Neutral Citation Number: [2026] EAT 26

Case No: EA-2024-000417-NK

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 6 February 2026

Before :

HIS HONOUR JUDGE AUERBACH

- -

Between :

MR M NOWAK

Appellant

- and –

EVTEC ALUMINIUM LIMITED

Respondent

- -
- -

Rad Kohanzad (Direct Access counsel) for the **Appellant**
Caspar Glyn KC (Direct Access counsel) for the **Respondent**

Hearing date: 2 December 2025

- -

JUDGMENT

SUMMARY

Race Discrimination; Victimisation

The employment tribunal did not err in rejecting a number of complaints of direct race discrimination (by reference to Polish nationality) and victimisation. The various challenges to the soundness of its reasoning brought by the grounds of appeal were not made out.

The tribunal considered a complaint that a response to a collective grievance about Friday breaks was an act of victimisation. It did not err in dismissing that complaint. It also did not err by failing to identify that there was a distinct complaint about this matter under the **Working Time Regulations 1998**. While the internal grievance had relied upon the **1998 Regulations** the judge had properly concluded, at a preliminary hearing held before the start of the full merits hearing, that there was no separate complaint of that sort that had been raised before the tribunal. The judge's further rejection of an application to amend to add such a complaint was not challenged by this appeal.

HIS HONOUR JUDGE AUERBACH:

Introduction

1. The claimant in the employment tribunal appeals from the decision of Employment Judge Camp, Mr Tony Liburd and Mrs S Outwin in respect of certain of the complaints that were considered at a full merits hearing held at Birmingham in November 2023. The tribunal dismissed all of the complaints. Written reasons were sent to the parties on 26 February 2024.

2. The complaints before the tribunal were brought by the claimant and four other colleagues. At the tribunal hearing they were represented by Dr M Ahmad of counsel. The respondent was represented by Mr N Brockley of counsel. The claimant's notice of appeal attached a document setting out grounds 1 – 4, settled by Rad Kohanzad of counsel. Subsequently the claimant submitted a document to the EAT in his own name, advancing two further proposed grounds, 5 and 6.

3. The judge who considered the matter on paper directed grounds 3, 4 and 5 to proceed to a full appeal hearing. At a rule 3(10) hearing at which Mr Kohanzad appeared, I directed ground 2 also to proceed. At the full appeal hearing Mr Kohanzad appeared for the claimant and Mr Glyn KC for the respondent. Because of travel disruption Mr Kohanzad was, in the event, unable to attend in person. Shortly before the start of the hearing he made an application for the hearing to be postponed so that he could do so on a later date. I refused that application for reasons given in email exchanges, and directed that he be permitted to join by Teams. He did so, and I also allowed breaks as required, so that he and the claimant could speak confidentially to one another during the course of the hearing.

The Facts

4. The material facts, as found by the tribunal, are, in summary, these.

5. The respondent is an aluminium castings company. Over a period of years, the business changed hands more than once, with the employees assigned to it TUPE-transferring from one

employer to the next. From around March 2004 to July 2017 it was owned by a company referred to as Amtek. From July 2017 to November 2021 it was owned by Liberty Aluminium Technologies Limited. From November 2021 onwards it was owned by the respondent.

6. The claimant was employed as a machine operator from January 2016 until he resigned in around April 2022. The claimant, and his fellow claimants in the tribunal, are all Polish nationals.

7. In 2012 Amtek introduced new contractual terms on which, henceforth, all new recruits were retained. Those who were already employed before the change remained on the old contracts, under which they got better pay, attendance bonuses and allowances, than those who were employed on the new contracts. The tribunal found that a large majority of those employed at the relevant level, from 2015 onwards, when the first of the claimants joined, were Polish nationals, although a small but significant minority of British nationals and other non-Polish nationals were recruited as well.

8. I interpose that all of the claimants complained that they were employed on less favourable terms than colleagues on the old contracts, because of their Polish nationality or national origins. Those direct discrimination complaints failed. There is no live ground of appeal in that regard.

9. Over the course of the period from when the claimant started in January 2016, Craig Mather was the claimant's line manager's line manager, or his immediate line manager.

10. On 12 February 2019 the claimant raised a complaint to the Production Manager, Richard Waite, that the tribunal said was on the face of it raised against Mr Mather and another manager, Mr Cruse. The tribunal said the complaint was essentially about not getting a pay rise when another named colleague had got one. Mr Waite considered the complaint, and gave the claimant a pay rise.

11. On 13 November 2019 the claimant raised a complaint about Mr Mather's "unfair or discriminating behaviour towards me". He compared his alleged treatment to that of a British

colleague, Mr Mosey. The respondent accepted that this was a protected act. The tribunal continued:

> **"23. During November and December 2019, there was an investigation of sorts into the grievance. It was handled by Mr Waite, with assistance from the then Personnel & Payroll Manager, a Ms Swann. This is another thing we shall go into in more detail later in these Reasons, but the significant points for the purposes of this overview of the facts are:**
>
> **23.1 in or around late November 2019, Mr Waite decided that Mr Nowak should be moved to a different 'line' so that he and Mr Mather would not be working together and this was communicated to Mr Nowak. Mr Nowak was told that the move would be permanent;**
>
> **23.2 at a meeting with the claimant and his trade union representative in November or December 2019, Mr Waite decided that in the absence of corroborating witnesses the grievance should be 'closed', a decision that was confirmed in a letter from Ms Swann of 3 January 2020.**
>
> **24. Mr Nowak appealed the grievance outcome by a letter dated 8 January 2020, which is also admitted by the respondent to have been a protected act. There was an appeal hearing on 22 January 2020 involving the claimant, Ms Swann and Mr S Hemming, the respondent's [Liberty Aluminium Technologies'] then new Managing Director. There are partial notes of that meeting. Two potentially relevant things emerge from those notes: the claimant was told that the reason he had been moved to a different line was "to take you out of the situation" and that he could move back (which he made clear he would not do unless Mr Mather was moved); Mr Hemming said he would look into the claimant's allegations.**
>
> **25. It is unclear how matters were left at the end of the meeting, but it does seem that the claimant never received a formal outcome to his appeal, and there is no evidence that anything significant happened in relation to it after the meeting on 22 January 2020."**

12. In December 2021 a collective grievance was raised by 23 employees, including all the claimants in the tribunal (who, as noted, were all Polish) and a number of British nationals, about various matters relating to pay and terms. One issue was about breaks. The tribunal explained:

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

13. The respondent conceded that the collective grievance was a protected act. The tribunal was "far from sure" that the concession was rightly made, but proceeded on the assumption that it was.

