chris Jones. I did not however hear of any efforts made by the respondent to contact any of these individuals and ask for assistance with the case. Respondents should not assume, if that was the assumption made in this case, that it is reasonable to conclude in all cases that employees who have left will not provide useful assistance and potentially appear as witnesses.

166. The issues themselves in many instances were unclear and/or poorly expressed which created difficulties in understanding the claimant's case.

Victimisation

*Issue: Did the Claimant do any of the following:*

*If so, did this amount to a protected act within the meaning of section 27(2) EqA? i.e.*

*(a) Did the Claimant bring proceedings under the EqA?*

*(b) Did the Claimant give evidence or information in relation to proceedings under the EqA?*

*(c) Did the Claimant do any other things for the purpose of or connection to the EqA?*
*(d) Did the Claimant make an allegation that a person had contravened the EqA?*
*(e) Was the information/evidence/allegation give or made in good faith?*

*(a) It is the Claimant's position that he sent a grievance to the Respondent on 11 December 2022 (the "First Alleged Protected Act").*

167. The respondent had denied in its response and in the list of issues that this grievance was received, however it is clear the claimant did send an email of complaint on that date. That document refers to bullying and harassment and describes the claimant's alleged treatment by the dock officer who raised the issue of the claimant's uniform as treatment intended to ridicule and humiliate the claimant. There is no explicit reference to race or any other protected characteristic but the claimant did say that his treatment was contrary to the

Equality Act. It seemed to me that this was sufficient to render this email a protected act.

*Issue: (b) It is the Claimant's position that he lodged complaints of being disadvantaged and isolated at the new site (S3 building) to the Respondent on 14 July 2023 (the "Second Alleged Protected Act"). This is not accepted by the Respondent and the Claimant is put to strict proof.*

168. The claimant sent on email on this date to Ms Tye and Mr Penton in which he complained inter alia that he did not receive the four days training which had been scheduled, that he was not given a PIN to access the computer and that he had not been allowed to wear his hat. There is nothing in the email which draws any connection between these complaints and any protected characteristic of the claimant or the Equality Act 2010. My attention was not drawn to anything in the context which would have meant that the complaint would have been understood as an allegation of a breach of the Equality Act 2010. In the circumstances, I did not find that this was a protected act.

*Issue: (c) It is the Claimant's position that the Claimant sent a grievance on 24 July 2023 to Mr Russell Penton (the "Third Alleged Protected Act"). This is not accepted by the Respondent and the Claimant is put to strict proof.*

169. The claimant did send an email raising grievance about his holiday entitlement and the hat issue. He said in terms that that he was being treated unfairly due to his race. I find that this was a protected act.

*5. Did any of the incidents relied upon by the Claimant amount to a 'detriment' for the purposes of EqA? The Claimant relies on the following:*

*(a) In relation to the First Alleged Protected Act:*

*Issue: (i) on 11 December 2023 the Claimant was denied access to the grievances procedure after doing the first protected act by David Machado;*

170. It was clear that Mr Machado did an informal investigation and I accepted his evidence that he had reported his finding back to the claimant, in part because this was consistent to an extent with what Mr Ayodele had told him he should do. Having done the investigation, it made sense for him to report back to the claimant. It would have been better and there would have been a paper trail if he had treated the matter with the somewhat greater level of formality Mr Ayodele had suggested. I did not accept the claimant's evidence that Mr Machado had simply not got back to him. It was clear from the totality of evidence in the case that the claimant was not someone who would let things lie if he did not receive a response. Had he been unhappy with Mr Machado's response, there was nothing I could see that would have prevented him raising the matter with a more senior manager or HR.

171. I did not conclude that the detriment alleged was made out.

*Issue: (ii) On 31 March 2023, Mr Machado had a predisposition against the Claimant over the alleged lost key;*

172. It was unclear exactly what the claimant meant by this allegation. I could see no evidence that Mr Machado had a predisposition against the claimant, although Mr Ayodele's correspondence suggested that Mr Ayodele thought the claimant was someone who made complaints which might not be well-founded. I accepted Mr Machado's evidence that he sought to focus on a lesser charge in relation to the lost key in order to benefit the claimant. I did not conclude that there was a detriment in this respect.

