Case Number: 1302640/2016

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr K Oppong	**v**	**DHL Services Limited**

Heard at: Birmingham

On: 1 to 7 November 2017
In chambers 28 November 2017

Before: Employment Judge Broughton
Members: Mr P Zealander
Mr G Bagnall

Appearances:
For Claimant: in person
Respondent: Mr D Bunting, counsel

JUDGMENT

The Claimant's claims of race discrimination and victimisation succeed in part.

Employment Judge Broughton
19 December 2017

Reasons

The facts

1. The claimant is black of African Ghanaian origin. He applied for work with the respondent at their new warehouse in Rugby and was interviewed and offered a position by Charlotte Van Jaarsveld, shift controller.

2. His employment commenced on 4 April 2016 and he was inducted that day, introduced to the respondent's policies and signed each page to confirm that he had read, received and understood the same. The company's Diversity & Respect at Work policy stated:

   the company will operate and conduct its disciplinary and grievance procedures in a non-discriminatory and fair manner and in accordance with the principles of natural justice;

3. We saw and heard that, in common with many warehouse operations, the respondent's policy on mobile phones was that employees were not allowed to use their phones, save when on breaks and in designated areas, and, indeed, they were not allowed to have their phones on them on the shop floor. One of the principal reasons for that policy was to prevent staff from taking photos of stock.

4. We also heard, however, that lockers were not yet available for staff and there was no stock in the warehouse as it had only just opened. As a result, staff were informed that, as a last resort, they could have their phones on them in the warehouse but they were still not allowed to have them turned on or use them. The claimant confirmed that he understood this, including from his previous warehouse experience. It appeared, however, that Mr Dempster, site operations manager, was not aware of the temporary, partial exemption to the normally strict rule.

5. We heard unchallenged evidence that the respondent employed a very diverse workforce including only around 10% white, British workers, over 50% white, Eastern European workers and 10% black workers, split roughly equally between those who would describe themselves as British or African.

6. On 6 April 2016 at about 2.30pm, Joanne Dyba, Team Leader approached the claimant in the warehouse and accused him of using his mobile phone.

7. The claimant suggested that he informed the team leader that he was just checking the time but that she, nonetheless, aggressively shouted at him, accusing him of using his phone. He went on to suggest that Joanne had checked his mobile phone and found that there was no call made or received at that time. He went on to claim that she had asked him to switch the phone off which he had done but that she still wanted him to hand it over.

8. That seems to us unlikely. Firstly because in oral evidence the claimant only suggested that he held out the phone and showed her the screen, which would not give the confirmation claimed. Secondly, this would not, in any

event, confirm that he was not using the internet, texting etc. If the claimant was willing to show Joanne his phone to prove he was not making calls then he would surely be willing to have done the same with regard to other uses if he had not, as claimed, been using it for some other purpose. He acknowledged, however, that he had not allowed her to check this. If the claimant had proved that he had switched off the phone there was no reason for Ms Dyba to ask for it.

9. Secondly, in cross examination the claimant also gave contradictory explanations such as claiming that he told Ms Dyba that the phone was switched off and that he didn't allow her to see his phone at all. Thirdly, it seems unlikely on the evidence before us that the events as described by the claimant would lead to the escalation that both parties agreed ensued.

10. The claimant clearly not only had his phone on him but it was switched on and even checking the time was, arguably, using it. Ms Dyba had, apparently, seen him trying to hide the use of his phone by concealing it in a yellow bin.

11. There was no suggestion that he acknowledged this, apologised and said it would not happen again. Had he done so we suspect that would have been the end of the matter. If he was not using the phone for some other purpose there was no good reason for him not to demonstrate this.

12. The respondent's evidence suggested that, when challenged, the claimant responded obstructively, refusing to both give his name and show his phone and that he had not come up with the checking the time excuse until much later. That seems to us far more plausible.

13. We did not hear from Ms Dyba but we did have her statement produced for the subsequent internal proceedings and that was consistent with what we heard she had reported to Charlotte Van Jaarsfeld, from whom we did hear, at the time. Moreover, we accept that Ms Van Jaarsveld was not aware of the "checking the time" excuse until much later. If all the claimant had been doing was checking the time, he would easily have been able to demonstrate that by showing Ms Dyba his locked screen. He did not.

14. Unable to resolve the situation and faced with the claimant refusing her requests, Ms Dyba then asked the claimant to follow her. She apparently asked the claimant to wait outside the office while she went to speak to Charlotte Van Jaarsveld, Team Line Manager.

15. A few minutes later Charlotte and Joanne met the claimant in the corridor. We found Ms Van Jaarsveld to be a credible, consistent and measured witness. She said, and we accept, that it was her intention at that stage to attempt to resolve the matter informally. We note that she had offered the claimant the job and so she would have known him. She apparently said to the claimant "you are not allowed to use your mobile phone". She did not, therefore, say that the claimant had been using his mobile phone.

16. The claimant suggested that he replied that the business allowed employees to carry phones because they had not yet been provided with lockers. Ms Van Jaarsveld and, it appeared, Ms Dyba knew this and that was not the issue.

She suggested that the claimant almost immediately went on the offensive, saying he was disappointed in her approach and labelling her unprofessional.

17. The claimant's evidence was that he was well aware that warehouse employees were not allowed to use their mobile phones in the warehouse and so his repeated attempt to shift the focus onto whether or not he was allowed a phone at all, or onto the respondent's handling of the situation may well have been nothing more than an attempt to distract from the issue of whether he had, in fact, been using his phone.

18. The claimant suggested that the mobile phone issue was a false accusation against him. It was not. He admitted his phone was on and, at the very least, he used it to check the time.

19. He went on to claim that he told Ms Van Jaarsveld that he felt he was being less favourably treated on grounds of his race and provided her with his "grounds to substantiate my racist complaint:

    A. Charlotte Van Jaarsveld did not give me opportunity to provide her with my evidences of what happened.

    B. Charlotte did not provide me with reason as to why she accepted Joanne's false accusation without hearing my evidence.

    C. Charlotte did not carry on an investigation in connection to the using of the phone or not, Charlotte could have professionally asked me to provide her with mobile phone to check as whether I have used my mobile or not (i.e. making or receiving a call).

    D. Why didn't Charlotte allow me to enter to the Office?"

20. Under questioning the claimant accepted that he had not used the words race or racist. He maintained that he did, however, use the words "less favourable treatment". That seems to us unlikely.

