Neutral Citation Number: [2025] EAT 138

Case No: EA-2024-000397-RN

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 30 September 2025

Before :

HIS HONOUR JUDGE AUERBACH

- -

Between :

MR J ALOM

Appellant

- and -

THE FINANCIAL CONDUCT AUTHORITY

Respondent

- -
- -

John Robertson (lay representative) for the **Appellant**
Orlando Holloway (instructed by Bevan Brittan LLP) for the **Respondent**

Hearing date: 4 September 2025

- -

JUDGMENT

SUMMARY

UNFAIR DISMISSAL; PRACTICE AND PROCEDURE

The claimant was dismissed for the given reason of conduct. He was found to have been the author of anonymous email to a colleague – which he denied having sent – which was considered, in view of its content, to amount to an act of harassment. A further email, sent by him, was found to have breached confidence in relation to the report of an unsuccessful complaint by him about the alleged conduct of the same colleague.

The tribunal dismissed complaints of unfair dismissal, direct discrimination because of race, harassment related to race, and victimisation, in relation to the decisions to dismiss and to reject the claimant's internal appeal, and of victimisation relating to the investigation report which preceded the disciplinary charges.

The tribunal did not err:

(a) by failing to find that the dismissal was unfair because the claimant had not been provided with transcripts of the investigation interviews with the complainant. Her original allegations had been wide-ranging, but the disciplinary charges related only to the two emails, and he had sufficient information to defend himself;

(b) by failing to find that the content of a "script" prepared by HR for the disciplinary hearing showed that the dismissing officer had prejudged the matter. The tribunal was entitled, having heard his evidence, to accept that the decision was his alone, and that he took into account the claimant's representations when reaching it; nor

(c) by failing to find that a search of the claimant's work computer, as part of the initial investigation, rendered the later dismissal unfair because it infringed the claimant's Article 8 rights and was disproportionate. The respondent had not relied upon its fruits in support of the actual disciplinary charges or decision to dismiss.

Following the full-merits hearing the three-person tribunal met in chambers and reached its decision the next day. However, for reasons explained by the judge, the reserved judgment

was not promulgated until about 9 months later. The delay was excessive, but, applying the guidance in **Bangs v Connex South Eastern Ltd** [2005] EWCA Civ 14; [2005] ICR 763, certain errors and omissions in the written reasons, relied upon by the claimant, did not point to the conclusion that he had not received a fair hearing or adjudication of his complaints.

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The claimant in the employment tribunal was employed by the respondent until 1 April 2021 when, following a disciplinary hearing, he was summarily dismissed for the given reason of misconduct. This related to an anonymous email to a colleague, Ms Shaukat, of which, despite his denial, he was found to be the author; and to another email referring to the report into a complaint he had made against her. His internal appeal was unsuccessful. He presented two claims to the tribunal, one before and one after the dismissal, raising multiple complaints.

2. The matter came to a full merits hearing at the East London Hearing Centre over a number of days in May 2023 before Employment Judge S Shore, Ms J Houzer and Ms H Edwards. The claimant appeared in person. The respondent was represented by Orlando Holloway of counsel. The tribunal reserved its decision. Its written judgment and reasons were sent to the parties on 20 February 2024. All of the complaints were dismissed. The claimant appeals against that decision.

3. Some grounds of appeal were permitted to proceed on paper and some further grounds at a rule 3(10) hearing. At the appeal hearing John Robertson, a lay representative, appeared for the claimant, who also contributed. Mr Holloway appeared for the respondent. In the opening discussion, the claimant indicated that he may need to take breaks more frequently than might be usual. Bearing in mind that the claimant and Mr Robertson are both lay people, I spent some time discussing with them and Mr Holloway how the hearing would be conducted, including the running order.

4. Prior to the hearing the claimant had made two applications to rely upon certain materials that were not before the employment tribunal, which the respondent had opposed. It was agreed at the start that I would consider those applications as part of my overall decision, on the basis that both sides could, in the course of overall oral argument, make their submissions about whether I should take any of this material into account, and what I should make of it if I did.

5. I had before me detailed skeleton arguments that had been tabled by the claimant and by Mr Holloway in advance, as well as the previous correspondence relating to the claimant's applications. I had main and supplemental bundles of documents and a bundle of authorities to which two additions were made. I heard very full oral argument over the course of the day on all aspects of the appeal from Mr Robertson, from Mr Holloway, and then in reply from Mr Robertson. The claimant himself made occasional supplementary submissions when Mr Robertson was making his initial and reply submissions. All of them helpfully responded to questions at various points raised by me.

6. During the course of his reply submissions, Mr Robertson said that in April 2025 Ms Shaukat had made a complaint to the police, and he wished to raise an aspect of that. Mr Holloway submitted that it was not appropriate for the claimant to be seeking to introduce such matters at this stage and in an open hearing, without he, Mr Holloway, first being told what the evidence or information was, and why it was considered relevant, so that the respondent could consider its position. He asked for a break so that that could be done, and Mr Robertson agreed. When we resumed following the break, Mr Robertson told me that Mr Holloway had objected and that the matter was no longer pursued.

7. At the end of Mr Robertson's reply submissions, I was told that the claimant wanted to send in a further written submission on the authorities. I asked why this had not been raised sooner, and why it was thought necessary, given the opportunity that had been given, and taken, to put in a written skeleton and to make oral submissions. I noted that if the claimant was permitted to put in a further post-hearing written submission, the respondent would need to be permitted to put in a response, to which the claimant might then want to reply. The claimant then indicated that his points had broadly been covered by Mr Robertson in oral submissions, and that he did not press the request.

The Facts

8. In summary, the facts material to this appeal, which I take from the tribunal's decision, or documents in my bundles, are as follows.

9. The respondent is the financial regulatory authority for the United Kingdom. The claimant was employed by it from 2015. He identifies as non-white, of British-Bangladeshi national origin and of Bengali ethnic background.

10. The claimant and Ms Shaukat had a friendship that started in late 2017 or early 2018. There were many emails between them. He gave her a number of gifts.