*Issue: (iii) On 31 March 2023, Mr Machado humiliated the Claimant in front of an employee of the Respondent's client;*

173. Even on the account of this ultimately given by the claimant, I concluded that there was no detriment. The claimant related that the client was told that the key had been lost during the claimant's shift. It did not seem to me that a reasonable employee would feel put at a disadvantage by a factual account to the client of what had occurred.

*Issue: (iv) On 15 April 2023, Mr Machado refused to pick up the Claimant's phone call but did pick up a call from a Polish colleague;*

174. I had no evidence that at the point when Mr Machado did not pick up the claimant's call, he was able to take a call. It is clearly the case that people in busy jobs are sometimes able to answer their phone and sometimes not. There was no evidence from the claimant that Mr Machado ignored him in person or was unfriendly to him in the office. The claimant did not himself chase up Mr Machado. I did not conclude that a reasonable employee would have felt put at a disadvantage by a single occasion of a call not being answered. I did not conclude that this constituted a detriment.

*Issue: (v) On 17 April 2023, the Mr Machado [sic] subjected the Claimant to unwarranted investigations when the outcome was pre-determined in advance;*

175. I did not have evidence on the basis of which I could conclude that the outcome was predetermined in advance, except in the sense that if the client decided that the claimant should not return to the site, the respondent was not in a position to insist. Two different processes arose from the same incident – the respondent's disciplinary investigation and the removal process initiated by the client. I had no evidence that anyone had predetermined what the outcome of the disciplinary investigation should be. I accepted that the key incident was regarded as serious and something the respondent was obliged to investigate. Similarly there was nothing at all surprising in an employer feeling the need to investigate an absence which was not authorised. I did not

conclude that the investigations were unwarranted and accordingly the detriment alleged was not made out.

*Issue: (vi) On 17 April 2023, Mr Machado denied the Claimant relevant evidence before and during the investigation meeting;*

176. The evidence the claimant was complaining about was the CCTV of the area at relevant times. He ultimately accepted in evidence that he had not asked Mr Machado for this material. Mr Machado had concluded it was not useful evidence. This detriment was not made out.

*Issue: (vii) On 18 April 2023, Mr Machado issued the Claimant's P60 form*;

177. Ultimately it was not clear how it came about that the claimant was provided with his P60 by Mr Machado at this point. I note that employees are entitled to receive a P60 every year; the receipt of a P60 carries no implications as to whether the employment is continuing. It is not a detriment to receive a P60 absent special circumstances. The claimant believed the circumstances showed that he was about to be dismissed but I did not conclude that it was reasonable for him to draw that connection given that there is no relationship between a P60 and dismissal. In the circumstances, I did not conclude that a reasonable employee would have felt put at a disadvantage by the provision of the P60 and I concluded that this was not a detriment.

*Issue: (viii) On 19 April 2023, Mr Machado suspended the Claimant from work which was unwarranted;*

178. There was documentary evidence that the client had asked for the claimant's removal. I accepted the respondent's evidence, which was supported by the policy on removals, that the respondent was obliged to remove employees when asked to do so by the client. The suspension was not therefore 'unwarranted' and, although suspension is itself generally reasonably regarded as a disadvantage, it was not a detriment imposed by the respondent.

*Issue: (ix) On 19 April 2023, Mr Machado issued a circular that the Claimant was no longer part of the Kings Cross Estate contract;*

179. I accepted the evidence that this was a standard part of risk management by the respondent. It would have been surprising if it were otherwise. If it was a detriment, it was not one which was in any relevant sense imposed by Mr Machado.

*Issue: (x) On 18 May 2023, Mr Lavell Green subjected the Claimant to a disciplinary process where the outcome was pre-determined;*

180. I could see no evidence that Mr Green's outcome was predetermined in respect of the only part Mr Green had control over, which was as to his

findings about the alleged misconduct. Ultimately the respondent had no control over the aspect which the claimant was most aggrieved about, which was the removal from 4PQS. This alleged detriment was not made out.