21. The claimant claimed to have little knowledge of race discrimination law so it would be surprising for him to use the precise words of the statute. In addition, at one point in his evidence he appeared to accept that he had not made any complaint of racism, less favourable treatment or similar until his written grievance some days later, seemingly after having taken advice. Having misled us over whether he mentioned race at this stage, we find that his evidence on whether he used any language that could amount to a protected act under s27 Equality Act 2010 was also unreliable.

22. Moreover, at one stage the claimant suggested under cross examination that a white, female employee had been using her phone and was not treated the same way. There was no evidence to support this and, if true, we are sure it would have been mentioned at least once in the claimant's grievance, claim form, response to the tribunal's specific request for comparator details and/or his statement. Furthermore, the precise way in which the claimant alleged he made his complaint seems unlikely given that he was in a charged atmosphere in a corridor when he was simultaneously suggesting he was not given an opportunity to state his case.

23. Charlotte Van Jaarsveld categorically denied that such words had been used and we prefer her evidence. We accept her unchallenged evidence that, had such a complaint been made, Ms Van Jaarsveld would have escalated the matter in accordance with company policy.

24. We note at this stage that Ms Van Jaarsveld had the power to suspend the claimant if she felt that the claimant's conduct was such as to warrant it. She did not and, in fact, it was her evidence that she was still trying to resolve the matter informally. Moreover, when she learnt of the claimant's suspension she was surprised, albeit she subsequently sought to suggest that, on reflection, she understood the decision.

25. The claimant suggested that, after hearing the grounds to substantiate his racist complaint, Charlotte Van Jaarsveld then apologised. Given that we do not accept that the claimant made a racist complaint at that stage, we do not accept that Ms Van Jaarsveld had anything to apologise for and accept her evidence that there was no such apology.

26. The claimant claimed that he refused her apology but, given that we do not find that there was such an apology, this merely confirms that the claimant was being obstructive and, potentially, confrontational and aggressive.

27. That would also appear to explain why, at that time, Lee Dempster, depot manager, approached and asked Charlotte what was going on and enquired whether she was ok. Charlotte Van Jaarsveld informed him of the claimant's apparent mobile phone use.

28. Lee Dempster then asked whether the claimant was an agency worker or DHL Staff. It was common ground that the claimant refused to answer. He suggested that the question was discriminatory. That made no sense. Mr Dempster needed to know the claimant's status as agency staff would need to be referred to the agency manager. Charlotte Van Jaarsveld informed Mr Dempster that the claimant was a DHL employee.

29. Lee Dempster also asked if the claimant had been using his mobile and the respondent's consistent evidence was that the claimant refused to answer. The claimant's vague responses to cross examination appeared to confirm this. There was no suggestion that he told Mr Dempster that he was merely checking the time which appears to confirm that this explanation was one which the claimant came up with later.

30. Lee Dempster was of the view that employees were not allowed to have their mobile phones on them. However, the claimant stated that, during the induction, Richard Jones, health and safety manager, had told employees that until they had lockers they would be allowed to keep their mobile phones with them in the warehouse.

31. A disagreement appears to have ensued that may have become heated on both sides. Lee Dempster did not believe the claimant and referenced the fact that he had been involved in writing the policy reiterating, wrongly, that the claimant was not allowed to have his mobile phone on him.

32. The claimant then alleged that he said he had not been provided with any policy in relation to mobile phones during the induction. That was clearly not

true. We had the claimant's signature on the relevant page of the induction booklet. At one stage he sought to suggest that the induction had been carried out so hurriedly that he had not had chance to understand the policy but, at another stage, he alleged that it was him who had challenged the policy given that employees did not yet have lockers.

33. It appears that the claimant was being, at best, evasive and obstructive. Both Mr Dempster and Ms Van Jaarsveld perceived this as aggressive. Equally Lee Dempster was reiterating a policy that he was unaware had been varied and the claimant viewed him as being aggressive.

34. To calm things down, Mr Dempster moved the conversation to the reception area and the claimant requested a witness, Tammy.

35. The claimant alleged that he was so upset at this point that he told Lee Dempster that he was being treated less favourably on grounds of his race. However, in cross examination the claimant admitted that he didn't think he had done so and both Mr Dempster and Charlotte Van Jaarsveld denied it. We accept their evidence. This was not an alleged protected act relied on by the claimant in any event.

36. It was, however, common ground that the claimant was complaining about his treatment, calling it, for example, rude and unprofessional.

37. Ms Van Jaarsveld went to fetch the witness. While waiting for the witness in the reception area, the claimant alleged that Lee Dempster was repetitively saying that he never allowed and will never allow mobile phones inside the warehouse. He alleged that Mr Dempster went on to say that this was "his site and his rules" and he would not allow the claimant to breach them and he didn't believe that employees were asked to have their mobiles inside the warehouse because there were no lockers. That latter point was in accordance with Mr Dempster's beliefs at the time. The claimant could not have known this if it hadn't been said.

38. When Tammy arrived, the claimant acknowledged that Lee Dempster professionally said that the meeting was to start all over again. He then introduced himself as the depot manager and asked for the claimant's version of events. Mr Dempster suggested that whilst things had calmed down, the claimant remained obstructive and evasive.

39. The claimant alleged that Mr Dempster then apologised for the manner in which he had handled the incident and shook the claimant's hand telling him that he should come to him if he needed any help.

40. That seemed to us surprising in the circumstances but Mr Dempster acknowledged that there was a handshake. Moreover, in his initial internal statement he confirmed that he had said "let's forget the situation and I will clearly state the rules and if you breach them it may lead to suspension and/or disciplinary".

41. He claimed in that initial statement that this was to calm the situation down so that he could discuss the matter with HR but that made no sense given that it was common ground that by this time the situation was calm and, it transpired, he did not contact HR that day. It appears to us that he was trying

to explain away how the initial meeting had ended given that there was an independent witness present.

42. The claimant further alleged that Lee Dempster then said he was going to make sure that Joanne (team leader) got the necessary training to avoid such incidents from recurring and that he would also speak to Charlotte Van Jaarsveld about what happened to avoid such incidents in the future.

43. That seems to us unlikely. It was clear that at this stage Mr Dempster still did not believe the claimant. He was going to go and check the induction paperwork, which the claimant falsely claimed not to have seen. He may have said that he was also going to speak to Joanne and Charlotte and the claimant may have misinterpreted this given that he believed Mr Dempster had drawn a line under the matter. In addition, Mr Dempster admitted that he may have said that if there was any evidence of management failings they would be dealt with as training needs unless they were serious.

44. In any event, the claimant was calm and was sent back to work. If Lee Dempster believed the claimant's aggression was sufficient to warrant suspension, as he later claimed, there was no good reason why he did not suspend then. We doubt that he would have shaken the claimant's hand and implied the matter was closed if that were not the case.