11. The tribunal continued:

> **"88.13 On 23 January 2020, there was an altercation between the claimant and Ms Shaukat in the respondent's canteen at lunchtime (§61 of the claimant's witness statement). The claimant had sent Ms Shaukat and email congratulating her on securing a place on a course that would lead to an MSc in Financial Regulation [339]. He received no response. He tried to message Ms Shaukat by Skype IM, but found he was blocked. He says that being blocked by Ms Shaukat "…triggered me."**
>
> **88.14. Later that day, the claimant went to the canteen for lunch. He says he saw Ms Shaukat sitting alone and approached her. The claimant's evidence was that he was in a rotten mood and decided to "…approach and essentially 'pick a fight'." He describes the exchange as being a "…heated and disordered argument." (§61 of the claimant's witness statement).**
>
> **88.15. During the argument, the claimant says that Ms Shaukat accused him of stalking her. The claimant says he had no further contact with Ms Shaukat after the incident until he emailed her on 29 January 2020. That is a disputed fact that we shall return to below.**
>
> **88.16. On 23 January 2020, Ms Shaukat received an email timed at 20:27pm [340] that appeared to be from someone with the same name as her. It said:**
>
> ***"Do you think that you could threaten people not to ever cross you but then you go ahead and cross other people with no consequences at all? Get HR involved. If you want to bring me down I will certainly make sure I bring you down with me.***
>
> ***Employee Handbook - passing off someone else's work as your own is an example of gross misconduct. That 300 word you submitted wasn't your work that was someone else's work. The meta data in the document itself proves it. You was in that interview room, yet you had someone else bring you down your notebook? You was communicating via an app with internet access with someone whilst you was undertaking the case study. Both of these points can and will be evidenced. You will be fired for gross misconduct and booted off the MSc you will be humiliated amongst everyone you know. You've got a previous history of submitting malicious stalking and harassment allegations against people. Being escorted to the car park from the office by canary wharf security? But what happened a few months after wasting their time and resources? They'll have that on record. Evidenced. You're so casually throwing allegations of HARASSMENT and STALKING against me?? It wasn't because of me that you was being escorted to your car by security. Chal tikhe. You're unjustly making ME out to be the villain?? I was never the villain in your story. Chal tikhe. If need be I'll play the part of the villain to absolute perfection. And this other thing? As I've said before if this is a curse for me then it's a curse for you also. You will be haunted by synchronicites, signs, and dreams for the rest of your existence! Enjoy. If I'm going down, you're going down and if I'm going down I'm doing so kicking and screaming and making a scene just like how we use to when we were kids. Get HR involved. Get police involved. My minds hanging on by a thread and I really honestly do not give a fuck any more. I've had enough of being patient, I've had enough of crying every single day to and from work, at work, at home, I've had enough of praying. I wish I never met you. I wish I never knew your name or saw your***

> ***face or even knew of your existence. I wish you never came to ME out of everyone in the building when you was going through your bullshit! Why ME?? Why did you have to come to me?? You could've gone to anyone else why did you come to me?? I never invited you to disturb whatever miserable amount of peace I had in my life! Why ME??***
>
> ***Whenever you're ready to grow a pair and face me to communicate and resolve this bullshit conflict and make peace let me know. In the meantime I will try my utmost to manage myself and my issues for as long as I spiritually mentally and emotionally able to like how I've been trying for the past 18 months! But I'm not giving any promises and any chaos that's to come is all due to the karma*** **that you yourself have created based on your actions and words that you've put in."**
>
> **88.17. On 29 January 2020, the claimant emailed Ms Shaukat [341-343] (§62 of the claimant's witness statement) accusing her of leaving him feeling upset and belittled after their altercation on 23 January 2020. He accused Ms Shaukat of "…spreading false, malicious rumours about myself to the FCA security team." The email offered to resolve their differences informally through mediation by their direct line managers. The claimant included a draft email to their managers."**

12. On 30 January 2020 Ms Shaukat raised the 23 January email and other concerns with Ms Chan of the HR Division. On 19 February 2020 Ms Shaukat received an email with sexually graphic content. It was purportedly from her boyfriend, but she believed it was from the claimant. On 20 February Ms Shaukat emailed Ms Chan a chronology that included allegations that:

> **"88.22.1. The claimant had bought her gifts that were unwanted. Some of the gifts were expensive.**
>
> **88.22.2. The claimant had created numerous Snapchat identities and had tried to add Ms Shaukat to them.**
>
> **88.22.3. The claimant had stated to arrive at work at the same time as Ms Shaukat and she saw him "constantly" in the kitchen area of the 7th floor.**
>
> **88.22.4. The claimant had behaved inappropriately towards her on 23 January 2020 in the canteen.**
>
> **88.22.5. She had received the email dated 23 January 2020 [340] that she described as "threatening".**
>
> **88.22.6. Ms Shaukat had confided in a friend and her manager. The manager had put her in contact with HR and advised MS Shaukat to contact the security desk with a view to being escorted to her car.**
>
> **88.22.7. As Ms Shaukat was speaking to the security guard, the claimant walked past. Ms Shaukat was escorted to her car by the building team manager.**
>
> **88.22.8. The claimant sent her another email (which we find is the one dated 29 January 2020 [341-343] because of the matters that Ms Shaukat says were in the email are the same as those in the 29 January email) that accused her of spreading rumours about him to security.**
>
> **88.22.9. The following day, Ms Shaukat asked the security guard how the claimant had become aware of her reaching out to the security desk. She says the reply was that the claimant had contacted them asking what she had said. Ms Shaukat did not see the claimant as often, so thought the situation had calmed down. 88.22.11. She had then received the email dated 19 February 2020."**

13. Ms Chan referred the matter to the Employee Relations (ER) team. She also asked the Cyber Security Team (CST) "to investigate the question of the origin of the offensive emails." [88.25]

14. Ms Shaukat made a complaint to the police, who then advised the claimant not to contact her. The complaint was later withdrawn. The claimant started a 12-month sabbatical on 7 March 2020.

15. An HR Business Partner, Natasha Oakley, conducted an investigation. She interviewed Ms Shaukat on 9 March 2020.

16. On 12 March 2020 the CST reported [88.31]:

> **"From this investigation I found no evidence that JA [the claimant] was responsible for the emails or anything that would indicate an attempt to test FCAs email protections. There is evidence that JA and AS had a relationship beyond work colleges, in the form of email correspondence between them, but nothing to suggest it was anything more than a close friendship. There is also evidence that this relationship ended badly, in a form of an unsent draft email supposedly to his line managers where he goes into detail around what happened between from his perspective. A third unsent email, with no recipient details or written content in the message, also has a number of files attached that consist of 3 CVs and 2 cover letters written for AS, the metadata suggests that JA created the documents. The remaining documents are either presentations or interview question sheets, it is not clear who these documents were for."**

17. The tribunal continued:

> **"88.32 On 23 March 2020, Ms Gregory of the respondent's ER team emailed the claimant [496] to advise him of a complaint that had been made against him. Further details were given in an email dated 26 March 2020 [495]. The claimant replied on 26 March 2023 [493-494] indicating that he would be making a complaint against Ms Shaukat about her spreading malicious rumours about him.**
>
> **88.33. On 2 April 2020, Ms Gregory sent the claimant an email [500-501] that set out details of the allegations by Ms Shaukat of harassment from May/June 2018 to date in the form of:**
>
> > **88.33.1. Unwanted attention;**
> > **88.33.2. Unwanted gifts;**
> > **88.33.3. Trying to engage interaction with Amna via anonymous snapchat ID's;**
> > **88.33.4. Creating a fake snapchat account using Amna's details;**
> > **88.33.5. Anonymous emails sent to Amna's FCA email address;**
> > **88.33.6. Anonymous call to Amna's FCA direct line;**
> > **88.33.7. Making fake enquiries regarding pest extermination to Amna's FCA email account; 88.33.8. Asking colleagues and staff members about Amna; and**
> > **88.33.9. Appearing near/around Amna in the FCA building.**
>
> **88.34. The email also invited the claimant to a meeting on 6 April 2020 by Skype. Copies of the two anonymous emails were attached to the mail.**
>
> **88.35. Ms Gregory met the claimant on 6 April 2020 when the claimant said he was going to**