*Issue: (xi) On 1 June 2023, Mr Lavell Green found the Claimant guilty of an allegation, and, or allegations he was not aware of;*

181. This allegation was not explained. The conduct allegations were set out prior to the hearing and those were the charges Mr Green made findings in respect of. This alleged detriment was not made out.

*Issue: (xii) On 18 May 2023, Mr Lavell Green refused to disclosure [sic] relevant evidence to the Claimant before and during the disciplinary meeting;*

182. The claimant accepted in evidence that he did not ask Mr Green for the CCTV footage. This alleged detriment was not made out.

*Issue: (xiii) On 15 June 2023, Mr Johnny Kempster denied the Claimant the relevant evidence for the appeal hearing;*

183. I accepted that Mr Kempster by this point would not have been able to access the CCTV footage. Given that he had looked at it, Mr Machado should probably have retained it for the claimant to see, but by this point, Mr Kempster had decided to disregard the key charge so there was no disadvantage to the claimant in the footage not having been preserved. What the claimant was really saying was that the respondent was obliged to investigate an underlying conspiracy against him to hide the key and 'frame' him. It seemed to me that this allegation was so implausible and so unsupported by evidence that there was no obligation on the respondent to spend further time on it and a reasonable employee would not have considered himself disadvantaged by any failure to do so. I concluded there was no detriment.

*Issue: (xiv) On 4 July 2023 and 17 August 2023, Mr Johnny Walker [sic, should be Kempster] and Sarah Lawrence forced the Claimant to attend an appeal meeting whose outcome was meaningless;*

184. The claimant was not forced to attend an appeal meeting: he had asked to appeal the disciplinary outcome. The outcome was not meaningless; Mr Kempster found the key charge should not be held against the claimant and reduced the disciplinary sanction. The claimant's real complaint again was that the client would not accept him back at 4PQS. That was something that was not in Mr Kempster's control. No detriment is made out.

*Issue: (xv) On 10 July 2023, Mr Johnny Kempster, Sarah Lawrence and Ellen Tye evicted the Claimant from the 4PQS site despite the Claimant being innocent of the allegation he was made aware of;*

185. This is essentially the same complaint. These people were not responsible for the decision that the claimant could not return to 4PQS. This detriment was not inflicted by the respondent.

*Issue: (xvi) On 11 July 2023, Mr Johnny Kempster, Sarah Lawrence, Mr Moore Haldane and Ellen Tye placed the Claimant at a disadvantage at the S3 building and isolated him;*

186. The evidence was that the respondent negotiated with the client that the claimant could return to another part of the King's Cross estate on his existing shift pattern and terms. This was not a detriment imposed by the respondent in the circumstances.

*Issue: (xvii) On 12 July 2023 and 17 August 2023, Ellen Tye and Sarah Lawrence denied the Claimant the opportunity to work at night to escape the humiliation and hostility at S3 building;*

187. The claimant could reasonably have felt put at a disadvantage by the non-availability of a nightshift in circumstances where he was suffering from stress due to his perception in particular of Mr Moore, whom he would encounter on dayshifts, so this was a detriment.

*Issue: (xviii) On 12 July 2023, Mr Haldane Moore and Sarah Lawrence denied the Claimant the right to wear a medical cap without providing the relevant policy at the new site (S3 Building).*

188. The claimant could reasonably have felt put at a disadvantage, given that he had previously been allowed to wear his hat as an adjustment for his sinusitis. It was Mr Moore not Ms Lawrence who raised the issue. This was a detriment.

*(b) In relation to the First, Second and Third Alleged Protected Act:*

*Issue: (i) On 17 August 2023 to 28 January 2024, Sarah Lawrence and Hillary Price forced the Claimant to apply for unknown jobs when he should not have been evicted from 4PQS and should not have been disadvantaged at the S3 building;*

189. I have made findings above about the 'eviction' from 4PQS and the situation at S3. If the issue was about jobs lacking job descriptions, there was no clear evidence that the claimant had asked for and not received details of any particular job. If the issue was about the ID numbers, I accepted Ms Lawrence's explanation that these were for internal use and therefore would not have produced results when input into the search facility of the available recruitment website/s. The claimant was not 'forced' to apply for jobs. He was given an opportunity to look for a job he preferred to a return to S3. There was no detriment.