14. Following meetings there was a letter to the group confirming the outcome of the collective grievance, which included the following, as set out by the tribunal at [30]:

> **"You also raised concerns regarding an insufficient break on a Friday. Given that this shift is 6 hours long there should be a longer break than what is currently operating. The company therefore propose to introduce a twenty-minute unpaid break to all shifts that are six hours and over. …. However, we would be prepared to establish a Joint Working Party to look at**

alternative solutions to this."

15. There was an appeal in respect of the collective grievance outcome. Again, the respondent conceded that the letter of appeal was a protected act. Again, the tribunal was not convinced that the concession was merited, but it proceeded on the basis that it was. The appeal was unsuccessful.

16. The complaints before the tribunal, of direct race discrimination by Mr Mather against the claimant, were set out in the list of issues at paragraphs 2.2.1, 2.2.2 and 2.2.3. They were, in summary, that (1) in February 2019 Mr Mather blamed the claimant for parts being in the wrong place, whether or not it was his mistake, and threatened to dismiss him; (2) between February and November 2019 if the claimant was 5 minutes late in producing some numbers Mr Mather told him "if anyone sees this, you'll get sacked"; and (3) between June and August 2019, if there were any issues with the machines, Mr Mather told the claimant that he did not need a reason to fire him, and could do so "with the click of a finger." The claimant relied on Mr Mosey as an actual comparator.

17. The tribunal made the following observations about these complaints:

> **"53. The claim is broadly to the effect that Mr Mather didn't like Mr Nowak because he is Polish. It was also, as presented in tribunal, both orally and in writing, that the mistreatment started well before February 2019. Mr Nowak's oral evidence was to the effect that the significance of February 2019 was that that was when he put in a grievance about Mr Mather's supposedly racist behaviour; and that putting in that grievance resulted in the behaviour getting worse. In other words, the claim had changed quite markedly from what it was in the list of issues.**
>
> **54. Before proceeding further, we note that there was no application to amend to add the claimant's letter of 12 February 2019 to the list of alleged protected acts being relied on, nor to allege that it was victimisation for Mr Mather (supposedly) to treat Mr Nowak worse after it was sent. The claim before the Tribunal remained as in the list of issues."**

18. The tribunal went on to find that the February 2019 complaint was in any event not a protected act. It also found that there was nothing odd about Mr Waite not having raised it with Mr Mather or Mr Cruse, as neither of them had authority to give a pay rise, nor was it alleged that either was being racially discriminatory. What Mr Waite *did* do in response to that complaint, was give the claimant a pay rise, backdated to 1 February 2019, albeit not the level of pay rise that the claimant had wanted.

19. I will set out the next passage from the reasons in full:

> **"58. Logically, if Mr Mather were prejudiced against Mr Nowak because of the latter's nationality, we would have expected Mr Mather to have been mistreating him all along. From the evidence we have, we understand Mr Mather to have been Mr Nowak's line manager or his line manager's line manager from when Mr Nowak started, in 2016. Certainly, there is nothing in the evidence to suggest that in or around February 2019 Mr Mather's role vis-à-vis the claimant changed. This is relevant not just because it would be odd for Mr Mather suddenly to have developed racist feelings towards Mr Nowak and/or to have started acting on them in February 2019, but also because, if it is true that Mr Mather was racially bullying Mr Nowak from well before February 2019, it would surely have been mentioned in this letter of 12 February 2019 and, equally, February 2019 would not have been picked as the date from which discriminatory behaviour allegedly started in the claim form and the list of issues.**
>
> **59. One thing that this letter of February 2019 from Mr Nowak does show is that Mr Nowak was not 'shy in coming forward'; he was not scared to raise issues with the respondent.**
>
> **60. That brings us to the November 2019 grievance. This is contained in a letter dated 13 November 2019, which runs from page 248 of the bundle. The question we have in relation to this is why, if things were consistently as bad as Mr Nowak now alleges they were, was no grievance raised before then? In cross-examination, he sought to explain this by reference to the fact that he had previously bought a grievance, in February 2019, that he had hoped that something would have been done about his mistreatment, and that he could hardly be expected to raise a grievance every week or month.**
>
> **61. That would be a reasonable answer if any of the alleged mistreatment by Mr Mather that is part of Mr Nowak's claim in these proceedings had been raised in February 2019. However, as we have just explained, none of it was; that was not what the 12 February 2019 letter was about. We therefore have no plausible explanation for why, if things really were as bad as all that, Mr Nowak didn't raise a grievance until November 2019.**
>
> **62. All of this adversely affects Mr Nowak's credibility, and the credibility of his claims.**
>
> **63. We have little difficulty in answering the question: why did Mr Nowak raise a grievance in November 2019 and not before? It is, first, that his allegations about Mr Mather's supposed mistreatment of him are at the very least exaggerated and, in all probability, largely untrue; and second that early November 2019 was when an incident concerning Mr Mosey, described in the grievance letter of 13 November 2019, occurred. That incident came on top of Mr Nowak's increasing concerns about the pay and benefits inequalities that are at the heart of his and the other claimants' claims in these proceedings. In Mr Nowak's perception: those pay and benefits inequalities were discriminatory on the grounds of nationality; Mr Mather was somehow responsible for them.**
>
> **64. Similarly, Mr Nowak evidently perceived that Mr Mosey, a British national, was being more favourably treated than Polish colleagues, in that he was seen to be getting away with "walking around doing nothing", as Mr Nowak put it. That is clear from the face of the letter of 13 November 2019. Mr Nowak thought that Mr Mather and Mr Mosey were close and that Mr Mather had done nothing when Mr Nowak complained to him, whereas in fact Mr Mather did not think much of Mr Mosey and did take some action, albeit there was little that he could do in the absence of more solid evidence than that provided by Mr Nowak.**
>
> **65. From some point in mid to late 2019, before November, we think Mr Nowak convinced himself that Mr Mather was against him and was against him because of his Polish nationality. This would undoubtedly have affected how Mr Nowak perceived not just what Mr Mather said and did going forward but also how Mr Nowak remembered incidents from the past.**
>
> **66. A further thing that causes us concern about Mr Nowak's credibility is his account – given for the first time in his oral evidence – of how he had made notes of what was happening during**