45. Mr Dempster said in his witness statement that he then went to check the claimant's induction paperwork. He admitted before us that he did not. He said he went to speak to Charlotte, but she had no recollection of a further conversation that day.

46. Mr Dempster made no mention in his initial internal statement of a subsequent conversation with the claimant. He admitted, however, that there was such a conversation. In his statement before us, he suggested that this was to check that the claimant had calmed down and to inform him that he was still investigating and that he had contacted HR. The claimant had calmed down, Mr Dempster was not still investigating nor had he spoken to HR, despite claiming before us that he needed their guidance regarding how to deal with the claimant's aggressive behaviour.

47. We had initially been confused by the events claimed by both sides and had enquired whether it may assist us if some evidence were called from HR. We had heard that the relevant individual was present observing the hearing. It was only the following day that it was admitted on the part of the respondent that there had been no such call to HR on 6 April.

48. Having claimed that he had spoken to Richard Jones the following day, Mr Dempster admitted before us that this conversation was actually on 6 April 2016. That accorded with the claimant's version of events in relation to his second meeting with Mr Dempster. The respondent's counsel suggested that these were simply chronological errors but we disagree. These issues were fundamental to the real reason for the claimant's suspension and we were misled.

49. We note that it was only before us that Mr Dempster claimed that he was satisfied that the mobile phone incident was resolved and that he did not have

any involvement in that allegation being pursued. Prior to that concession, however, he was maintaining that both allegations (the phone use and aggression) remained "live" and that was consistent with the suspension letter subsequently issued. The inclusion of the phone allegation in that letter, of course, made no sense if, as subsequently admitted, it had already been resolved to Mr Dempster's satisfaction. It appeared to us that Mr Dempster's evidence was at least as unreliable as the claimant's.

50. Before us Mr Dempster admitted that he commenced his second conversation with the claimant by confirming that he had spoken to Mr Jones and he had confirmed that he had allowed employees to have their mobile phones on them because they didn't have lockers. This accorded with the claimant's version of events. Lee Dempster acknowledged that this was information that ought to have been in his statements but it was not.

51. The claimant then claimed that he told Mr Dempster that he "was not happy with the less favourable treatment on grounds of my race" and that he was going to put in a grievance against him. Mr Dempster admitted that the claimant had said that he wanted to put in a grievance against him and he wrote the name of the manager to address it to on a piece of paper. That was Michael Perrett, Mr Dempster's line manager.

52. The claimant suggested that this second meeting took place between 3 and 4 pm but the respondent claimed it was much later, at around 4.45pm.

53. That was potentially important because it became clear on seeing Mr Dempster's phone records that he had spoken to Andrew Laybourn, site operations manager at 4.36pm. His evidence was that it was in this discussion that he and Mr Laybourn had decided to suspend, although in other evidence he suggested it was principally his own decision. Mr Laybourn denied any recollection of such a call.

54. If that phone call was prior to the second meeting as claimed, it seemed to us that there was no good reason why Mr Dempster would not carry out the suspension himself and do so before the end of his shift. It would be surprising if, having decided to suspend, he would approach the claimant and inform him that the mobile phone incident was resolved and shake his hand. We note in this regard that Ms Van Jaarsveld was surprised that the claimant had been suspended when she learnt of it the next day.

55. It seems to us that if Mr Dempster was so concerned about the claimant's behaviour that he thought suspension was appropriate he would either have done so at their first meeting or, at the very least, spoken to Mr Laybourn and/or HR immediately. He would not have allowed an aggressive member of staff back on the shop floor. There was nothing to investigate in relation to that allegation prior to suspension. If he knew the claimant was going to be suspended he would not have shaken his hand and informed him that someone would be "speaking to him" the next day. His evidence was, at best, unreliable.

56. It seems to us more likely that the second meeting with the claimant was earlier than claimed by the respondent but later than suggested by the claimant. It also seems that this started amicably with Mr Dempster's

acknowledgment that the claimant had been informed that he could have his phone on him. They appear to have shaken hands again. It seems to us that it was only once the claimant said that he wanted to raise a grievance that things changed.

57. Having had time to reflect the claimant may well have mentioned race in the context of his proposed grievance at this stage given that is what ensued, notwithstanding the fact that this was not a protected act relied on. That is arguably confirmed by Mr Dempster not mentioning this at all in his internal statement. We find that to have been a deliberate omission on his part to conceal the real motive behind his actions.

58. It seems likely that Mr Dempster then phoned Mr Laybourn and the decision to suspend was made. Mr Laybourn had no recollection of such a conversation, which was convenient, given his subsequent involvement. As a result we cannot know if he was also informed of the pending grievance or, indeed, whether Mr Dempster merely gave him partial information to justify his decision.

59. Mr Dempster then appears to have approached Michael Brennan, the other shift controller and asked him to suspend the claimant the following morning. There was some confusion over when this conversation took place but it appears to us that it must have been on 6 April towards the end of the working day.

60. The claimant carried on with his work, finished at 5pm and went home.

61. There was also confusion over who had prepared the letter of suspension. Mr Dempster was adamant that it wasn't him. Mr Brennan thought Mr Dempster had prepared it and given it to him but he wasn't sure. There didn't appear to be anyone else who could have prepared it.

62. We heard that Mr Brennan rarely worked overtime and we also heard that Mr Dempster worked until 7.30pm that evening. It seems to us that there would not have been time for Mr Brennan to prepare the letter that afternoon, assuming he left on time at 5pm or shortly thereafter. We consider it more likely, therefore, that Mr Brennan was asked to carry out the suspension and Mr Dempster prepared the letter. Either way it was prepared on Mr Dempster's express instructions and we do not accept that it included the mobile phone allegation in error.

63. On arrival at work on 7 April 2016 the claimant was approached by Michael Brennan who checked his name and then asked him to follow him to the second floor. Mr Brennan went into the office and asked the claimant to wait for him. It appears that Mr Brennan was collecting the suspension letter. That, perhaps, further confirms that the letter was, in fact, prepared by Mr Dempster the previous evening.

64. Mr Brennan then took the claimant to the search point and told him that he was being suspended on full pay/ He handed him the letter saying that it would explain everything. Mr Brennan said that he took these steps to minimise risk and disruption given that he was dealing with an allegedly

aggressive employee. He said he would have done the same for any employee in similar circumstances and we accept that evidence.

65. There was some dispute about the exact details of the conversation but the claimant alleged that he asked for a witness again and also requested the opportunity to make a statement. Michael Brennan denied this. In any event, there is no right to a witness or to give a statement in such circumstances. It was, however, unwise not to allow the claimant to explain his version of events before suspending.