*Issue: (ii) From 11 December 2022, Mr David Machado, Chris Jones, Ellen Tye, Sarah Lawrence, Mr Lavell Green, Mr Kempster and Mr Russell Penton forced him to take sick leave between 14 July 2023 and 28 January 2024;*

190. The claimant was on sick leave because he had medical certificates saying he was unwell. The complaint appears to be a complaint about the failure to provide a nightshift only position. There is no separate detriment in respect of the outcome of that failure which was that the claimant remained on sick leave.

*Issue: (iii) On 14 July 2023 and 20 October 2023, the Respondent's payroll department delayed and withheld sick pay, underpaid sick pay, denied pay slips and gave HMRC figures which did not tally with the bank deposit;*

191. The claimant did not sufficiently clarify this complaint in time for it to be properly responded to and I am not able to make any finding as to whether there was a detriment. Ultimately the only evidence I had even from the claimant was that he was missing some payslips. There was no account of the alleged underpayment or delayed payments or of the issues with HMRC.

*Issue: (iv) On 12 October 2023, Sarah Lawrence determined it was for the Second Respondent to hire and allocate the Claimant's rota*.

192. I have outlined above what Ms Lawrence said about the fact that the client would have to be involved if a new nightshift only position were created, because of cost. I did not conclude that Ms Lawrence gave the claimant misleading information about that at the 12 October 2023 meeting and I have not concluded that there was a detriment.

(c) In relation to the Second and Third Alleged Protected Act:

*Issue: (i) On 14 July and 24 July, that the Claimant was denied access to the grievances procedure had a hostile reception at the S3 building and was denied holiday.*

194. What the claimant perceived as a hostile reception at S3 predates the protected act on 24 July 2023 so that part of this complaint simply cannot proceed. The claimant was not denied access to the grievance procedure. He was told that it would not proceed whilst he was on sick leave; it did proceed thereafter. I was not directed to any evidence which suggested the claimant was unhappy with that approach and asked for his grievances to be considered whilst he was on sick leave. I could not see any detriment to the claimant in relation to the grievances.

195. The alleged denial of holiday ultimately seemed to relate the delay in allowing holiday because the claimant was on sick leave and what the claimant ultimately said was under provision of holiday / holiday pay.

196. The handling of the initial holiday requests seemed to be unsophisticated. A blanket denial of holiday because an employee is on sick leave seems to ignore the fact that for some employees recuperative holiday may well be possible whilst on sick leave. It seemed to me that a reasonable employee could have felt put at a disadvantage by this approach. Similarly there was no evidence from the respondent to contradict the claimant's account that he had not received his full entitlement to pay. I concluded there was detriment.

*Issue: 6. If, so what was the reason for the alleged detriment? Was this because the Claimant did the alleged protected act?*

197. I considered in turn the various detriments I found made out and whether there was evidence from which I could reasonably conclude that the reason was in a material sense the fact that the claimant had done the protected act or acts relied on.

*The hat incident at S3*

198. I did not hear from Mr Moore, who was no longer employed by the respondent. I had no evidence that he knew about the claimant's first protected act. He was not a manager involved in matters at 4PQS. The claimant asked me to accept that Mr Moore became involved in a conspiracy initiated by Mr Machado and Mr Ayodele.

199. The evidence I had was that the hat was not part of the indoor uniform and that the wearing of the uniform was important to the client. So far as the comparators put forward by the claimant as wearing hats, I did not have sufficient information about them from the claimant to conclude that they were in materially the same circumstances as he was. One was a contractor engineer. I had no information on where exactly he worked and for whom and in what circumstances he had worn a hat. One was a dock officer, which I understood to be an external role. I did not have details of that individual's manager. The final individual was a break relief officer. I did not have details of who managed him and whereabouts and how often and in what circumstances the claimant saw him wearing a hat.