> **2019. That evidence came in the context of questions as to why his witness statement, prepared in 2023, contained lots of details about what allegedly happened that were not contained in the grievance of November 2019. Those notes had not been disclosed. Mr Nowak, in mid cross-examination on 22 November 2023, told us he thought he had his notebooks at home. We adjourned for the day so he could go home and get them and bring them to the Tribunal the following day. The following day, he arrived empty-handed and told us that he had been unable to find them.**
>
> **67. Mr Nowak has been professionally represented for most of the duration of these proceedings, including at all preliminary hearings. His professional representatives will undoubtedly have explained to him his disclosure obligations and in any event the disclosure orders that had been made were in the plainest of English. We think that if Mr Nowak had contemporaneous or near contemporaneous notes and if those notes supported his case, they would have been disclosed.**
>
> **68. Even if we did accept Mr Nowak's version of events, none of the facts he told us of which he had personal knowledge was evidence from which we could infer that the reasons Mr Mather (supposedly) treated him in the way he alleges was his Polish nationality.**
>
> **69. In addition, there is a contradiction at the heart of Mr Nowak's case: his core allegation is that he, Mr Nowak, was picked on. Given that the majority of the respondent's workforce was Polish, if Mr Mather's treatment of him was because of his Polish nationality, his evidence would be of mistreatment of Polish staff generally rather than – as the gist of it was – of Mr Nowak being singled out for mistreatment."**

20. The tribunal next considered the evidence given by a witness for the claimant, Mr Samelczak, which the tribunal considered, "might realistically have provided a basis for us to infer that Mr Mather was prejudiced against Polish people". However, his evidence concerned an alleged incident which, for reasons that it set out, the tribunal found had not in fact occurred. The tribunal continued:

> **"73. We are also of the view, based on our collective workplace experience, that if the kinds of incidents detailed by Mr Nowak were happening with anything like the frequency he describes, everyone on the shop floor would know about it when it was happening, even if they were out of site and/or earshot. Yet the only corroborating witness Mr Nowak has of Mr Mather's allegedly discriminatory behaviour towards him is Mr Samelczak; and this is not withstanding the fact that we heard evidence from many other people who worked alongside Mr Nowak at the relevant time, such as Mr Byrne.**
>
> **74. Further credibility points were made in submissions, in particular contradictions between Mr Samelczak's evidence and that of Mr Nowak were highlighted. We think those points were well made.**
>
> **75. Suffice to say that: we do not accept any of Mr Samelczak's evidence where it is not corroborated by someone or something other than Mr Nowak's evidence; and we do not accept any of Mr Nowak's evidence relating to Mr Mather where it is uncorroborated by someone or something other than Mr Samelczak's evidence.**
>
> **76. We do not uncritically accept Mr Mather's evidence, but we would say that we have far fewer reservations about that than about Mr Nowak's or Mr Samelczak's evidence. Consequently, where Mr Mather's account of events is different from either of their accounts, we prefer his evidence to theirs.**
>
> **77. In those circumstances, we are not satisfied that Mr Nowak's account of events on which he bases the claim set out in paragraphs 2.2.1 to 2.2.3 of the list of issues is true. That claim**

> **therefore fails on the facts. And even if we had decided that Mr Mather did what Mr Nowak had accused him of doing, as we have found Mr Samelczak not to be a credible witness, there would be no substantial basis in the evidence for us to decide that the reason Mr Mather behaved in that way was anything to do with Mr Nowak's Polish nationality."**

21. The tribunal then made further findings about what happened in relation to the November 2019 grievance. These events were the subject of further tribunal complaints of direct discrimination, and of victimisation. In summary, the salient findings were as follows. Following the raising of the grievance the claimant was moved to a different work station, he was told "for his own good". Subsequently he was told that the move was, or likely would be, permanent. Mr Waite's investigation was limited to speaking to the claimant and Mr Mather. When Mr Waite met with Mr Mather, Mr Mather was merely presented with the complaint letter, and asked in a general way to comment on it. It was an investigation meeting "not worthy of the name". In a meeting in December the claimant was told that in the absence of any other witnesses to Mr Mather's alleged treatment of him, the matter was considered to be closed. This was confirmed in a letter of 3 January 2020. The tribunal also found that, contrary to the claimant's evidence, he had not suggested at the time that there had been any witnesses to the alleged treatment of him by Mr Mather.

22. The tribunal continued:

> **"87. Moving onto the specific subsidiary allegations under paragraph 2.2.6 of the list of issues, we start with 2.2.6.1. This is an allegation that Mr Nowak was put under pressure to drop the allegations made in his grievance. Based on what is in paragraph 43 of his witness statement, his true case is in fact that he "felt like he was being forced to drop the allegations" [our emphasis], rather than that he was actually being pressurised to do so. Looking at the substance of what Mr Nowak is alleging happened, we are not satisfied that, objectively judged, Mr Waite was doing anything other than making sure Mr Nowak was aware of the potential seriousness of what he was alleging and was sure that he wanted to go through with the formal grievance. We don't think there was a detriment here (in that we don't think anything was said that a reasonable person in Mr Nowak's position could consider to be to their detriment); and there is no basis in the evidence for us to decide that any valid comparator – real or hypothetical – would have been treated differently, nor that race had anything to do with it.**
>
> **88. This was a process that on the evidence was driven by Mr Waite, so if there was unlawful discrimination here, it can only be on the basis that Mr Waite was racially prejudiced against Polish people, consciously or unconsciously. There were no facts highlighted to us from which we could infer that he was. This was not something said on the claimant's behalf, but perhaps it could be argued that Mr Waite did not take the claimant's grievance of discrimination as seriously as he should have done and that we should infer racial prejudice from that. We would not have accepted such a submission, had it been made. On the evidence we have, we are**

> **satisfied that Mr Waite conducted an inadequate investigation of the claimant's grievance, but not that he would have done a better job had the claimant's grievance been about something other than race discrimination."**

23. The tribunal went on to consider further complaints of direct race discrimination concerning the handling of the grievance. The claimant complained that he was moved after raising the grievance (issue 2.2.6.2). The tribunal found [89] no basis in the evidence to conclude that this was influenced by his being Polish. He complained (issue 2.2.6.3.) of being told that as there were no witnesses to the alleged treatment, there was no case, and the grievance was being closed. The tribunal found that it was likely that the explanation given for closing the case was true – from the respondent's point of view it could go nowhere – and that this was not influenced by the claimant's nationality [90].