66. Mr Brennan informed the claimant that he must leave immediately. The claimant suggested that at this point he felt he was being racially discriminated against and victimised but he did not allege saying as much.

67. Mr Brennan suggested that the claimant read the suspension letter in front of him and that he believed that the letter enclosed the relevant, referenced policies.

68. The claimant suggested that it did not include any enclosures and that he had only read the letter when he got home. The letter stated that the reason for the suspension was to allow a full and detailed investigation to be carried out into allegations of disciplinary offences, which were that

    "on 06/04/2016, it is alleged that you used your mobile phone within the warehouse and then reacted inappropriately towards members of the management team upon being questioned regarding the mobile phone. This allegation constitutes a breach of site policy and the diversity and respect policy"

69. On 7 April Mr Dempster produced his witness statement. As previously mentioned it completely omitted reference to the second conversation with the claimant the previous day. He emailed his statement to Mr Brennan, Ms Van Jaarsveld and Mr Laybourn on 8 April. That email was only disclosed during the hearing and there was no good reason why it was sent to all three managers rather than just Mr Brennan who was, at that stage, the investigating manager.

70. On 7 April Mr Dempster also spoke to HR by telephone. He suggested that he was informed that it would be best to bring forward the claimant's probation review, rather than progressing down a disciplinary route although, if that were the case, nobody appears to have told Mr Brennan.

71. We heard that Ms Van Jaarsveld prepared her statement the same day. She said that she did this on the instruction of Mr Laybourn. She said she left her statement in the office for him. Mr Laybourn denied this but we prefer Ms Van Jaarsveld's evidence. There was no reason for her to lie and it was consistent with what happened.

72. On 10 April 2016 Mr Brennan emailed Charlotte asking for her statement and she retrieved it for him.

73. On 12 April 2016, the claimant lodged a formal grievance complaining of being less favourably treated on grounds of his race. That grievance was sent

to the HR Department who set up an incident log on their systems that was only disclosed part way through the hearing.

74. Unaware of the grievance at this stage, Mr Brennan suggested that he had attempted to call the claimant on several occasions to arrange a disciplinary investigation. The claimant denied having received any missed calls but we prefer Mr Brennan's evidence. He expressly referenced the attempted calls in his subsequent email and the claimant did not deny such calls in his initial response or at any stage until giving oral evidence before us.

75. This, perhaps, suggests that the claimant was continuing to be obstructive. We note that the suspension letter had expressly required the claimant to remain contactable by phone.

76. As mentioned Mr Brennan then emailed the claimant on 13 April 2016 asking him to make contact. The claimant claimed not to have checked his emails until 20 April 2016.

77. On 16 April 2016, Michael Brennan wrote to the claimant by post, stating that the respondent had been trying to contact him regarding his suspension by phone and by email without success and asking him to contact the Company. The claimant suggested that this letter had been delayed because it was incorrectly addressed, but the address was accurate.

78. Meanwhile, the claimant had been sent no acknowledgment of his grievance but people services passed the grievance to Mr Perrett, who assigned Mr Laybourn to deal with it.

79. It appeared from the incident reports that the grievance hearing was originally proposed for 27 April 2016. However, once people services realised that the claimant was already suspended attempts were made to bring the grievance hearing forward. The idea was to attempt to hear and resolve it before a probation hearing, as opposed to a disciplinary hearing.

80. It was not clear precisely when the disciplinary investigation was converted to an early probation review, nor was the same expressly provided for in the respondent's policies. The first reference to this on the HR records was on 15 April 2016. Mr Brennan, however, was still trying to arrange an investigation hearing on 16 April 2016.

81. There were various internal exchanges about setting up the hearing including one from Mr Laybourn expressing concern that inviting the claimant to a probation review before hearing his grievance could be seen as prejudging the grievance outcome.

82. The grievance hearing was, therefore, arranged for 20 April 2016 at 9am with the probation review to follow at 11 am.

83. The invite letters were not sent out until 18 April 2016 due, apparently, to a delay obtaining the claimant's address. The claimant was not sent the other witness statements. The invite letters were sent by post. It was, rightly, conceded that it was entirely possible that they would not be received until at

least the day of the proposed hearings making it impossible for the claimant to attend.

84. On 20 April 2016 the claimant did not attend either hearing. As a result, it was decided that he was not pursuing his grievance. The probation review proceeded in his absence and Mr Laybourn decided to dismiss the claimant summarily. Letters were prepared and sent confirming the outcomes. The claimant claimed not to receive these until 23 April 2016.

85. In the evening of 20 April 2016 the claimant emailed Mr Brennan purportedly replying to his letter of 16 April. He suggested that he could not phone due to lack of credit and asked for communication by email, whilst also suggesting that he had not checked his emails previously. He also asked for Mr Brennan to have no further involvement because he had named him in his grievance. In addition he requested CCTV evidence.

86. On 21 April 2016, just before midnight, the claimant emailed both Andrew Laybourn and people services informing them that it had been impossible for him to attend the meeting on 20 April 2016 as he had not received the invite in time. He claimed in the email to have only received the invites that day but, before us, suggested that they were received the day before. He had apparently delayed responding in order to take advice. If so, that would, perhaps, suggest that his email to Mr Brennan on 20 April was somewhat disingenuous.

87. Andrew Laybourn's email address had been wrongly copied and so on 22 April 2016 the claimant re-sent the same email to his correct address.

88. The claimant claimed before us that the outcome letters from his grievance and probation review were not received until 23 April 2016. However, in his email of 26 April 2016 he acknowledged that he had received them on 22 April 2016. This potentially confirms that he was moving the dates of receipt to suit his narrative.

89. On 26 April 2016, the claimant emailed Andrew Laybourn and people services asking to be provided with a copy of the company's policy regarding disciplinary and grievance matters and again complaining that he felt he was being discriminated against and victimised.

90. Mr Laybourn claimed to have sent these policies out albeit without a covering letter and despite advice from HR that he need not respond. We find that unlikely. The claimant denied receiving anything.

91. On 3 May 2016, the respondent wrote to the claimant informing him that his last day of service was 6 April 2016 and his final pay was paid on 25 April 2016 i.e. he was not paid for his period of suspension. The letter suggested that people services had "been advised" that his last day of service was 6 April 2016. His pay was rectified some months later because his original salary had been suspended.

92. All of the respondent's managers and those from people services involved in the case knew that the claimant was supposed to have been suspended on full pay. There was no explanation offered as to how someone else in people services could, therefore, have come to the conclusion that they did, nor who had "advised" them.