200. Comparators are of course provided for in direct discrimination claims but not in victimisation claims and the claimant does not have to show he was treated less favourably than someone who did not do a protected; however evidence of how others who have not carried out a protected act are treated may be evidence which contributes to the burden of proof passing. Those individuals, because of the lack of evidence that they were in materially similar circumstances to the claimant, did not provide facts which caused the burden of proof to shift. Was there other evidence from which I could reasonably conclude that Mr Moore had been influenced by the first protected act? I concluded there was not., Not only was there no evidence that Mr Moore knew anything about the protected act, there was no logic to the conspiracy the claimant alleged Mr Moore was a part of. Mr Ayodele and Mr Machado had dealt with the claimant's complaint and the claimant appeared to have let it lie after that. It was not an allegation of discrimination by ether Mr Machado

or Mr Ayodele, nor was it a matter they continued to be troubled by the claimant about, and so it was difficult to see any reason why it would have led to an animus against the claimant by Mr Machado and Mr Ayodele which was sufficient to cause them to plot against the claimant to cause his new manager to disadvantage him. So not only was there no evidence in support of such a conspiracy, nor did it make any sense.

201. What also was clearly the case was that once the matter was raised with management and a GP letter provided, the claimant would not have been prevented from wearing his hat. This was consistent with the evidence that wearing of hats by indoor employees was exceptional and needed to be justified to the client.

202. In the circumstances, the burden of proof did not pass and this complaint was not made out.

*Lack of provision of nightshifts*

203. The claimant named some comparators but gave no evidence at all about what he knew about their circumstances. Apart from Mr Neto, he did not put these individuals to the respondent's witnesses, although I invited Mr Gachuba to do so.

204. I accepted the evidence of Ms Lawrence that the respondent could not simply create a nightshift position where that would be surplus to the client's requirements. The respondent could arguably have done more to make enquiries as to whether there were any employees willing to do a dayshift only, although I did not hear evidence about whether there were any locations other than S3 where the client would have been willing to accommodate the claimant on the King's Cross estate. I note also that at this point, there was no advice to the respondent or information which would reasonably have led it to conclude that the claimant was disabled within the meaning of the Equality Act 2010 so as to trigger a duty to make reasonable adjustments.

205. I accepted that Mr Neto was not in the same circumstances as the claimant. He was someone who was drafted in to do a nightshift to enable an existing employee to switch to dayshifts only in circumstances where the claimant's removal from 4PQS had created a vacancy. Those were not the circumstances of the claimant. He was more in the position of the employee who had asked for dayshifts. The evidence I heard was that it had taken some time (I did not have evidence as to how much) to accommodate that request and it was able to be satisfied because of the claimant's removal from 4PQS.

206. In the circumstances, I could see no evidence to link the detriment to the protected acts and the burden did not pass.

*The holiday issue*

207. This appears to have been a matter for HR and Mr Penton. I could see no evidence for or reason why anyone from HR or Mr Penton would have been drawn into the alleged conspiracy flowing from the first protected act or why

they would wish to punish the claimant for bringing the 24 July 2023 grievance which was really a grievance about Mr Moore.

208. Mr Penton appears to have intervened to ensure the claimant could take some holiday. I had no evidence to suggest that he was influenced by the protected acts nor was it logical to infer that he must have been.

209. Looking at the allegations together, was the fact that the respondent had denied in its pleadings that there were grievances on the dates of the protected acts a material factor in potentially shifting the burden, as the claimant submitted? I could not see that it was. It appeared that the respondent or its lawyers had not fully investigated until a fairly late stage in the proceedings what complaints (not labelled as grievances) the claimant had brought. I had no evidence that individuals such as Mr Machado had misled the lawyers or suppressed material.