> **make a complaint about Ms Shaukat. The meeting was recorded. Ms Gregory emailed the claimant the same day [502]. A transcript of the meeting was produced [511-560].”**

18. On 23 April 2020 the claimant submitted a complaint alleging that Ms Shaukat had engaged in unwanted sexual conversations, spread malicious rumours about him, made false complaints to the police and the respondent and made inappropriate race-based comments to him. Following an investigation those allegations were all rejected in December 2020. An appeal was unsuccessful.

19. Ms Oakley interviewed Ms Shaukat again on 6 May 2020. Following further interviews and investigations Ms Oakley produced a report that was sent to the claimant on 27 January 2021.

20. Ms Oakley’s conclusions were as follows. Gift-giving by the claimant did not amount to harassment. But Ms Shaukat had been clear that these were unwanted and Ms Oakley recommended that neither give the other any further gifts, and that the claimant take caution in buying gifts for other colleagues. She could not find evidence that the claimant made an anonymous call on 14 February 2020 or sent any email other than the one sent on 23 January 2020. The tribunal said that she found that that email was “harassing in nature and its tone and language were aggressive and threatening and creating an intimidating and hostile environment that was unwanted.” The tribunal continued:

> **“88.45 Ms Oakley also found that the 23 January email was, on balance, sent by the claimant [900]. Her reasoning was that the content matter of the email was specific in its references to events and conversations that relate directly to events and conversations between the claimant and Ms Shaukat. The examples Ms Oakley gave were:**
>
> > **88.45.1. References to the respondent’s Employee Handbook;**
> > **88.45.2. References to the help that the claimant had given Ms Shaukat in preparing her 300-word application;**
> > **88.45.3. Knowledge that Ms Shaukat had been accepted on to the MSc course;**
> > **88.45.4. Knowledge that Ms Shaukat was escorted to her car by security;**
> > **88.45.5. Knowledge that Ms Shaukat was “throwing around” accusations of stalking and harassment; and**
> > **88.45.6. Knowledge that Ms Shaukat had confided with someone “in this building”.**

21. Ms Oakley recommended that the claimant not contact Ms Shaukat, unless absolutely necessary in a work context, in which case he should refer to his line manager. She had no conclusive evidence as to who changed Ms Shaukat’s Snapchat ID or made certain phone calls. It seemed unusual that the claimant would be able to do the former, as he appeared not to know her passwords.

22. Ms Oakley could not determine conclusively if the claimant was following Ms Shaukat. But there were two particular incidents where he did not act professionally or appropriately. One was in seeking to confront Ms Shaukat on the 15th floor. The other was in speaking to a security guard to understand the contents of a private and confidential conversation. She recommended that the claimant undertake training in resilience and conflict management. As to making inappropriate sexual comments, she discussed one particular incident where a comment made by the claimant made Ms Shaukat feel uncomfortable, whether that was intended or not.

23. Ms Oakley considered that the sending of the 23 January email amounted to harassment and was a potential breach of the respondent's Equal Opportunities and Respect at Work Policy.

24. The second email was sent by the claimant on 27 January 2021 to Ms Shaukat's manager and the claimant's own line manager. It referred to the outcome of the claimant's complaint against Ms Shaukat; and the attachments included a copy of one of the recommendations from that report.

25. On 4 February 2021 Esther Grey of the ER team emailed the claimant that following Ms Oakley's report there was to be a disciplinary hearing before the Head of Transformation, Graeme McLean. On 10 March she notified him of a second charge arising from the second email. On 18 March he was invited to a disciplinary hearing to consider the following [88.62]:

> **"i. Allegations of harassment arose from a complaint made by Amna Shaukat in February 2020. These allegations were investigated by Natasha Oakley, Head of Strategy and Analysis. A copy of Natasha's investigation report is attached, which sets out further detail on the allegations and findings. The investigation found that an anonymous email dated 23 January 2020 was sent by you and is harassing in nature and therefore a potential breach of the FCA's Equal Opportunities and Respect at Work Policy.**
>
> **ii. You sent an email to Louise Vergara dated 27 January 2021. In your email you refer to a recommendation made in Simone Ferreira's investigation outcome report into a complaint you made against Amna Shaukat. In disclosing this information, this is a potential breach of confidentiality. Simone's recommendation is confidential and is a matter to be taken forward by HR only."**

26. Documents provided included Ms Oakley's report, the emails in question and relevant policies, procedures and contractual terms. The claimant himself supplied eleven items of evidence.

27. The disciplinary hearing took place on 25 March 2021. The claimant had a trade union representative. Mr McLean was supported by Ms Grey. The meeting was recorded and a transcript produced. The claimant read out a prepared statement, which he also sent to Mr McLean.

28. Mr McLean decided that the claimant had sent the first email, which he considered to be gross misconduct. He regarded the sending of the second email as involving a breach of confidentiality amounting to misconduct. At a further meeting on 1 April 2021 the claimant was informed that he was summarily dismissed. That was confirmed in a letter of that date.

29. The claimant appealed. The appeal hearing was before Emad Aladhal, Director of the Specialist Directorate. The claimant had his trade union representative. The meeting was recorded and a transcript was produced. Following the meeting Mr Aladhal interviewed Mr McLean and also Ms Oakley. When the claimant did not attend the outcome meeting it was rescheduled. The claimant then produced an affidavit that stated that he had not sent the first email. Mr Aladhal sent the claimant an outcome letter on 30 June 2021 rejecting his appeal in respect of both matters.

The Employment Tribunal's Decision

30. During the course of the full merits hearing, a large number of complaints were withdrawn. The remaining complaints were: (a) that Ms Oakley's decision to uphold Ms Shaukat's complaint relating to the first email, was an act of victimisation; (b) that the decisions to dismiss the claimant and to reject his appeal, were both acts of direct race discrimination, harassment related to race, and/or victimisation; and (c) that the claimant was unfairly dismissed. The tribunal considered that all of those complaints were in time, as they related to what it called a continuing series of events.

Victimisation

31. The tribunal found that internal complaints and related appeals that the claimant had raised in around 2017 and 2018, concerning his pay, were protected acts. The respondent accepted that a

tribunal complaint which he had begun in September 2018 was also a protected act. Other claimed protected acts originally relied upon had been withdrawn.