24. The claimant complained that there was a failure to update him on the progress of his appeal, and that, on 22 January 2020 the new Managing Director, Steve Hemmings, asked him to wait before taking any action, in order for Mr Hemmings to carry out his own investigation. The tribunal concluded that the likely explanation was that, as the new MD, Mr Hemmings had other priorities, and then the pandemic intervened, and that there was no basis in the evidence for inferring that this had anything to do with the claimant's race [92 – 94]. Finally (issue 2.2.6.5.) the claimant complained of a failure to progress the investigation, in order to waste time, and allow the deadline to bring a (tribunal) claim to pass (issue 2.2.6.5). The tribunal considered this complaint to be pure speculation, and that there was no basis in the evidence to support such a belief ([96 – 97].

25. The tribunal also went on to reject other complaints of race discrimination, brought by all of the claimants, but which are not the subject of the grounds of appeal that are before me. The tribunal then considered a series of victimisation complaints by the claimant which overlapped, in terms of their subject matter, with his complaints of direct race discrimination. It considered in more detail at [113] why he was moved after he raised his grievance, concluding that this was done because either he or Mr Mather had to be moved, as it was impracticable for them to work together during the

investigation, and, given his responsibilities, it was less disruptive not to move Mr Mather. This did not happen *because* the complaint was a protected act. The tribunal noted in this regard that there was an offer to move the claimant back, following the outcome [114].

26. This section continued:

> **"115. We have already found there is no evidence that this grievance would have been better investigated had it been brought by a Polish person. Equally, there is no evidence that it would have been better investigated had it been about something other than discrimination.**
>
> **116. The aspect of this that gave us most pause for thought, and which at one point in our deliberations almost led us to concluding that the burden of proof had been 'reversed' by operation of EQA section 136, was Mr Nowak being told that it was a permanent move and being told this before, officially at least, the respondent's investigations into the grievance had been concluded. This suggests there was pre-judgment of the outcome of the grievance, in that it suggests there was a premature decision that Mr Mather was not guilty of what Mr Nowak had accused him of and would be staying in place.**
>
> **117. However, consistent with what we have already set out about what happened here, there is nothing in the evidence to say or suggest there would not have been exactly the same kind of pre-judgment and premature decision-making had the grievance been about something other than discrimination.**
>
> **118. We are in effect invited to decide that had the November 2019 grievance been about something other than discrimination it would have been handled better by Mr Waite. We have no other comparable grievance process to compare this grievance process to. A relevant comparable grievance process would have to be one involving Mr Waite, because he is the individual who is alleged to have acted to Mr Nowak's detriment because Mr Nowak did a protected act by complaining about discrimination. No useful comparison can be made with the process followed in 2021 to 2022 in relation to the collective grievance because Mr Waite was not involved in that; we could not logically infer victimisation by Mr Waite from the fact that (arguably; potentially) he handled the 2019 grievance worse than others handled a different grievance 2 years' later.**
>
> **119. We ask ourselves whether there is any evidence from which we could conclude, in accordance with EQA section 136, that Mr Waite acted as he did, consciously or unconsciously, because this was a grievance about discrimination rather than about something else. Upon analysis, there isn't. Mr Nowak has therefore failed to discharge the burden of proof on him in proving a prima facie case of victimisation."**

27. I interpose that it was common ground that at [115] in line 2, the tribunal must have meant to say "had it **not** been brought by a Polish person".

28. The tribunal then considered the victimisation complaints which overlapped with direct discrimination complaints 2.2.6.1., 2.2.6.3 and 2.2.6.5, concluding that they also had no merit, for similar reasons why the direct discrimination complaints did not. It also observed that the evidence

suggested that, at the time the respondent was not at all good at dealing with grievances; and there was no evidence that they were peculiarly bad at dealing with discrimination grievances [120].

29. After addressing some other victimisation complaints, the tribunal continued:

> **"122. The final complaint is 3.2.5: that the respondent failed to "Inform the claimants in the second claim by letter dated 19 April 2022 that the Company could not change the contracts and if they wanted to have a break of twenty minutes on Fridays they would need to work twenty minutes longer than everyone else."**
>
> **123. This complaint fails for a number of reasons.**
>
> **123.1 First, the allegation being made is entirely circular, being to the effect that because the claimants brought a grievance, that grievance was not upheld.**
>
> **123.2 Secondly, there was no difference in treatment between the claimants (and the others who brought the collective grievance) and those who did not. It was simply not the case as a matter of fact, as the claimants had been trying to give the impression it was, that while others could have the breaks the claimants wanted unconditionally, the claimants had to work 20 minutes longer than everyone else to get them.**
>
> **123.3 There is a single sentence in the letter from Mr Billson of 19 April 2022 that the claimants are in practice complaining about here: "Should any of the employees who are part of this collective grievance wish to have an unpaid 20-minute unpaid rest break, this would mean that you would finish work 20 minutes later." In writing this to them, the respondent was not punishing them or treating them any differently from those who had not brought the collective grievance and appealed the collective grievance decision. What they were being told was that from the date of the letter, if they – or anyone else in the workforce – wanted a 20 minute break on a Friday, that would not be a problem, but they would have to work longer. If they didn't want to do this, they could continue to enjoy exactly the same breaks as the rest of the workforce. It follows that if this statement was detrimental to the claimants, it was equally detrimental to everyone else. There was, then, no causal link between the bringing of the collective grievance and appealing the collective grievance outcome and any detriment.**
>
> **123.4 Moreover, if we compare the claimants' position to the position they would have been in had they not bought this collective grievance and appealed the grievance outcome, they were in fact in a better position (albeit still in the same situation as the rest of the workforce), in that they were being given the option of having a 20 minute break, which would probably not have been offered if they hadn't appealed. They were therefore not being subjected to a detriment at all, but being given an option potentially of benefit to them that would not have been offered had they not brought the grievance. The fact that they were being offered less than they wanted did not make this a detriment.**
>
> **124. In summary and conclusion, all the complaints of victimisation fail because, to the limited extent that the claimants were subjected to relevant detriments, the reason for this was not that they did protected acts."**

The Grounds of Appeal – Argument – Discussion – Conclusions

Ground 2

30. This ground has the headline that the tribunal "misunderstood the nature of discrimination in the workplace". Mr Kohanzad confirmed in submissions that it relates specifically to the tribunal's

decision on the complaints of direct race discrimination against Mr Mather, identified in issues 2.2.1., 2.2.2. and 2.2.3, and which I have set out at paragraph [16] above.