210. I also considered whether Mr Kempster's unsatisfactory evidence about his investigation into the key incident was material from which I could draw inferences. Mr Kempster was not responsible for any of the detriments I have found but was this evidence which supported the cliamant's case about an underlying conspiracy? I reminded myself that I should draw inferences which are logical to draw. It seemed to me it was far more likely that Mr Kempster had not regarded the detail of the key matter as of any great importance once he had decided that he was not going to uphold the finding of misconduct about the key incident than that he had been drawn into a conspiracy by Mr Machado and Mr Ayodele about a previous complaint of the claimant's which appeared to have been resolved.

211. If I am wrong about any of the alleged detriments which I have found not to be detriments, I have not found in relation to any of these matters facts which would cause the burden of proof to shift.

212. For all of these reasons the victimisation complaints are not upheld and are dismissed.

*Direct race discrimination*

*7. The Claimant is African.*

*8. Did the following incident occur as alleged:*

*Issue: (a) On 11 December 2022, 14 July 2023 and 24 July 2023, was the Claimant was denied access to the Respondent's grievance procedure;*

213. I have already found that there was no detriment in this respect.

*Issue: (b) On 17 March 2023, the predisposition against the Claimant i.e. pre-judging the Claimant as guilty without hearing his account and for undisclosed reasons*;

214. Mr Machado was not responsible for deciding whether the claimant was guilty of the allegations. He was the investigating manager and decided whether there was a case to answer. He did hear the claimant's account and he did not find him guilty. This detriment is not made out.

*Issue: (c) On 17 March 2023, subjecting the Claimant to unwarranted investigations;*

215. I concluded that it was reasonable to investigate the allegations and the investigations were not unwarranted. This detriment is not made out.

*Issue: (d) On 18 April, the issuance of the P60 which the Claimant understood was part of the dismissal process;*

216. I have already found that this detriment is not made out.

*Issue: (e) On 19 March 2023, suspending the Claimant due to predisposition against the Claimant over undisclosed allegations;*

217. The suspension was not caused by any predisposition of the respondent or its managers but by the decision of the client. This detriment was not the result of a decision by the respondent.

*Issue: (f) On 19 April 2023, the issuance of a circular that the Claimant was no longer part of the Kings Cross Estate contract;*

218. I have already concluded that this detriment is not made out.

*Issue: (g) On 17 March 2023, subjecting the Claimant to an unwarranted disciplinary hearing while refusing to investigate how the key was used on 20 March 2023 and other relevant evidence;*

219. The complaint here is about the 18 April 2023 meeting with Mr Machado which was an investigation meeting. The charge Mr Machado was looking at was about the claimant's delay in reporting the loss of the key. Mr Machado did look at the CCTV footage to see if it cast any light on the loss of the key but could not find anything. No other 'relevant evidence' was pointed to by the claimant. I did not find there was a detriment.

*Issue: (h) On 1 June 2023, finding the Claimant liable because client wanted and not because of the lost key since it had been found;*

220. The claimant was found liable for not reporting the key loss earlier. Whether or not the key was subsequently found was irrelevant to that charge. There was no evidence that Mr Green had been improperly influenced by the client in reaching his conclusion. This detriment is not made out.

*Issue: (i) On 18 May 2023 and 14 June 2023, refusal to disclose the relevant evidence before and during the investigations;*

221. This again was a reference to the CCTV footage. The claimant did not ask for it on 18 May 2023. He did ask for it in his appeal but by that stage I accepted that the CCTV no longer existed. The CCTV footage in any event cast no light on the charge against the claimant, which was about delay in reporting the loss of the key. I concluded there was no detriment.

*Issue: (j) On 4 July 2023, continuing to hold the Claimant liable despite the Claimant's exoneration;*

222. Mr Kempster did not continue to hold the claimant liable in respect of the key matter. He did continue to hold him liable in respect of the unauthorised absence. I concluded that he was not obliged to find that the claimant was exonerated in respect of that incident in circumstances where he had taken leave which he knew the respondent had not authorised. The earlier issues around refused leave might have provided some mitigation but Mr Kempster could still reasonably have concluded that there was misconduct in taking the leave. I concluded that this was not a detriment.