32. Ms Oakley had only upheld Ms Shaukat's grievance in relation to the first email. The tribunal found her evidence credible. The tribunal doubted that the claimant would have put his name to it, had he written it. It found it understandable that Ms Oakley had not asked Ms Shaukat if she had written it herself. That did not invalidate Ms Oakley's process or conclusion. The tribunal continued:

> **"105. We find, however that it was reasonable for Ms Oakley to come to the conclusion that the claimant *had* sent the email on 23 January 2020 for the following reasons:**
>
> **105.1. In an email from Ms Gregory on 8 June 2021 [661], the claimant was asked for his thoughts on the email of 23 June 2020 and its content and confirmation of whether the email was sent by him. The claimant responded approximately 90 minutes later that said:**
>
> > **"No thoughts or comments on the attached email. The last email I sent to Amna's FCA email address was the one sent to was on 29 Jan 2020 titled "Informal Steps to Resolve Issue(s)" and the one before that on 21 Jan 2020 congratulating Amna for getting onto the MSc. Both of these emails were sent from my FCA email address."**
>
> **105.2. Ms Oakley found the response to be "… a strange and evasive reply to a straightforward question…" (§34 of her witness statement).**
>
> **105.3. Ms Gregory emailed the claimant again on 9 June 2021 [661] and asked if he did or did not send the email. The claimant's response was sent within 25 minutes [661] and stated, "I would have thought my reply was clear enough to state that I did not send that email?"**
>
> **105.4. We find the claimant's first response to be a less than emphatic denial. We do not find anything unusual about the question mark used in the second response. The claimant asked a question. However, we find it was reasonable for Ms Oakley to include the first response in her consideration of the question of whether the claimant had sent the email and for her to find that it was one of the matters that tipped the scales against the claimant.**
>
> **105.5. The claimant did not suggest to Ms Oakley on receipt of the report [888-910] that her decision had been because he had done a protected act.**
>
> **105.6. On 29 January 2021, the claimant emailed Ms Gregory, copying Ms Oakley asking questions about the grievance outcome [963-965] but none of his nine questions suggested that the reason that Ms Oakley had made the decision she did was because the claimant made a protected disclosure.**
>
> **105.7. The claimant did not appeal against the outcome of the report.**
>
> **105.8. Ms Oakley only found a single instance or harassment proven against the claimant, which indicates to us that she considered things with a neutral mind and had not predetermined the outcome.**
>
> **105.9. Ms Oakley was not challenged in cross-examination by the claimant about her motive for making the decision. He was aware that unchallenged evidence was likely to be found to be credible. Ms Oakley's evidence (§§ 64 and 65 of her witness statement) was that she was not aware of any specific complaints that the claimant had raised in around April 2016 or April 2017 or related appeals in around September 2016 and February 2018 I connection with pay and award. She was not aware that the claimant had submitted an ET1 in September 2018. We find Ms Oakley's evidence about her lack of knowledge of the protected acts to be credible.**

105.10.There was no evidence presented to us that someone else in the respondent's organisation had created and/or fed false information to Ms Oakley.

105.11.We find that the email of January 2020 could only have been written by the claimant or Ms Shaukat. We make that finding because the detail in the email could only have been known by them.

105.12 It was agreed evidence that the claimant and Ms Shaukat had a heated argument in the canteen on 23 January 2020, the day that the email was sent.

105.13.On 29 January 2020, the claimant emailed Ms Shaukat [341-343] (§62 of the claimant's witness statement) accusing her of leaving him feeling upset and belittled after their altercation on 23 January 2020. He accused Ms Shaukat of "…spreading false, malicious rumours about myself to the FCA security team." We find this to be a similar tone and style of language to that used in the 23 January 2020 email. The 29 January email offered to resolve their differences informally through mediation by their direct line managers. The claimant included a draft email to their managers.

105.14.We have reproduced the 23 January 2020 [340] email in full in this Judgment and Reasons. It uses similar syntax and narrative style to other examples of the claimant's correspondence and some of the documents created for this Tribunal. We find it highly unlikely that Ms Shaukat would have written the email in anticipation of making a false claim against the claimant because the email includes an allegation that she cheated in preparing a 300-word submission to get a job. The claimant admitted that he wrote that submission. Ms Shaukat would have been opening herself up to potential action by her employer, which we find to be unlikely.

105.15.We also find it highly unlikely that Ms Shaukat's boyfriend was the author of the email because we find it unlikely that he would have had the information contained in it and it would be highly unlikely that he would address such things in an anonymous email to his girlfriend.

105.16.We find that the claimant did not produce a credible alternative scenario to his having been the author of the email.

105.17.The email of 23 January said that the meta data on the 300-word document would prove who the author was.

105.18 The claimant's email to Amanda Jackman dated 9 September 2020 [817] contains similar tone of language to that in the emails of 23 January and 29 January 2020. The context of the email is that it was written as part of the claimant's complaint against Ms Shaukat. We find it remarkable that the claimant should include the following sentence (our emphasis):

> ***"The entire Contact Centre Department can attest to how the hungry little Nazi leech was joined to my hips since June 2018, begging for attention in all forms and then she's got the cheek to go to both FCA HR and the MPS and knowingly LIE in order to intimidate me, threaten me and get me into trouble??"***

105.19. In his statement to the disciplinary hearing [1108-1116] the claimant's case that Ms Shaukat was the author is expressed in a very equivocal tome, *"I do not believe that it is entirely outside of the realm of possibility that Amna Shaukat had constructed and sent that email to herself, along with the other emails and then faking her 'upset' and 'distress' to NO [Ms Oakley]."*

105.20.Taken as a whole, our findings above lead us to the conclusion that the claimant is, on the balance of probabilities, the author of the 23 January email."

33. The tribunal found Mr McLean's evidence that he was not "substantively aware" of the history of the protected acts to be credible. The 2018 ET1 was mentioned in the disciplinary hearing. The

claimant had received pay awards and promotion after issuing that claim. That was not consistent with the respondent waiting 2 ½ years to exact retribution.

34. The evidence that the claimant had written the first email was compelling. He had accepted in cross-examination that *if* he had sent it, that would justify dismissal. It was reasonable for Mr McLean to conclude that he had. The overwhelming reason for dismissal was his conduct, not his "protected disclosures". [111] Mr McLean conducted the hearing properly and applied himself with diligence. His decision letter was thorough. The evidence did not reveal, on the balance of probabilities, a causal link between the decision to dismiss and the "protected disclosures." [114]

35. Matters raised by the claimant at the appeal stage included issues relating to his mental health, which the tribunal discussed. The documents tabled by him had included WhatsApps with a third party in which the claimant had made derogatory comments about Ms Shaukat, which he had partially redacted. He had not suggested at the appeal stage that Ms Oakley or Mr McLean had been influenced by the matters relied on as a "protected disclosure". The process was through and fair. The evidence did not reveal a causal link between Mr Aladhal's decision and the "protected disclosures." [124]

Direct Race Discrimination or Harassment

36. The tribunal referred to its previous findings. Mr McLean was not challenged on the issue of race discrimination, nor was it mentioned in the claimant's written or oral submissions. His written evidence about the disciplinary hearing did not mention race discrimination or harassment. There were no facts that might shift the burden of proof. The tribunal made similar observations about the appeal stage, and concluded that the burden did not pass in relation to that complaint either.