The Law

90. Under s.13 of the Equality Act 2010 direct discrimination is defined as treating an employee less favourably than others would be treated where the difference in treatment is because of a protected characteristic.

91. Section 23 Equality Act 2010 provides for a comparison by reference to circumstances.

92. Section 27 Equality Act 2010 provides that a person victimises another when they subject them to a detriment because they have, for example, made an allegation of a contravention of the Equality Act.

93. Section 136 of the Equality Act provides that if there are facts from which the tribunal could decide in the absence of any other explanation that there had been a contravention of the Act, then the tribunal must hold that such a contravention occurred.

94. The first stage is to establish whether there are facts found, on the balance of probabilities, from which a tribunal could conclude, in the absence of an adequate explanation, that an act of discrimination has taken place. If there are not the claim will fail.

95. That said, it is unusual to find direct evidence of discrimination and the discrimination may be unintentional. Accordingly it is for a tribunal to draw appropriate inferences from the primary facts.

96. At this stage a tribunal does not have to reach a definitive determination that there was unlawful discrimination merely that there could have been and, in those circumstances, we must assume that there could also be an adequate explanation at the second stage.

97. We can have reference to any relevant code of practice and draw inferences from any failure to comply with any provision of such code.

98. Where facts are proved from which conclusions could be drawn of less favourable treatment because of a protected characteristic, then the burden of proof moves to the respondent and it is then for them to prove that they did not commit, or are not to be treated as having committed, the discriminatory act.

99. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

100. Accordingly, the tribunal must assess not merely whether there is an explanation for the facts but also whether such explanation is adequate to discharge the burden of proof. Cogent evidence is required to discharge that burden.

101. A difference in treatment alone would not be sufficient to establish that discrimination could have occurred and pass the burden of proof to a respondent.

102. Similarly, unreasonable conduct, without more, is not enough. Context is important and adverse inferences may, where appropriate, be drawn from the surrounding circumstances and the respondent's conduct.

The Issues

The issues had been determined by the claimant. They were agreed by the respondent and EJ Camp at the preliminary hearing. They are set out in the annex to this judgment in the form produced by the claimant with some minor amendments confirmed before us

Decision

100. This was a difficult case. It seemed to us that in numerous key respects the evidence of both sides was unreliable. Nonetheless we have made detailed findings of fact on the balance of probabilities and we will apply those to the relevant statutory tests.

Allegations 1 - 3

101. In relation to the allegations against Joanne Dyba we find that the she did approach the claimant and observe that he was concealing the fact that he had his phone out, seemingly using it.

102. It was, therefore, entirely appropriate that she challenged him about using his phone in the warehouse.

103. In these proceedings and in his grievance the claimant admitted having his phone out and "using" it to find out the time.

104. Whilst we did not hear from Ms Dyba her evidence in the internal proceedings was both plausible and entirely consistent with the evidence of Ms Van Jaarsveld, from whom we did hear. The claimant's account was not preferred for the reasons already given.

105. We do not accept, therefore, that the claimant offered any explanation for the use of his mobile phone, let alone that Ms Dyba ignored such explanation.

106. We find that the claimant, even on his own case, was defensive and obstructive. He did not allow Ms Dyba to check that his phone had not been used. The claimant's suggestion that he allowed her to check his calls but not other uses was not credible. He would not have been making a call with his hands in a yellow bin in any event.

107. There would have been no reason to ask to see the phone if the claimant had clearly turned it off in front of Ms Dyba. She would not have confiscated the phone as she knew employees were allowed to have them.

108. Accordingly the facts claimed by the claimant were not made out. There was nothing unusual or detrimental about his treatment. His team leader was simply doing her job, addressing what, at the time, seemed like a minor infraction.

109. It may be that she raised her voice as a result of the claimant's obstructive responses but, even if she did, that would be understandable and there was no evidence that race played any part in that.

110. We note that the claimant attempted to suggest that a white, female employee had also been using her mobile phone and no action was taken against her. He could provide no details and had never mentioned this before, despite express orders regarding comparators earlier in the proceedings. We find that his evidence on this point lacked credibility. There was no evidence that a white employee would have been treated any differently, nor any evidence from which we could draw adverse inferences.

111. The claimant has failed to establish most of the facts relied on, let alone facts from which we could conclude that the first three allegations were discriminatory. Accordingly those claims fail. In any event, we accept the respondent's explanations for their actions which were not in any way tainted with discrimination.

Allegations 4 – 7

112. It was common ground that Charlotte Van Jaarsveld said to the claimant "you are not allowed to use your mobile phone". That, of course, is no more than a restatement of the respondent's policy.

113. She acknowledged that she initially accepted the report of her team leader as she would have done in relation to any employee. There was no obvious reason for her to lie. We have already found that it was not a false accusation in any event.

114. We accept her evidence that she was intending and endeavouring to deal with the matter informally. As a result there was no reason for her to engage in the formalities that may be required by a disciplinary process. Her actions appear to us to have been the entirely normal, every day actions of a manger dealing with a minor incident in a warehouse environment. It was considered a minor incident because the warehouse had only just opened and contained no stock.

115. We do not accept that Ms Van Jaarsveld did not allow the claimant to explain his version of events. He had plenty of opportunity to do so as illustrated by the fact that he claims that he made several allegations at the time.

116. We find that the claimant did not offer his version of events, or attempt to do so. He went on the offensive by immediately making counter allegations probably to deflect attention from his earlier actions.

117. There was no reason to carry out an investigation when there was no intention to proceed to a disciplinary. It was beneficial for the claimant for matters to be dealt with informally. They only escalated because of his response.

118. There was no reason to ask to see the mobile phone at this stage as it would not prove anything. The claimant could have switched it off and deleted any activity whilst waiting in the corridor in any event. His focus on proving that he had not made or received any calls, which was never alleged, illustrates that he was probably diverting attention from whatever he had been doing.

119. There was no reason to take the claimant into the office when dealing with things informally. It would be fanciful to suggest that warehouse managers should take employees into the office every time they wanted to informally address minor misconduct issues. When things escalated as a result of the claimant's reaction he was taken to the office by Mr Dempster.

120. We do not consider that there was anything untoward about the claimant's treatment at this stage. We accept Ms Van Jaarsveld's evidence that she would have treated any employee exactly the same. There was no evidence of any less favourable treatment.

121. Ms Van Jaarsveld could have taken the claimant down a formal disciplinary route. The claimant's allegations are based on what may have been expected had she done so. The fact that she was attempting to resolve matters informally was to the claimant's advantage.