31. The ground criticises, specifically, what the tribunal said, at paragraph [58] and at paragraph [69]. The nub of the challenge is that the tribunal's reasoning process in these two paragraphs was fundamentally faulty and unsound. As to [58] the ground contends that the tribunal there reasoned – defectively – that, because the claimant was always Polish, and because Mr Mather had not mistreated him in earlier years, *therefore* Mr Mather *could not* have started to mistreat him in February 2019 on account of his being Polish. Similarly, the ground contends that the tribunal reasoned – defectively – at [69], that, as, on the claimant's case, only he was mistreated by Mr Mather, and it was not claimed that any other of his many other Polish colleagues was similarly mistreated, *therefore* whatever treatment was meted out to the claimant *could not* have been anything to do with his being Polish.

32. Mr Kohanzad submitted that there could be a variety of scenarios in which such reasoning would be obviously unsound. For example, particular developments may trigger a biased response. An individual who begins to have performance issues, or to be assertive, may *then* attract an adverse reaction, which is more severe than it would otherwise have been, because it is (consciously or not) influenced by their race, even though they have not previously been adversely treated because of their race in any respect before the performance issues or combativeness began. Similarly, an individual who is, for example, peculiarly vocal, may then receive adverse treatment which is influenced by their race, which is not meted out to colleagues of the same race who are not similarly vocal.

33. As to [58] the ground gains an initial foothold from the opening word "logically". But what the tribunal meant must be ascertained by reading the paragraph fairly as a whole, in the context of the wider decision, the complaints at issue, and how the rival cases were advanced.

34. This group of complaints, as set out in the list of issues, were to the effect that Mr Mather had

ill-treated the claimant in various ways, because he was Polish, in the period between February and November 2019. Importantly, there was a factual dispute as to whether the alleged ill-treatment had occurred *at all*. In considering whether it had, and whether any treatment that did occur was because of race, the tribunal reviewed a number of aspects. These included, at [53], that it considered that the claimant's case shifted in evidence to being that the mistreatment had started *well before* February 2019, but got worse on account of him raising the 12 February 2019 grievance about his pay, and its further consideration of the various other factors that it considered affected the credibility of his account at [59] – [67]. It is within that wider context of discussion that [58] must be considered.

35. Further, as to the February 2019 grievance, the tribunal found that this was not alleging racial discrimination against Mr Mather, and in any event it was dealt with by Mr Waite himself deciding to give the claimant a pay increase, and doing so without referring it to Mr Mather.

36. Against that background and context, reading [58] itself as a whole, the tribunal was looking for any other change, or event, in or around February 2019, which might have triggered the adverse treatment by Mr Mather that was alleged. It could not find it, for example, in any change in Mr Mather's role in relation to the claimant. It also drew (at [59] and following) on the fact that the claimant *did* raise a grievance in February (about his pay), as tending to suggest that, had the alleged ill treatment begun well before that time (as was the claimant's case in evidence) the tribunal might have expected it to be raised in that grievance as well, or certainly before November.

37. What the relevant passages read as a whole show, I conclude, is the tribunal giving extended consideration to the factual issue about whether the treatment occurred at all, and, if it did to any extent, why, by reference to various particular features of the evidence, and how the case was advanced, rather than engaging in a reductive form of abstract reasoning with reference to the evidence. Paragraph [58] formed just one part of that overall assessment.

38. Similarly, given its opening words, referring to "a contradiction", what the tribunal said at [69] does merit some examination. But, once again, it must be considered in the wider context of what was at issue, and the tribunal's wider reasoning, and in particular the fact that there was an underlying factual and evidential issue to resolve as to whether the claimant had been mistreated as (or as badly as) he claimed, at all. In that wider context of its consideration of this issue, the tribunal also looked at the wider context that "most" of the workforce was Polish. The tribunal therefore considered whether there was any evidence that any other Polish colleague had been mistreated, which might have supported his case that he too had been mistreated because he was Polish.

39. In particular, in the succeeding paragraphs the tribunal considered the evidence of the claimant's (Polish) colleague, Mr Samelczak, which, had it been accepted, might have lent evidential support to the claimant's case; but concluded that it was not credible, for reasons that it discussed. It also considered whether it might have expected there to be other supporting evidence, had the claimant been so persistently mistreated over a period of months as he claimed [73].

40. Standing back, I conclude that, once again, the tribunal was not engaged in paragraph [69] in faulty abstract reasoning, but properly considering the evidence, and the extent to which it supported the claimant's case. It was not wrong to note features that were *not* present, that, had they been present – something suggesting why Mr Mather would have been triggered to react against the claimant from February 2019, or credible evidence that at least some colleagues in the largely Polish workforce had attracted his ire as well – would have strengthened the evidential case that the claimant had been ill-treated as he claimed, and that such ill-treatment was adversely influenced by his race.

41. For all of these reasons, I do not uphold ground 2.

Ground 3

42. This ground relates to the complaint of direct discrimination because of race at 2.2.6.1 of the

list of issues, being that Mr Waite directly discriminated against the claimant at a meeting to discuss his November 2019 grievance, by "pressurising him into dropping the allegations" made in that grievance. It relates specifically to what the tribunal said at [87] in support of its conclusion that the conduct of Mr Waite on this occasion did not amount to subjecting the claimant to a detriment.

43. The headline of the ground is "conflating less favourable treatment with detriment." In the body of the ground the tribunal is said to have erred (a) because there is no requirement in section 13 **Equality Act 2010** for the treatment complained of to be detrimental. It suffices if, because of race, the complainant is treated less favourably than others are, or would be, treated; or in any event (b) because the tribunal misunderstood the nature of detriment, because asking a worker if they are sure about wanting to pursue a grievance is objectively a detriment if they feel pressured by the question.

44. As to the first strand, as Mr Kohanzad acknowledged during the course of oral submissions, section 13 defines the concept of direct discrimination (together with section 23), but it does not create the cause of action. The cause of action in relation to employment cases is created by section 39. In this case the relevant cause of action was in section 39(2)(d), being that an employer must not discriminate against an employee by subjecting the employee to "any other detriment."

45. The tribunal therefore did not err by considering whether, as a matter of fact, the respondent had subjected the claimant to a detriment by the conduct to which this complaint related.