Unfair Dismissal

37. The respondent had shown that the reason for dismissal was conduct. The tribunal found that it genuinely believed in the claimant's guilt, the decision to dismiss was based on reasonable grounds and it followed a reasonable investigation, in each case for reasons that the tribunal set out. As to the

investigation, there were some small errors, but not such as to render the overall process unfair.

38. The claimant had contended that the searching of his work emails and computer, dubbed Operation Orion, infringed his Article 8 rights. He did not object to the attempt to identify the source of the anonymous emails, but contended that the exercise had sought also to analyse the extent of his and Ms Shaukat's professional and personal relationship, and thereby cast the net unreasonably wide. He also contended that the decision to dismiss was predetermined and in bad faith, and that the effects of being summarily dismissed on him professionally, psychologically, financially and in his family life amounted to a disproportionate infraction of his Article 8 rights. He also contended that his Article 6 right to a fair trial may have been breached by the respondent. The claimant contended that such infractions of his Convention rights rendered the dismissal unfair.

39. The tribunal cited a commentary on **Mattu v University Hospitals of Coventry and Warwickshire NHS Trust** [2012] EWCA Civ 641; [2013] ICR 270 to the effect that a dismissal decision does not engage Article 6. That allegation, it said, could not succeed.

40. The tribunal considered a number of authorities, including in particular **Turner v East Midland Trains Limited** [2012] EWCA Civ 1470; [2013] ICR 525 in which Elias LJ at [52] (citing earlier authorities) found it "very difficult to see how a procedure which could be considered objectively fair if adopted by a reasonable employer could nonetheless be properly described as an unfair procedure within the meaning of Article 8"; and observed that the "band of reasonable responses test allows for a heightened standard to be adopted" where the consequences of dismissal are "particularly grave." The tribunal found that the claimant had by his own conduct brought the dismissal upon himself, and rejected the Article 8 argument founded upon its consequences.

41. As to Operation Orion the tribunal said this:

> **"162. We find that the respondent's Handbook included the following section on Monitoring 141:**
>
> > **"The FCA's systems enable us to monitor email, internet and other communications.**

> **To carry out our legal obligations as an employer (such as ensuring compliance with the FCA's policies) and for other business reasons, we may monitor use of systems including telephone and computer systems and any personal use of them, by automated software or otherwise. Monitoring is only carried out to the extent permitted or as required by law and as necessary and justifiable for business purposes."**

> **163. We find that the claimant can have no reasonable expectation of a right to privacy relating to documents created on or stored on a work computer. Whilst the decision of the ECtHR in Bărbulescu v Romania is noted, we also took account of the case of Garamukanwa v Solent NHS Trust [2016] IRLR 476, which was an EAT decision that the claimant attempted to appeal to the Court of Appeal. The Court of Appeal rejected the appeal and the claimant took the case to the ECtHR. It is reported as Garamukanwa v United Kingdom [2019] IRLR 853, which determined that the claimant had no right to expect privacy on the following four factors:**
>
> **163.1. He had had notice for at least a year after the original complaints of harassment were made that this material was the basis for the complaints and that the employer was going to investigate. On this basis, Bărbulescu was distinguishable because there the employee did not have notice of the nature and extent of the employer monitoring.**
>
> **163.2. He knew that the communications were not going to be kept private.**
>
> **163.3. He had not challenged the use of this material at the disciplinary hearing.**
>
> **163.4. In fact, at that hearing he had volunteered further communications from the same source. In this case, the claimant was notified of the respondent's intention to search his computer to determine if he had sent the anonymous emails. The claimant had no objection to the search. He knew that the respondent reserved the right to search his work IT equipment. He also knew that the investigation included allegations that he had harassed the claimant. The claimant did not challenge the use of the material at the disciplinary or grievance hearings. The claimant volunteered further information from his own mobile device."**

42. The tribunal went on to conclude overall, drawing on its conclusions thus far, that all of the live complaints, including unfair dismissal, failed.

The grounds of appeal, discussion, conclusions

43. Some of the live grounds of appeal overlap. It is most convenient to consider them in the following order and groups, using the original numbering and lettering.

Witness evidence matters (grounds 2.3 and 2.4)

44. Ground 2.3 relies upon the fact that the tribunal erroneously stated (at [33] and [74]) that some witnesses, specifically Mr Aladhal, had given evidence by video link. In fact (Mr Holloway accepted) none had done so. This ground overlaps with ground 3, relating to the delay in the production of the tribunal's decision; and I will consider it when I come to consider ground 3.

45. Ground 2.4 complains that the tribunal erred by accepting what the ground calls the

"unauthorised evidence" of Simone Ferreira, who had investigated the claimant's April 2020 complaint against Ms Shaukat. The ground relies upon the fact that in April 2023 the respondent had applied for her to be permitted to give evidence from outside the jurisdiction, but that had been refused. Yet the respondent had still put in a witness statement from her.

46. However, it is clear from the tribunal's decision [54] to [56] that the respondent had arranged for Ms Ferreira to fly back to the UK to give evidence. But, following the withdrawal of some of the complaints specifically relating to her conduct, Mr Holloway asked if she was still required to attend for cross-examination. The tribunal recorded that it then explained to the claimant the significance of not cross-examining her. The claimant then withdrew the remaining complaint relating to her and she was excused from attendance. This ground therefore fails.

Failure to Provide the Claimant With Interview Transcripts (grounds 5, 8(h) and 9.1(a))

47. At no point was the claimant provided with copies of the transcripts of the two investigation interviews with Ms Shaukat. The grounds contend that the tribunal should have found that that omission made the dismissal unfair, because it meant that he did not fairly know the case that he had to answer. The claimant referred to the *ACAS Code of Practice 1 on Disciplinary and Grievance Procedures* (2015) and to **Bentley Engineering Co Ltd v Mistry** [1979] ICR 47. The grounds alternatively contend that the decision was in this regard perverse, and/or that the tribunal erred by failing specifically to address this issue, which the claimant had specifically raised in his skeleton.

48. One of the claimant's two applications to the EAT was to be permitted to rely upon emails of 1 April 2020, in which he had made a Data Subject Access Request (DSAR) in terms which embraced these documents, and of 2 May specifically seeking copies of them. Ms Gregory replied on 6 May that this would not be provided as it was confidential. The claimant responded on 7 May that he understood from ACAS that the respondent would have to provide this material if the investigation led to a disciplinary hearing. The claimant acknowledged that he had known of these emails at the

time of the tribunal hearing, but submitted that they had not been presented to the tribunal because he was a litigant in person who had mental ill health and because the respondent had controlled the bundle. The respondent was, however, now asserting in its Answer, that he had not requested copies of the transcripts; so he wanted to demonstrate that he had asked for them in April and May 2020.