122. We do not consider that there was any evidence that race played any part. We note that Ms Van Jaarsveld had recruited the claimant only a short while before.

123. The claimant has failed to establish facts from which we could conclude discrimination had occurred. In any event, we accept the respondent's explanation. Allegations 4 to 7 fail and are dismissed.

124. We do not accept that the claimant did a protected act whilst dealing with Ms Van Jaarsveld.

Allegations 8 – 11

125. Lee Dempster became involved because of the claimant's conduct when challenged by Ms Van Jaarsveld. At the time he was unaware that employees had been allowed to keep their phones with them until lockers were provided. That was an understandable misunderstanding in a new operation.

126. Mr Dempster did not explore whether the claimant had been using his phone but instead focussed on the fact that the claimant had his phone on him at all.

127. Mr Dempster had been involved in the drafting of the policy. It appeared that, initially, the claimant falsely claimed that he had not been provided with the policy. That was something that could be verified. Mr Dempster would have expected the policy to have been provided during the induction as, indeed, it was.

128. Faced with an employee who was seemingly misleading him, Mr Dempster would have made reference to his involvement in the drafting when it appeared that the claimant was subsequently disputing what the policy was.

129. In those circumstances he did not believe that the claimant had been told that he could have his phone on him. The disagreement that followed resulted from the claimant being obstructive and Mr Dempster's focus on the possession of the phone and his lack of awareness of the policy exemption.

130. The allegations under this heading all stem from that disagreement. It is entirely conceivable that Mr Dempster did make the comments alleged. He admitted some of them and the general thrust of the exchange. There was no evidence that race played any part or that Mr Dempster would have treated a white employee any differently.

131. The facts as we have found them do not suggest anything other than a difficult and disingenuous employee being challenged by a manager under a misapprehension. Those were the reasons for the claimant's treatment.

132. We note in this regard that Mr Dempster went on to allow the claimant to be accompanied and conducted a "professional" meeting that resulted in the situation calming down and ending with a handshake. He went on to say "let's forget the situation", clarified the respondent's rules and expectations going forward and sent the claimant back to work.

133. Given that there were potential grounds for taking the matter further the claimant was not being less favourably treated.

134. The claimant has not established facts from which we could conclude that he had been discriminated against at this stage. The facts as we have found them explain the reasons for his treatment and so, even if the burden of proof had shifted to the respondent we are satisfied by their explanation

135. Allegations 8 to 11 do not amount to race discrimination and are dismissed. The fact that they were not pursued as allegations of victimisation further confirms our findings that no protected act had occurred at this stage.

Allegation 12

136. Whilst stated as being an allegation against Michael Brennan this was principally an allegation against Mr Dempster and the respondent generally. The claimant could not have known until the hearing that it was actually Mr Dempster who made the decision to suspend.

137. The facts as we have found them are as follows:-

137.1 The claimant was caught using his mobile phone in the warehouse and responded obstructively.

137.2 The respondent, nonetheless, intended to deal with the situation informally.

137.3 The mobile phone use was only considered to be minor misconduct given that the warehouse had only just opened and contained no stock.

137.4 Ms Van Jaarsveld did not consider that the claimant's "aggression" was serious enough to warrant suspension or she could, and would, have done so. She was surprised to learn of the claimant's suspension the following day.

137.5 A disagreement arose between the claimant and Mr Dempster that probably became heated but quickly calmed down.

137.6 Mr Dempster did not consider that there were grounds to suspend or he could, and would, have done so.

137.7 Moreover, he drew a line under the matter and shook the claimant's hand, probably in acknowledgment that he, too, had overreacted. That appeared to be an end to the aggression allegation.

137.8 His subsequent claim that he did so to calm the situation down and seek advice lacked all credibility. The situation was calm and he didn't seek advice.

137.9 We consider that he gave this explanation to justify his subsequent actions. Specifically, he had to explain why he subsequently suspended the claimant having previously, in front of a witness, drawn a line under the situation.

137.10 He sent the claimant back to work. He would not have done this if the claimant had been as aggressive as subsequently claimed.

137.11 Mr Dempster still did not believe that the claimant had been told that he could keep his phone with him and checked this with Mr Jones> he did so that afternoon not the following day as originally claimed.

137.12 When Mr Dempster discovered that the claimant had been right on the phone carrying exemption he, to his credit, went and informed the claimant and shook his hand again. That was, by Mr Dempster's own eventual admission, the end of the phone allegation.

137.13 It was then that the claimant stated that he was going to raise a grievance against Mr Dempster. He was insistent that he mentioned race at this stage but, even if he did not, Mr Dempster would have known that was a possibility with a black employee raising a grievance in these circumstances.

137.14 We consider that Mr Dempster then decided to resurrect both allegations.

137.15 He spoke to Mr Laybourn and they agreed to suspend. If they had already agreed this prior to the second meeting with the claimant there was no good reason why Mr Dempster did not suspend at that stage.

137.16 He then spoke to Mr Brennan and arranged for him to suspend the following day. We suspect this was to distance himself from the suspension and subsequent action.

137.17 He then prepared the suspension letter and left it in the office for Mr Brennan to collect the following day.

137.18 Mr Brennan suspended the claimant the following day. He did so in front of security because he had been informed of allegations of aggression.

137.19 Mr Brennan ought to have given the claimant an opportunity to give his version of events but he did not do so. His evidence was, however, that he would not ordinarily do so, especially when dealing with an allegedly aggressive employee.

137.20 Mr Brennan was simply doing as he had been instructed to do by his manager.

138. We consider that the above facts are ones from which we could conclude that discrimination had occurred.

139. Suspending the claimant for allegations previously closed was clearly unreasonable and unfair. To do so because he threatened a grievance made it considerably worse. That is not, however, without more, enough to infer discrimination.

140. We have to consider whether the respondent would have suspended a white employee in similar circumstances. We have no direct comparators, partly because of the unusual circumstances and also because the claimant had only been employed for a few days.

141. That said, it was not the respondent's case that they would have suspended a white employee for threatening to raise a grievance. We observe that a grievance by a new employee that doesn't relate to a protected characteristic carries little weight.

142. Mr Dempster completely omitted reference to the second meeting in his internal statement. We find that he did so deliberately to conceal his true motives. We draw adverse inference from that. As a result we prefer the claimant's evidence that race was mentioned at this stage.

143. Before us Mr Dempster initially sought to suggest that the phone allegation remained “live”, before conceding that it wasn't, but struggling to explain why it remained in the suspension letter. We draw adverse inference from that.

144. We also draw adverse inferences from the respondent's subsequent acts and omissions, not least their failure to properly investigate the claimant's grievance.