*Issue: (k) On 14 June 2023 and 15 June 2023 the denial of evidence before the appeal;*

223. Since the CCTV no longer existed, there was no detriment inflicted by Mr Kempster.

*Issue: (l) On 4 July 2023, 10 July 2023 and 11 July 2023 the decision to evict the Claimant from 4PQS when the Claimant was innocent of the only allegation he knew about;*

224. This was not a detriment imposed by the respondent.

*Issue: (m) On 11 July 2023, the decision to place the Claimant at a disadvantage and isolation in the new site (S3) despite promises to the contrary;*

225. I have already concluded that this was not a detriment.

*Issue: (n) On 12 July 2023, Ellen Tye and Sarah Lawrence denied the Claimant night shifts;*

226. This was a detriment for the reasons set out above.

*Issue: (o) In July 2023, the Respondent hired a White Brazilian (Paul S Neto) to replace the Claimant at 4PQS;*

227. This was not a detriment to the claimant. Once the client had refused to have the claimant back at the site, it could make no difference to the claimant who was employed there in his stead and on what terms.

*Issue: (p) On 12 July 2023, the denial of the right to wear a medical cap without disclosing any policy which allowing comparators to do so;*

228. I concluded that this was a detriment.

*Issue: (q) From 7 December 2022 and 20 October 2023, causing the Claimant to suffer stress and forcing him to take sick leave from work;*

229. I have considered this allegation elsewhere insofar as particular matters are relied on which are said to have caused the claimant stress. This allegation does not contain any particulars of additional acts or omissions on the part of

the respondent and I cannot conclude find liability for a detriment caused by an unparticularised act or omission.

*Issue: (r) On 14 July to date, denied the Claimant access to the grievance procedure over hostile environment at S3;*

230. The claimant did not give evidence that any of his grievances had not been considered in February 2024 or that he objected to the grievance being delayed whilst he was on sick leave. I did not conclude that this detriment was made out.

*Issue: (s) From16 July 2023 to 28 January 2024, the continuous and unreasonable denial of holiday contrary to the Respondent's policy and the Claimant's statutory right;*

231. As set out above, I concluded that aspects of this were a detriment.

*Issue: (t) From 4 July 2023 to 28 January 2024, forcing the Claimant to apply for new positions when:*

*(i) There were no disclosed reasons to warrant eviction from 4PQS;*

*(ii) When a hostile environment had been deliberately created at the S3 building;*

*(iii) Not responding to the Claimant's applications;*

*(iv) Providing the Claimant with non-existent vacancies.*

232. Unpicking this allegation I concluded that:

a) There was a reason why the claimant was not able to continue to work at 4PQS, which was disclosed to him – that the client had asked for his removal;
b) I was not able to find on the evidence I had that a hostile environment had been deliberately created for the claimant at S3. The login situation was unfortunate but I did not consider there was adequate evidence to show it was concocted. The fact that the PIN was easily obtained in January 2024 seemed to be readily explicable by the fact that it had been requested back in July 2023. Mr Moore required evidence in support of the claimant's requirement to wear a hat which previous managers had not asked for. Once the evidence was provided at a later date there was no issue. The fact that Mr Moore was more of a stickler about the uniform policy did not seem to me in itself evidence of hostility. I bear in mind that the claimant only attended for two days before going on long term sickness absence;
c) I did not have any clear evidence from the claimant of positions he had applied for and not received a response in respect of;
d) I accepted Ms Lawrence's evidence that the claimant was wrong in his understanding of the ID numbers and therefore there was no good evidence that he was provided with nonexistent vacancies.

234. Looked at overall, I did not have evidence of detrimental treatment in the handling of this matter. The claimant was not forced to apply for new positions. He was given an opportunity to apply for such positions in circumstances where he did not want to return to S3 and the respondent was not in a position to simply impose him on a client in another location.

*Issue: (u) From 14 July 2023 to 28 January 2024, delaying sick payment, withholding the sick pay, underpayment of the sick pay, denial of pay slips and giving HMRC figures not tallying with the bank deposit;*

235. As I have said above, most of these allegations were never particularised or the detail was provided too late for them to be responded to. I have not found there was a detriment.