49. Mr Holloway contended (a) that this was not a request for new evidence meeting all of the criteria in **Ladd v Marshall** [1954] EWCA Civ 1; [1954] 1 WLR 1489; (b) the salient point was that the claimant had not, *at any point after the formal disciplinary process began* asked (again) for these documents to be provided to him *for that purpose*; and (c) that in any event there was no unfairness, because the disciplinary charges were confined to the matters of the first email and the second email, and the claimant understood, and could defend himself in respect of, those charges, without needing sight of those transcripts. He submitted that it might be inferred that that was indeed why the claimant did not, during the disciplinary process, renew the earlier request for sight of these documents.

50. I consider that the third of these is the decisive point. As the *ACAS Code* identifies at paragraph 9, fairness requires that the employee be provided with *sufficient* information about the alleged conduct to enable them to respond to the charges. It states that it would "*normally* be appropriate to provide copies of any written evidence, which *may* include any witness statements." (Emphasis added) As discussed in **Mistry** at [1979] ICR 51B- 51E what specifically the employee needs to be given, in order to satisfy this principle, will depend upon the facts of the particular case.

51. In the present case the original investigation concerned several allegations raised by Ms Shaukat. But the disciplinary charges that were pursued related only to the first email and the second email. The claimant was provided with a copy of the first email. The charge alleged that he sent it, and that, in view of its content, the sending of it *in itself* amounted to serious misconduct. He also had a copy of the Oakley report, which identified what was said to be the evidence supporting the conclusion that he was the sender of that email. It also summarised what Ms Shaukat had said about

that email and the other anonymous email. The claimant also had a copy of the second email, and was told that he was alleged to have breached confidence by sending it, and how.

52. While the April and May 2020 emails show that, at the time of the investigation, the claimant had requested, and been denied, copies of the interview transcripts, it was *not* contended, (nor found) that, following being notified that he was to face disciplinary charges, and what those specific charges were, he had then revisited or renewed such a request.

53. I also note that it was not argued, nor found by the tribunal, that the dismissing officer (or the appeal officer) had copies of the transcripts of the interviews with Ms Shaukat, or relied upon them, and so relied upon material that the claimant had not seen. In argument before me, the claimant suggested that Mr McLean might have become aware of the contents of Ms Shaukat's interviews via Ms Grey, who supported him at the disciplinary hearing and had also been involved in Ms Shaukat's second interview. However, the tribunal made no such finding. The tribunal did list the materials provided both to the claimant and to Mr McLean for the purposes of the disciplinary hearing, which, in both cases, included Ms Oakley's report, and, in neither case, the interview transcripts.

54. I have noted that, in the course of reply submissions Mr Robertson referred to Ms Shaukat having complained to police in April 2025. Although I was not taken to it in oral argument, there is, in fact, a reference to that in a footnote in the claimant's skeleton argument. It refers to something that it says Ms Shaukat stated in that report, which it says calls in to question her credibility. I do not consider that this submission provides any support for the contention that the respondent not providing the claimant with copies of her interview transcripts rendered the dismissal unfair.

55. Mr Holloway referred to well-known authorities which indicate that it is not incumbent on the tribunal to refer in its decision to every aspect of the evidence, factual dispute or submission made to it; and it should not be inferred from a failure to refer to a matter, that it was not considered. In this case this particular issue was ventilated in submissions. The tribunal made copious reference to the

parties' submissions but also noted (at [85]) that it had not dealt with every single matter that was raised. The claimant, for his part, referred to the well-known authorities which indicate that a decision which does not address a significant or key element of a party's case will not be *Meek*-compliant.

56. As the claimant had made specific written submissions, to the effect that the fact that he had not been given copies of the transcripts of the interviews with Ms Shaukat meant that the dismissal was unfair, it would have been better had the tribunal specifically addressed that. But, given the limited and specific nature of the charges, the information and materials that the claimant *was* given, the fact that he did not, during the disciplinary process, ask (again) for these documents, and the fact that the disciplining and appeal officers did not see or rely upon them, the tribunal could not properly have concluded that this omission made the dismissal unfair. So, even it was an error not to specifically address this argument in the decision, any such error cannot have affected the result.

57. For all of these reasons, the grounds that rely upon this aspect do not succeed.

Operation Orion (ground 4)

58. Ground 4 contends that the tribunal made an incorrect and perverse factual finding at [164] that the claimant had been notified that the respondent would be searching his computer, and had no objection. The respondent had not so contended, and the evidence (and other findings made by the tribunal itself as to the sequence of events) was to the contrary. That error is said in turn to have affected the tribunal's assessment of the claimant's case that Operation Orion was an unjustified infraction of his Article 8 rights, which led to the dismissal being unfair.

59. Mr Robertson submitted that the fact that the respondent's policy addressed the possibility of monitoring was not enough, as the claimant was not in fact forewarned of the particular exercise. This case was different from **Garamukanwa** (cited by the tribunal at [163], as set out above) in that, in the present case the claimant only learned of the harassment complaint *after* the search took place. The search had not been confined to an attempt to identify the author of the disputed emails, but had

trawled more widely with a view to establishing the precise nature of the relationship with Ms Shauka, which was unnecessary and disproportionate. Because the tribunal had not found any interference with Article 8 rights, it had failed to consider the proportionality issue. The fact that the claimant had put forward some personal material, such as WhatsApps and emails, in support of his defence to the charges, did not mean that he could properly be treated as having thereby waived his Article 8 rights.

60. Mr Robertson submitted that the tribunal should have concluded that there was here an unjustified violation of the claimant's Article 8 rights, which should have led to the conclusion that, for the purposes of the test in section 98(4) **Employment Rights Act 1996**, the dismissal was unfair.

61. Mr Holloway accepted that the tribunal was wrong to say that the claimant was notified in advance of the intention to search his computer and did not object. But he submitted that this did not undermine its overall conclusions. Mr Holloway advanced, broadly, three lines of argument.

62. Firstly, in his skeleton he did not contend that the general reference in the respondent's policy to the possibility of use of its systems being monitored alone disposed of the issue; but he relied on it as one of a number of considerations which overall meant that in this case either the claimant's Article 8 rights were not infringed by the investigation, or if they were, it was justified and proportionate.

63. Secondly, in oral argument he contended that this case was, in salient respects, factually similar to **Garamukanwa**. As the tribunal recorded at [88.15] the claimant had himself complained that, during the lunchtime argument on 23 January 2020, Ms Shaukat had accused him of stalking her. The emails relied upon in the disciplinary process were sent in point of time following that accusation, of which he was aware when he (as was found) sent them. He also knew that the CST had been asked to investigate the source of the anonymous emails, but did not complain of that in the disciplinary process. He himself relied upon private communications in advancing his defence.