145. Most tellingly, Mr Dempster sought to explain the failure to initially suspend for aggressive behaviour by suggesting that he wanted to take advice from HR. He suggested that he then acted on that advice. That was a fabrication. It was only revealed as such part way through the hearing when Mr Dempster changed his evidence.

146. We remind ourselves that the respondent was facing allegations of race discrimination before us. They chose to present a false version of events. They were hiding something.

147. It seems to us that this is more than enough from which to infer possible discrimination. Accordingly, there were facts from which we could conclude that discrimination had occurred.

148. As a result the burden of proof shifted to the respondent. Their explanation of events lacked credibility and cogency. They have, therefore, failed to satisfy us that discrimination played no part whatsoever in the claimant's treatment.

149. That situation was compounded by the failure to allow the claimant to give his version of events prior to suspension.

150. We do not accept that the claimant carried out a protected act by complaining to Charlotte Van Jaarsveld, nor was there any evidence that she communicated the same to other managers.

151. It did appear that there was, potentially, a protected act during the claimant's second meeting with Mr Dempster but that was not one relied on by the claimant. Had it been relied upon we would have had no hesitation finding that the claimant's suspension was also an act of victimisation.

Allegations 13 to 20

152. It is not particularly helpful to divide the case into the separate allegations in the list of issues as they are intrinsically linked.

153. We do not consider that there was any duty to provide a detailed investigation report, nor was there any evidence that the respondent would ordinarily provide such a report to employees of any race.

154. That said, the claimant had a right under the respondent’s policies to receive copies of the evidence against him. That would be the case under the disciplinary policy and, indeed, the diversity policy.

155. It seems to us that the reason that the claimant did not receive this information was because the respondent changed course from dealing with the claimant under the disciplinary policy to utilising the probationary policy.

156. That change of course appeared to be directly linked to the claimant's written grievance and resulted in detriment to the claimant. It would have amounted to victimisation but that was not how the claimant put his case. Nonetheless, we draw adverse inferences from it.

157. We do not accept that HR decided to switch to the probation policy from the date of their first involvement, 7 April. The only evidence in support of this came from Mr Dempster who was, at best, unreliable. Moreover, Mr Brennan was still the investigation manager, gathering evidence and trying to arrange an investigation hearing for over a week thereafter.

158. The HR grievance record suggested that the decision to progress under the probation policy was on or around 15 April 2016. It seemed to us that this was done to exit the claimant as swiftly as possible.

159. This was evidenced by, for example, the grievance hearing being brought forward, the short notice given in respect of both hearings and the failure to reopen the issues once the respondent was informed that the invitations had not been received in time.

160. We note that the probation policy did not seem to be drafted to deal with serious disciplinary matters. It made no express provision for early review such as occurred in this case.

161. We also note that the respondent's disciplinary policy provided for employees to be provided with 48 hours notice of hearings, copies of the evidence against them and a right of appeal, all rights that the claimant was denied. It contained no express provision for switching to the probation policy in certain circumstances.

162. Whilst the respondent did arrange a grievance hearing they did not investigate the grievance or rearrange the hearing. They claimed that they would not have treated a white employee with a grievance any differently. There was no evidence to dispute this although we would like to think that a large employer such as the respondent would not ordinarily treat an employee in the cavalier fashion they demonstrated in this case.

163. The respondent's actions were unfair, unreasonable and in breach of their own diversity policy. Whilst not upheld as stand alone allegations of discrimination we draw adverse inferences from those failings.

164. The respondent had enough information from the written grievance to be able to investigate without a meeting. They did not.

165. The grievance clearly required investigation. In those circumstances arranging the probation review meeting to commence immediately after the grievance hearing suggests that the respondent had no intention of giving the claimant a fair hearing.

166. The grievance was also effectively the claimant's response to the disciplinary allegations but was not considered in that context. Mr Laybourn expressly asserted that the grievance had no impact on his decision to dismiss. It should have done.

167. It seems to us that these factors suggest that the claimant was never going to receive a fair hearing. That is further confirmed by Mr Laybourn’s involvement from the outset.

168. He claimed to have no recollection of that but there was no reason for Mr Dempster to make up such inappropriate involvement in the original decision to suspend. Moreover, Ms Van Jaarsveld was clear that Mr Laybourn had asked for her statement the following day. He was copied in to Mr Dempster’s email. It was inevitable that he would be the manager appointed to deal with the claimant.

169. We draw adverse inferences from Mr Laybourn’s failure to acknowledge his earlier involvement and from the respondent's failure to disclose their HR records until part way through the hearing.

170. For all the above reasons, it seems to us that the claimant's fate was sealed from the time he was suspended. Mr Laybourn was always going to support Mr Dempster and his managers. If that were not the case, he would have investigated the grievance and not arranged the probationary meeting until that had happened or, at least, he would have reopened matters once informed that the claimant had not received the invites.

171. The claimant has established facts from which we could conclude that discrimination had occurred. The respondent has failed to satisfy us that discrimination played no part whatsoever in his treatment.

172. As the dismissal inevitably followed the suspension and the suspension was discriminatory it follows that the dismissal, too, was tainted with discrimination. All of the adverse inferences drawn above, whilst not supporting separate stand alone claims as pleaded, further confirm that.

173. Whilst the claimant's race grievance seemingly caused the respondent to change course to utilise the probationary policy to the claimant's detriment it did not cause the dismissal, which was going to happen in any event. It also did not cause the grievance failings.

174. It did, however, cause the claimant to not receive the evidence against him and contributed to the claimant not receiving a fair hearing or right of appeal for the reasons given above.

175. Those points, therefore, would also succeed as allegations of victimisation within the claimant’s pleaded case.

Allegation 21

176. We consider that, contrary to his claims, Mr Laybourn did not reply to the claimant's email of 26 April 2016.

177. The reason for not accepting his version of events is that we find that he misled us over his early involvement in the suspension. Moreover, we note that HR advised him that he need not respond so it is unlikely that he did. Had he done so he would doubtless have informed HR and their records would reflect that. We note that those records and the claimant's email request were not originally in the bundle before us.

178. Mr Laybourn claimed to have sent the policies without any covering letter, which also seems unlikely.

179. The claimant's email referenced his complaints of race discrimination and victimisation. The respondent was facing those allegations before us and made false assertions in response. We did not hear from HR.

180. We draw adverse inferences from those failings in relation to this and the dismissal allegation. There was no reason to mislead us unless there was

something to hide. As a result the claimant has established facts from which we could conclude that discrimination and/or victimisation had occurred.