*Issue: (v) The Claimant's hiring and rota was dependent on the good or ill will of the Respondent's client.*

236. The situation was that the client had ultimate say over who worked at its site. This was simply a facet of the employment not a detriment imposed on the claimant. So far as the rota was concerned, I accepted that it was a matter for the client to authorise new shift patterns where these would cause additional cost to the client, although the client would not otherwise be troubled over what shift patterns were in place to cover the services contracted for. Again this was simply a facet of the job and not a detriment imposed by the respondent on the claimant. I did not find any detriment committed by the respondent in this respect.

*9. If so, in respect of each/any incident, did the Respondent treat the Claimant less favourably than an appropriate comparator?*

*10. Who is the appropriate comparator?*

*11. Are the facts from which the Tribunal could decide in the absence of any other explanation that the Respondent treated the Claimant less favourably than the appropriate comparator because of the Claimant's race?*

237. As to comparators named by the claimant, I was unable to conclude that there were others in materially similar circumstances to the claimant because of the lack of evidence I have described above under the victimisation heading.

238. I could see no facts from which I could reasonably conclude that in not being placed on nightshifts only, the claimant was being treated less favourably than a hypothetical comparator because of his race. The respondent had a shift pattern which involved both days and nights; any other pattern was an exception which would have to be accommodated by finding another employee to work a different shift pattern or asking the client to pay for additional resource. There was no immediate opening which could be offered to the claimant. Essentially the claimant’s case was that there was a conspiracy by all of the managers involved. I could see no evidence of or logic to such a conspiracy. If I had found facts which would have caused the

burden of proof to shift, I was in any event satisfied that nightshift only positions were not available at the time and that was the reason why none was offered. Had the claimant continued to be unable to return to work and had the medical advice been that he was disabled, the respondent might have been under a duty to make more vigorous efforts to consider whether such a role could be found or created for the claimant, but I could see no material on the basis of which I could reasonably infer that a non-African employee would have been treated differently in respect of the efforts made by the respondent when the claimant asked for a night shift only role and over the period in respect of which he is claiming.

239. So far as the hat issue is concerned, I have already concluded that there was no evidence of a race-based conspiracy in which Mr Moore became involved. Nor did I have any evidence on the basis of which I could reasonably conclude that Mr Moore would have taken a different approach with a non-African employee.

240. I did not uphold these claims. Further I could see no evidence on the basis of which I could reasonably conclude that other matters complained of which I have not concluded were detriments were materially caused by the claimant's race.

*Issue: Non-payment of wages*

*16. Has the Claimant properly presented a claim for owed wages, or does this relate to remedy regarding the complaints of victimisation and discrimination?*

*17. If an unlawful deductions from wages claim has been presented, was the Claimant entitled to pay for overtime between 20 October 2023 to 28 January 2024? The Respondent notes that the Claimant did not work overtime in this period.*

*18. If so, did the Claimant receive this pay?*

241. It was accepted by the claimant that this was not a separate claim but a claim for compensation in respect of his victimisation and direct discrimination claims. Those were unsuccessful and this claim for compensation is accordingly dismissed.

*Unlawful deductions of Statutory Sick Pay*

*Issues: 19. What pay was the Claimant entitled to during his period of sickness absence between 20 June 2023 and 19 January 2024?*

*20. What pay did the Claimant receive in respect of this period?*

*21. What, if any, is the Claimant owed in respect of Statutory Sick Pay?*

242. The claimant never clarified this claim and I have been unable to make any finding about it. It is accordingly also dismissed.

*Jurisdiction*

*2. Were any of the Claimant's complaints presented outside the primary limitation period (taking the relevant early conciliation dates into account)?*

243. I have not upheld any of the claimant's claims substantively so I did not have to go on to consider issues of time.

Employment Judge Joffe

Date: 9 July 2025

Sent to the parties on:

10 July 2025

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For the Tribunal Office:

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