64. Thirdly, Mr Holloway argued that in any event this challenge could gain no purchase, because

the decision to dismiss did not rely upon Operation Orion, or anything that came out of it. So, even if it had amounted to an unjustified interference in the claimant's Article 8 rights, that could not properly be said to have impacted on the fairness of the dismissal.

65. I consider that third argument to be decisive of this challenge. Even if Operation Orion, in the way that it was carried out, amounted to a disproportionate infraction of the claimant's Article 8 rights, as he accepted, he could not complain to the tribunal of that as a freestanding complaint. The issue for the tribunal was – only – the relevance of that, if any, to the fairness of the dismissal.

66. Mr Robertson submitted that it was Ms Oakley's investigation, which considered the CST report, and led to the disciplinary charges, which, in turn, led ultimately to the dismissal. So, it was not possible to separate these out. I do not agree. The two charges that were pursued were limited and well-defined. The respondent did not rely upon the CST report in support of them. The claimant did not object to the CST having attempted to ascertain who wrote the anonymous emails (to which Ms Oakley's report had referred), and indeed put his case that their conclusion on that actually supported him. The respondent did not itself rely, in support of the disciplinary charges or dismissal decision, upon any aspect of the wider investigations or conclusions of Operation Orion.

67. Accordingly, even if Operation Orion amounted to a disproportionate interference with the claimant's Article 8 rights, there was no basis on which the tribunal could properly have concluded that this rendered the dismissal unfair. So, had the tribunal not made the erroneous finding of fact that it did, that could not properly have resulted in a different outcome of that complaint. The error was therefore not material to the decision on that complaint.

Script for Chair of Disciplinary Hearing (grounds 8.1(j), 9.1(b), 9.2)

68. This group of grounds all relate to a "script" prepared for the disciplinary hearing. Although there is also mention in these grounds of the "script" prepared for the appeal hearing, the substantive focus of the challenge was on a passage in the one prepared for the disciplinary hearing.

69. It was common ground that this document was written by Ms Grey, who supported Mr McLean at the disciplinary hearing. On the face of it, the overall structure and content was by way of an agenda, setting out an order of speaking, and points that needed to be mentioned, or raised, at different stages, by each of them. The claimant did not complain of the use of a document covering that sort of thing, or the general content, as such. However, the challenge focussed on two paragraphs in the section dealing with questions relating to the email of 23 January 2020. These read:

> **"1. Question around the impact of the email dated 23 Jan 20. I've read the email of 23 January – it was one of the most unpleasant emails I've read. Natasha said in para 8.15 of her report that its tone and language are aggressive and threatening and create an intimidating and hostile environment, that is clearly unwanted. I concur with this. I'd like to know your perspective on this?**
>
> **2. Your response to Nathalie's email of 8 June 20 was evasive. Can you talk me through your response please?"**

70. The grounds contend that these reflect conclusions by Mr McLean that this was "one of the most unpleasant emails I have read", that he agreed with Ms Oakley's assessment of its tone and language, and that he considered the claimant's response to Ms Oakley's 8 June email "evasive". The language is also said to be echoed in the language of the dismissal letter. Mr Robertson submitted that it would be perverse to regard this as other than evidence of prejudgment by Mr McLean – which would plainly be unfair. He also relied upon a passage in **Ramphal v Department of Transport**, UKEAT/0352/14 (endorsed in **Dronsfield v University or Reading** [2016] ICR 1107) to the effect that guidance given by HR to a dismissing officer should be limited to matters of law and procedure, as the employee is entitled to expect that the decision will be taken by the appropriate officer.

71. It is also contended that the tribunal erred by failing to address this argument in its decision. The claimant also attached significance to the fact that these documents were only disclosed in response to a request for specific disclosure, and that the respondent maintained prior to the hearing that they did not add anything of relevance to the transcripts of the disciplinary and appeal hearings.

72. While it is true that the tribunal did not, in its decision, expressly refer to this material, I

consider that it is clear that it did *not* overlook it, or the claimant's arguments in relation to it. It was common ground that the reference at [43] to "a discussion about an additional document" which was added to the bundle, was a reference to this material. Further, in the claimant's tribunal skeleton this material was referred to as part of his case that the outcome of the disciplinary process had been "predetermined" or "premeditated". The tribunal referred at several points to his contentions to that effect, including some specific references to sections of his skeleton argument. That included paragraph [35], in which he had specifically referred to the script.

73. The tribunal heard evidence from Mr McLean, who was cross-examined, including, I was told, on this point. It is clear from a number of passages that it was satisfied that he had come to his own view, and that he had come to his decision only after hearing from the claimant. These included [139] in which it found that he had formed a genuine belief in the claimant's guilt; and [142.3] in which it said that he "took on board what the claimant was saying and addressed himself the matters the claimant raised". The tribunal reached similar conclusions in relation to Mr Aladhal.

74. I see the force in the submission that the framing of these particular parts of the script was inappropriate, because they suggested what view Mr McLean should put forward. But the tribunal was not bound to regard that as showing that he must have made up his mind, or that Ms Grey was the true decision-maker. The context was a section which properly identified that the content of the anonymous email, and how it might be viewed, needed to be put to the claimant, as well as the matters that Ms Oakley had regarded as pointing to his authorship. It provided for the claimant's responses to be invited. The overall script did not presume any particular outcome of the process.

75. The transcript of the disciplinary hearing, taken at face value, showed Mr McLean asking the claimant for his comments on the anonymous email and his reply to the 8 June email. The dismissal letter set out Mr McLean's own reasoning, as well as identifying where he agreed with Ms Oakley. I do not think it could be properly said that the fact that he also used the word "evasive" to describe the

claimant's reply to the 8 June email, *must* be treated as showing prejudgment.

76. The tribunal was entitled to believe Mr McLean's evidence and that of Mr Aladhal. The material relied on in these grounds does not demonstrate that its conclusions were perverse.

77. For all these reasons, these grounds do not succeed.

Delay in promulgation of the decision (ground 3)

78. This ground contends that the delay in the promulgation of the reserved decision until 20 February 2024 resulted in unfairness to the claimant.