46. Turning to the second strand, in its self-direction of the law on the concept of detriment, the tribunal said it had referred to **Jesudason v Alder Hay Children's NHS Foundation Trust** [2020] EWCA Civ 73; [2020] ICR 1126 at [27] to [28]. That concerned a protected-disclosure detriment claim, but in that passage Elias LJ (Henderson and Baker LJJ concurring) identified that the concept of "detriment" in the context of such a claim, is the same as it is in the context of a discrimination claim, and referred to established authorities setting out the test. Drawing on these, he said, at [27]:

> **"It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker. There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment."**

47. At [28] he said:

> **"Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective."**

48. While the test has a subjective element, in as much as the tribunal must consider how the worker whose complaint it is subjectively experienced the treatment, it is not wholly subjective, because the tribunal must consider whether their subjective reaction was a reasonable one.

49. In the present case the tribunal not only identified the correct legal test. It also, reading [87] as a whole, plainly applied it. Although it said that it was not satisfied that "objectively judged" Mr Waite was doing anything more than making sure that the claimant was aware of the potential seriousness of what he was doing, and wanted to go through with a formal grievance, it plainly did not make the error of applying a purely objective test. It identified the claimant's case about how he "felt" and therefore his subjective point of view, and it explained that it did not consider that anything was said that a reasonable person in the claimant's position could consider to be to their detriment. Mr Kohanzad contended in oral submissions that this conclusion was perverse. I disagree. The tribunal was entitled to conclude that doing what it found that Mr Waite did was not reasonably viewed as detrimental treatment. The high threshold for a perversity finding is not surmounted.

50. For all of these reasons, ground 3 fails.

Ground 4

51. This ground relates to complaints of both direct discrimination and victimisation concerning the grievance of November 2019. As to direct discrimination it relates (like ground 3) to the complaint that Mr Waite pressurised the claimant at the meeting on 18 November at which the

grievance was discussed (issue 2.2.6.1). But it challenges a further part of the tribunal's reasoning at [87], where it held that there was "no basis in the evidence for us to decide that any valid comparator – real or hypothetical – would have been treated differently, nor that race had anything to do with it."

52. As to victimisation, Mr Kohanzad clarified that this ground relates (a) to the victimisation complaint about the same conduct on 18 November (issue 3.2.2.1), but also to the other victimisation complaints at issues 3.2.2.2, 3.2.2.3 and 3.2.2.4. In summary these were of (b) the claimant being told on 18 December 2019 that, because there were no witnesses, there was no case, and the grievance investigation was therefore closed; (c) failing to update the claimant on the progress of his grievance appeal, and on 22 January 2020 Mr Hemmings telling the claimant to wait, before taking any action, for him (Mr Hemmings) to carry out his own investigation; and (d) failing to progress the investigation, so as to waste time and cause the deadline to bring a tribunal complaint to pass.

53. The ground contends that the tribunal erred by failing to find that the burden of proof shifted to the respondent in respect of all of these various complaints under section 136 **Equality Act 2010**. It asserts that the following things in particular should have been treated by the tribunal as causing the burden to shift: that (as the ground puts it) employers generally do not seek to second guess a worker's decision to raise a grievance, and then inadequately investigate that grievance, in combination with the fact that the grievance raised a complaint of discrimination.

54. This ground also contends that the tribunal erred when it said at [115] that there was "no evidence" that the complaint would have been better investigated if brought by a person who was not Polish, or had it been about something other than discrimination. This is said to have been an error because there was no evidence on the point either way; and if the respondent had wanted to run the defence that it would have handled an otherwise similar complaint by any employee equally poorly, whether or not they were Polish, and whether or not their complaint was of discrimination, then it was incumbent on the respondent to present some positive evidence to support that defence.

55. My conclusions on this ground follow.

56. First, as has been stated a number of times in the authorities, what facts are or are not sufficient to shift the burden of proof pursuant to section 136 of the **2010 Act** in a given case is a fact-sensitive matter, which turns on the nature of the complaint and the issues, and all the relevant facts, and particular context, in the given case. Secondly, as the authorities also establish, it is not an error for a tribunal not to proceed in two stages pursuant to section 136 in a case where it is able to make positive findings about the reasons for the impugned conduct.

57. In this case the tribunal made positive findings, in the passages that I have set out, about the reasons for the conduct in question, and that it was not because of the claimant being Polish, nor because his grievance made an allegation of discrimination. The tribunal also plainly had in mind the burden of proof. It referred to section 136 and relevant authority in its self-direction as to the law at [14]. As Mr Glyn KC noted, it specifically discussed it in relation to one of the complaints at [116]. That shows that it had not lost sight of it, when coming to its conclusions.

58. Mr Kohanzad contended that the findings that the investigation was, in some respects, inadequate could have *potentially* supported a shifting of the burden or an inference of discrimination. But, it is, of course, well-established, that unreasonable treatment is not automatically to be equated with discriminatory treatment. Further, in this case, I consider it is clear that the tribunal, in the passages setting out its conclusions, considered in terms the aspects of the handling of the matter that it had itself identified as, in one way or another, unsatisfactory. But, having done so, and in light of all its findings, it reached positive conclusions, as to the reasons for the conduct in question, which were neither because the claimant was Polish, nor because he had alleged discrimination.

59. I do not agree that the reference at [115] to there being "no evidence" that the grievance would have been better investigated had the complainant not been Polish, or not complained about

discrimination, shows that the tribunal erred. This paragraph must be read in the context of the overall conclusions reached, and the earlier findings of fact upon which it drew. It formed part of a section in which, as I have noted, the tribunal plainly gave consideration to whether the burden passed in relation to any of the victimisation complaints. In doing so, it properly referred back to its earlier positive conclusions on the direct discrimination complaints relating to the same matters.

60. The conclusions on both sets of complaints must also be read in the context of the tribunal's earlier findings of fact about this aspect of matters at [78] – [86] which I have summarised earlier. These included criticism of Mr Waite for not being more thorough in his questioning of Mr Mather when they met to discuss the grievance (about which the tribunal heard evidence from Mr Mather). But, importantly, they also included (at [84] and [85]) findings about the meeting that Mr Waite had had with the claimant himself to discuss the grievance (at which the claimant had a union representative and Mr Waite had a colleague from personnel with him), and consideration of the evidence of an exchange of correspondence, following, and about, that meeting, in January 2020. The tribunal made reasoned findings, in those paragraphs, that the claimant had not, in the internal process, put forward Mr Samelczak, or anyone else, as a witness in support of his complaints. Those properly supported its conclusions about why Mr Waite acted as he did in closing the grievance.

61. For all of these reasons, I do not consider that the tribunal erred in failing to conclude that the burden had shifted to the respondent in respect of these complaints, and not been discharged.

Ground 5

62. This ground relates to the Friday breaks issue. There are two strands. The first contends that the tribunal erred because, in addition to an **Equality Act 2010** complaint of victimisation, there was a tribunal complaint in this regard of contravention of the **Working Time Regulations 1998**, which the tribunal erred by failing to address. I will refer to such a complaint as a WTR complaint.

63. The ground, which was drafted by the claimant, and much of Mr Kohanzad's skeleton argument, focussed on the contention that the *internal collective grievance* raised an issue under the **1998 Regulations**. However, the issue raised by this ground is whether there was live freestanding WTR complaint *before the employment tribunal*, in addition to the **Equality Act** complaint.

64. If there was such a live complaint in the original claim form, or that was later introduced by amendment, and which had not at any point been abandoned by the claimant, then the tribunal would err if it failed to address and determine that complaint; but if there was not, then it would not. See **Moustache v Chelsea & Westminster NHS Trust** [2025] EWCA Civ 185; [2025] ICR 1231 especially at [33] to [36]. It is therefore necessary to trace through the relevant litigation history.

65. The claimant's claim was presented, against his then employer, Liberty Aluminium Technologies Limited, in February 2020. It identified his representative as someone from Central England Law Centre. At section 8, concerning the type and details of claim, the only box ticked indicated that he was complaining of race discrimination. The narrative was set out in an attached particulars of claim document. Beginning at para. 2 this set out various complaints of being treated "less favourably than his non-Polish colleagues", including, at para. 5, the following: "in addition to the threats of termination and lack of equal payment with other non-Polish staff, the Claimant also was only given a 10 minute break for a 7 hour shift when he believed it should be 20 minutes."

66. Liberty Aluminium's grounds of resistance understood the complaint about breaks to be a complaint of direct race discrimination, which it denied at para. 11.

67. The other claimants presented their claims together, on a single claim form, in May 2022. They were unrepresented. In section 8 they ticked the boxes for sex and race discrimination and "other payments". There were narrative particulars in box 8.2. Para. 2 said that they had, since starting, always been paid less than non-Polish colleagues, and had less benefits. Para. 3 said: "In addition to

the above we only have a 10 minute break for 7 hour work on Friday." Para. 11 referred to a belief that they had been treated unfairly and discriminated against "due to our race and gender". Para. 13 stated their belief that "forcing us to work over on Friday to receive 20 minute break during seven hours work is act of victimisation for writing grievance."

68. There was a preliminary hearing (PH), in respect of the claims of both the claimant and his colleagues, before EJ Meichen on 25 November 2022. All of the claimants had a paralegal representative from the Law Centre. The respondent had a lay representative. In view of the TUPE transfer, Evtec Aluminium was substituted as the proper respondent to the claimant's claim.

69. Para. 13 of the minute identified that the claims and the issues, as discussed at that PH, were set out in the Case Summary. If a party thought the list was wrong or incomplete, they should write to raise the matter within 14 days. Otherwise it would be treated as final unless the tribunal decided otherwise. The Case Summary identified that the complaints were of direct race discrimination based on Polish nationality, and victimisation. The list of issues identified complaints of direct discrimination relating to the claimants being given only a 10 minute break on Fridays when it should have been 20 minutes (2.2.4.) and victimisation by the letter of 19 April 2022 (3.2.5.). No WTR complaints were identified.

70. Among the orders made, EJ Meichen required all the claimants to provide further details of comparators relied upon, and the present claimant to provide particulars of the conduct for which he claimed he had been unfairly blamed by Mr Mather. It is clear that a particulars document was then tabled on behalf of all the claimants, by the Law Centre, in January 2023. I have not seen it. However, there are amended grounds of resistance in the claimant's case later in January [58]. It is apparent from that document (at paras. [18] and [19]) that the claimant's particulars contended that he was treated less favourably by being given shorter breaks than three actual (non-Polish) comparators – Gary Tranter, Anthony Mosey and John Byrne. In denying that particularised complaint the

respondent sought to rely upon a collective agreement that predated its acquisition of the business as the explanation for its approach. But there is no sign or suggestion here that the claimant had sought in his particulars to introduce a distinct and additional WTR complaint relating to this matter.

71. Following the claimant raising a number of matters, and applications, on behalf of himself and his fellow claimants, in a document tabled in March 2023, there was a further case-management hearing before EJ Perry on 30 August 2023. The claimants were represented by counsel and the respondent by a lay representative. The judge noted (para. 2) that since the hearing before EJ Meichen, and also at that hearing, the issues had been "further narrowed and clarified." The claimants' counsel had agreed to provide an updated list of issues. Points of clarification of the issues were set out. This included that the complaint at 2.2.4 in EJ Meichen's order had been withdrawn. This was, I note, the direct discrimination complaint relating to the Friday-break issue. There is no sign or suggestion of any distinct WTR complaint having been raised or added at this stage.

72. However, in an email to the tribunal of 23 October 2023, the claimant then sought to argue that the complaint about the breaks issue should have been treated as brought from the outset under the WTR, such a complaint should have been identified by EJ Meichen, and, on that basis, an application to amend to bring such a complaint was not required, and so they should be permitted to pursue such a complaint at the forthcoming full hearing in November 2023. The claimant also referred to the WTR in relation to this issue, in his witness statement for that hearing.

73. In those circumstances, at the start of the listed first day of the full merits hearing EJ Camp held a PH at which this matter was considered upon application by the claimants' counsel. The judge concluded that there was no live WTR complaint and refused permission to amend to add one. An oral decision was given, and it appears that the Order was sent on 23 November 2023. Written reasons were provided, albeit after a considerable delay (which the judge explained), in August 2024.

74. The notice of appeal did not refer to this separate decision by EJ Camp, nor did ground 5. But in any event Mr Glyn KC submitted that, even if this appeal was treated as embracing an appeal from that decision, it was plainly correct. I turn to consider the judge's substantive reasoning.