79. The tribunal's decision included the following paragraph at [84]:

> **"Note from Employment Judge Shore – It is entirely my responsibility that it has taken far too long to produce this Judgment and Reasons, for which I offer my sincere and profuse apologies to the parties, the representatives, and my colleagues. Following the hearing, I had to deal with several serious personal matters that reduced the time I had available to complete what was a complicated decision in a complex case, whilst also fulfilling my obligations to ongoing hearings and family duties. I underestimated the time it would take to finally prepare the written judgment and the seriousness of my personal circumstances regrettably affected my focus and capacity to conclude it in good time."**

80. By his second application to the EAT, the claimant sought to rely, in support of this ground, upon an analysis that he had prepared, taken from public records, of the time taken by the same judge who presided in this case to deliver oral or reserved decisions in other cases in a period from July 2023 to February 2024. This identified that the present decision had taken significantly longer to produce than any other in the same period. In oral argument Mr Robertson suggested that this demonstrated that the delay was not an unavoidable consequence of the judge's workload, and was "inexplicable". However, he also said that neither actual nor apparent bias was alleged.

81. Reliance was placed on a number of authorities of the ECtHR, which emphasise the need for "special diligence" with regard to the timely production of decisions in employment cases. The claimant in his skeleton, and Mr Robertson in argument, accepted that the ECtHR jurisprudence does not mandate a judgment being set aside solely on account of delay. The claimant also accepted that

Bangs v Connex South Eastern Ltd [2005] EWCA Civ 14; [2005] ICR 763 is to the same effect.

82. However, the contention for the claimant is that in this case there is a "real risk" that he did not get a fair trial or adjudication, in particular because the tribunal's decision was flawed by factual inaccuracies, suggesting that his case was not properly and fairly considered. Mr Aladhal had *not* given evidence remotely. There was no evidence that the claimant had been told of the computer search in advance, and had not objected. At a number of points the tribunal referred to "protected disclosures" when it should have referred to "protected acts". The tribunal had, at certain points, "conflated" Article 6 and Article 8. Reliance was also placed on the failure to address the claimant's arguments relating to the non-disclosure of interview transcripts and disciplinary hearing script.

83. Mr Robertson submitted that the natural inference was that these errors or omissions were attributable to the delay. The cumulative picture created by them needed to be considered. If the tribunal had forgotten *how* Mr Aladhal gave evidence, that called into question its recall of the substance. He drew a comparison with **Chase v Northern Housing Consortium Limited** [2025] EAT 104. I was also told that the claimant had applied for a transcript of the proceedings, and, after chasing, was eventually told that the HMRC audio recording could not be located. It was suggested that it was to be inferred that the tribunal would have therefore been dependent on the judge's notes.

84. My conclusions on this ground are as follows.

85. First, it needs to be kept in mind that the ECtHR authorities are generally concerned with complaints against a state for alleged breach of Article 6. This is an appeal from a decision of the employment tribunal to the EAT. The applicable principles are those set out in **Bangs**.

86. There is no dispute that the delay in producing this decision was unacceptably long. This was acknowledged at paragraph [84] by the judge, who properly accepted responsibility for it. The respondent recognised that the delay was unacceptable. The claimant's analysis of the judge's

activities in relation to the production of other decisions during the same period, does not add anything material or relevant in that regard. There is no allegation of actual or apparent bias – and I should state clearly that I can see no basis on which there could have been, nor any good basis, by reference to that analysis or otherwise, for questioning the judge's frank explanation for the delay.

87. Whether there are mistakes and/or omissions in a tribunal's decision, which are such as to give rise to a real risk that a party has not received a fair adjudication, is highly fact-specific. The significance of the undisputed errors which this tribunal's decision does contain, and the other criticisms of it, must also be assessed within the overall context, and content, of the whole decision.

88. This is, overall, a meticulous, thorough, and closely-reasoned decision. The judgment and reasons run to 63 single-typed pages. The judgment alone, carefully disposing of every sub-complaint in turn, takes up 6 pages. In the reasons, there is a detailed account of the history of the proceedings prior to the full merits hearing. The list of issues is fully set out. There is a careful self-direction as to the law. A section chronicling the events of the hearing, day by day, including to-the-minute timings, and identifying material developments and decisions along the way, occupies several pages. The findings of fact are detailed, extensive, logically structured, and contain copious references to the evidence, including verbatim quotations and page numbers in the bundle. The further reasoning in the concluding section is similarly detailed, extensive and logically-structured. There is no sign of the tribunal running out of steam before the end.

89. The claimant submitted that the fact that the tribunal met in chambers the day after the last hearing day was irrelevant, because that did not stop the clock. But it is, in my judgment, material when considering what impact the delay in producing the decision may have had. When the tribunal deliberated and reached its substantive decision, the evidence and arguments will plainly have been as fresh as they could be. Whether or not the audio-recording was available then, and/or when the judge was drafting the written decision, I can assume that the tribunal will have had access to all of

the documents, witness statements, written submissions, their notes of the evidence and proceedings. I can also assume that the judge, when completing the writing task, will also have had access to those materials and the judge's own record of what had been decided in chambers. That is all of a piece with the overall written decision generally bespeaking a close and detailed command of the material.

90. Any judge drafting a document of this sort may sometimes mis-speak, or get the wrong word lodged in their mind. There was no whistleblowing complaint in this case. The references to "protected disclosure" which should have been to "protected act" give me no cause for concern as to the substantive approach to the victimisation complaints. The section addressing the various Article 6 and Article 8 arguments does not muddle up the substantive arguments and issues. A couple of references to one Article number which should have been to the other give me no cause for concern. There is no tenable comparison with **Chase,** in which the EAT's criticisms of the quality of the tribunal's decision (at [29] and following) were trenchant, and there were also failures to address particular substantive *complaints* of detrimental treatment altogether (see [51] and following).

91. Mr Holloway acknowledged that it might be inferred that the error about how Mr Aladhal gave his evidence was attributable to the delay in writing up the decision. But even if so, the substantive decision shows no sign of any risk that the tribunal failed properly to recall, or consider, his substantive evidence. Apart from the fact that the decision was reached promptly in chambers, at [74] to [76] the tribunal referred to the precise timings of his evidence, commented on Mr Holloway asking "a few" supplementary questions of him, and referred to an aspect of his cross-examination and to there having been some tribunal and re-examination questions. All of that bespeaks the tribunal drawing upon a full command of his substantive evidence, which was duly considered.

92. The erroneous finding of fact, that the claimant knew that his computer was going to be searched, and did not object, is puzzling. But, even if it is attributable to the delay in producing the written reasons, given all that I have said about the overall decision, it appears to me to be an isolated

unforced error, not a smoking gun that undermines the reliability of the rest of the decision. For reasons I have already given, the tribunal in any event did not err by not concluding that the dismissal was rendered unfair because Operation Orion was an unjustifiable infraction of Article 8 rights.

93. I have already considered the substantive grounds which relate to the claimant's arguments about the fact that he was not provided with the transcripts of the interviews with Ms Shaukat and the "scripts". Having regard to what I have said earlier about those, and, once again, the overall content and presentation of this decision, I do not consider that the failure to address these matters expressly or specifically in the decision, vitiates the outcome in respect of any of the complaints.

94. This ground therefore also fails.

Outcome

95. For all of the foregoing reasons the appeal is dismissed.