75. The judge referred to what had happened at the two PHs, before EJ Meichen and then before EJ Perry. The judge observed that, through their representatives, the claimants had confirmed, at the former, that the only complaint to do with rest breaks in their claim forms was of direct race discrimination, and, at the latter, that that complaint was withdrawn. That remained the position until the claimant's application of 22 October 2023. His counsel had then set out the specific terms of the WTR complaint which he sought to have added to the list of issues.

76. The judge looked at para. 5 of the claimant's original particulars of claim. He observed that it did set out facts which could *potentially* give rise to such a complaint, but did not use the language of the WTR and was identified as being a complaint of race discrimination. The judge then analysed the other claimants' claim form. There was, in that claim form, a victimisation complaint about rest breaks and possibly a direct discrimination complaint, but no WTR complaint.

77. The judge observed that at, and following, the EJ Meichen hearing the claimants' representatives confirmed that the only complaints relating to rest breaks were of direct discrimination and victimisation in relation to the 19 April 2022 letter. So, to the extent that there was any ambiguity in the claim forms, the matter had been discussed and confirmed before EJ Meichen and no-one had written thereafter to correct the list of issues. At the EJ Perry hearing counsel had then withdrawn the direct discrimination complaint about this matter on the claimants' behalf.

78. EJ Camp concluded that all of the claimants required permission to amend to introduce WTR complaints. The judge then went on to consider whether such an amendment should be permitted, but, for very full reasons which he set out, declined to do so.

79. In oral argument Mr Kohanzad noted that a schedule of loss tabled for the claimant and one of his fellow claimants in January 2023 included a reference to breach of the WTR, as did the respondent's 19 April 2022 letter. He argued that the reference in the claimant's original claim form to this issue should have been interpreted as raising a WTR complaint.

80. Applying the structured approach and guidance set out in **Moustache** I conclude as follows.

81. First, the tribunal was right to focus on the pleadings.

82. Secondly, the tribunal was prepared to treat para. 5 of the claimant's original particulars of claim, in isolation, as ambiguous, but properly concluded that, read as a whole, the complaints that his claim, and that of his colleagues, identified as having been brought, in relation to this issue, were specifically identified as being – only – complaints of direct discrimination and/or victimisation. The fact that the facts asserted *might* have given rise to an additional complaint under the WTR does not mean that the tribunal did not err by not inferring that such a complaint was in fact being advanced.

83. Next, the tribunal properly regarded this as having been confirmed, on behalf of all claimants, by what transpired at the two PHs at which they were represented, at which no WTR complaint was said to have been raised, and no application to add such a complaint was made. The fact that the WTR were referenced in a schedule of loss following the first of those PHs was not enough. No application to amend was made at, or before, the second PH, at which the claimants were represented by counsel.

84. Accordingly, EJ Camp did not err by concluding, when the matter came before him, that there was no such live complaint before him, and that permission to amend was required. There was no appeal, in the alternative, in respect of the tribunal's reasoned decision to refuse permission to amend.

85. For these reasons I conclude that the first part of this ground does not succeed.

86. The second part of the ground contends that the tribunal erred, in respect of the complaint of victimisation relating to the letter of 19 April 2022, in concluding at [123] that it did not amount to detrimental treatment. I turn to consider that challenge.

87. In their collective grievance the claimant and his colleagues argued that, having regard to the length of the shift, they were entitled to a 20-minute break on Fridays pursuant to regulation 12 WTR. The respondent's letter of 19 April 2022 began by acknowledging their concerns in relation to the different terms and conditions applying to different groups of employees. It referred to the legacy of TUPE transfers, and to its intention to commission a consultant to carry out a review with a view to establishing a framework to "harmonise" terms and conditions. The letter than continued:

> **"In relation to rest breaks, you are of course entitled to an unpaid uninterrupted 20 min rest break as you work more than 6 hours on Friday. This is in accordance with regulation 12 of the Working Time Regulations 1998 (WTR 1998). However, this regulation can be modified or excluded by collective agreement or workforce agreement. (Reg 23 of the WTR 1998). The Union has informed me that the majority of employees opted to not have a rest break so that they could finish earlier.**
>
> **Should any of the employees who are part of this collective grievance wish to have an unpaid 20-minute rest break this would mean that you would finish work 20 minutes later."**

88. Had the claimant been permitted to amend his tribunal claim to add a WTR complaint, it would have been to the effect that he (and colleagues) were only permitted a 10-minute break on Fridays, which did not comply with regulation 12, *and* that the express terms of his own contract were such that the collective agreement relied upon by the respondent did not apply to vary his WTR rights.

89. However, what the tribunal was considering was not that issue, but a complaint that the letter amounted to an act of *victimisation* of the claimant (and his colleagues) *because* they had complained of discrimination. The claimant contends that the letter effectively told them that, in order to enjoy an *extra* 10 minutes' break, they would have to work an *extra* 20 minutes at the end of the Friday shift, which should have been found to amount to detrimental treatment. Mr Glyn KC submitted that that was not the import of the letter. It was saying that employees could have a 20 minute break, but

would then have to work 20 minutes later than they would have, had they taken no break at all.

90. My conclusions follow.

91. First, I agree with Mr Glyn KC that the natural reading of the letter is that the writer was simply asserting that (a) the respondent had properly not given a 20-minute break, in light of the collective agreement; but (b) nevertheless, those who wanted such a break could take one, but in that case their shift would end 20 minutes later than it would have, had they taken no break. But even if the claimant was right that his entitlement to a 20-minute break was not, for WTR purposes, validly varied by the collective agreement (about which I do not need to express any view), and even if this letter should have been regarded as amounting to detrimental treatment, as such, that would not show that the tribunal erred in dismissing this complaint of victimisation.

92. The tribunal did not rest its conclusion on its reasoning that the letter was not detrimental treatment, but added at [123.3] that, even if it *was* detrimental treatment, there was no causal link between the grievance and this stance. The tribunal specifically found that, while this letter was addressed to those who had specifically complained about the current arrangement, the respondent's approach would have been the same in respect of *any* employee who wanted to be given a 20-minute break. That was a proper inference, given that the respondent, on the face of the letter, was seeking to rely on a collective agreement, which it considered applied generally to the relevant workforce as a whole. The tribunal therefore properly took the view that it was not treating the claimant or his colleagues differently, *because* their grievance (it was conceded) alleged discrimination.

93. For all of these reasons this ground also fails.

Outcome

94. The appeal is dismissed.