181. It may well be that the real reason Mr Laybourn did not respond was based on the HR advice that, given the claimant's short service and dismissal, he need not bother. That was incorrect advice but, more importantly, that was not the respondent's case. They claimed to have sent the documentation requested.

182. As a result, they have failed to discharge the burden on them to show that the claimant's treatment was neither motivated by race nor victimisation.

Allegation 22

183. It was common ground that the claimant was not initially paid for his period of suspension. The respondent adduced no evidence on this point but submitted that it must have been an error.

184. That seems unlikely. The letter from people services suggested that they had been “advised” that the claimant's last day of service was 6 April 2016. That suggests active intervention by somebody. All key individuals and, indeed, people services, knew the correct position. The HR records that we saw reflected that, as did the dismissal letter.

185. It seems to us, therefore, that the most likely explanation was that somebody stopped the claimant's pay deliberately. That would suggest a motive and the most likely explanation is that it was retaliation for the claimant having raised a grievance. Accordingly this allegation succeeds as an allegation of victimisation.

Allegations 23 to 25

186. These allegations have been addressed above.

Victimisation

187. We have dealt with these allegations above. For the avoidance of doubt, we do not accept that the first alleged protected act occurred. There was no dispute that the written grievance amounted to a protected act. The further emails also amounted to further protected acts but added nothing to the formal grievance in terms of causation.

Remedy

188. The case has already been listed for a remedy hearing. The claimant has already quantified his claimed losses. The respondent should provide a counter schedule within 4 weeks of this judgment being sent out.

189. We hope it is clear from our findings that we consider that the claimant was responsible for the initial events in this saga.

190. He was using his phone when he knew that he should have had it switched off. He responded obstructively when caught and challenged.

191. He made some false allegations before us.

192. Moreover, we find that he continued to be deliberately obstructive once suspended. Specifically, he did not reply to phone calls and replied late to other contact. In short he was playing a game.

193. We will need to consider the extent to which those matters are relevant to remedy, whether by means of contributory conduct, or otherwise.

194. We have also made serious findings against the respondent and may need to consider whether there were any aggravating features to the breach and, if so, whether to impose a financial penalty and in what sum, in accordance with section 12A Employment Tribunals Act 1996.

Annex - **Issues**

A. **Direct race discrimination**

Against Joanne, Team Leader

1. When on 06 /04/16 at about 02: 30, Joanne, Team Leader approached me when I was checking time on my Mobile and then accused me of using my mobile phone ignoring my explanation.
2. When on 06 /04/16, Joanne, Team Leader has aggressively shouted on me, accusing me of using my mobile phone despite of checking my mobile phone and found that there was no call made neither received at that time;
3. When on 06 /04/16, Joanne, Team Leader has aggressively shouted, asking me to turn off my phone which I did and she shouted asking me to give her my mobile phone.

***Against* charlotte Van Jaarsveld**

4. When charlotte Van Jaarsveld said “you are not allowed to use your mobile phones” without hearing my evidences of what happened.
5. When charlotte Van Jaarsveld did not provide me with reason as to why she accepted Joanne’s false accusation in first place without hearing my evidence.
6. When charlotte Van Jaarsveld did not carry on an investigation in connection to the using of the phone as Charlotte had not asked me to provide her with mobile phone to check as whether I have used my mobile (i.e. making or receiving a call) or not.

7. When Charlotte Van Jaarsveld did not give me reason why she didn't allow me to enter to the Office and have spoken to me outside the office?

***Against* Lee Dempster**

8. When Lee Dempster replied to me that he does not care about what was said during the induction (by *Richard, health and safety manager that since we do not have the lockers at present it was ok to have our mobile phone in the Warehouse)* he is the one who wrote the policy therefore, I am not allowed to have my mobile phone on me,
9. When Lee Dempster then shouted towards me by saying never he will allow that ever if I have not a locker.
10. When Lee Dempster replied he never allowed and will never allow that (I told him that if during the induction, we were not allowed to have mobile phones I would not have my mobile phones with me) in the warehouse to me
11. When Lee Dempster was repetitively saying that he never allowed and will never allow me to have my mobile phones inside the warehouse and then went on to say that this is his site and this is rules which he will not allow me to breach he then said he didn't believe that we were asked to have our mobile inside the Warehouse as we have not lockers.

Against Michael Brennan

12. My suspension on 07/04/16 at 9; 02am including the circumstance around my suspension: lack of response to my request to have my witness statement being taken before leaving the site.
13. Failure to provide me with full and detailed investigation report being carried out into allegations of disciplinary offences raised against me, which are *"on 06/04/2016.*

Against *Andrew Laybourn*

14. Failure to arrange a meeting related to my grievance of 12 April 2016;
15. Failure or delay to provide me with *an outcome of my grievances* of 12 April 2016;
16. When on 20/04/2016, Andrew Laybourn and Sandra Tyldesley conducted a probationary meeting on my absence but my grievance meeting regarding racial discrimination was not held in my absence;
17. *Andrew Laybourn's failure to re-examine his decision to conduct a probationary meeting on my absence despite of receiving my email to the company on 21/04/2016 stating that* it was impossible for me to attend probationary meeting on 20 April 2016 because the invitation letter was received on 21 April 2016.

18. When Andrew Laybourn discontinued my probation period on 20 April 2016 without giving hearing my version of fact, without a proper examination of my grievance of 12 April 2016.

19. When no reason were provided by Andrew Laybourn as to why written evidence from my grievance of 12 April 2016 were not accepted but verbal evidence from Joanne, Team Leader were accepted.

20. Andrew Laybourn's failure to mention the names including statements or investigation notes before making his findings as per the contents of his letter dated 20 April 2016.

21. Andrew Laybourn's failure to reply to my email on 26/04/2016, in which I informed that Andrew Laybourn's letter dated 20/04/16 was received on the 23/04/16 and requested to be provided with a copy of the Company's Policy regarding disciplinary and grievance, employee book and finally, complained feeling being discriminated and victimized by the Company because of the formal grievance l lodged in.

22. When I was paid only for 2 days as per the Company's letter dated 03/05/2016.

Against people services

23. Failure to arrange a meeting related to my grievance of 12 April 2016;

24. Failure or delay to provide me with *an outcome of my grievances* of 12 April 2016;

25. When I was paid only for 2 days as per the Company's letter dated 03/05/2016.

Victimisation (s.27 Equality Act 2010)

1. **Racial Victimisation claim against Michael Brennan**

1.1 Protected Acts:

A. When on 06/04/2016, I complained of being less favourably treated on grounds of my race by Charlotte Van Jaarsveld and then provided her with my grounds to substantiate my complaint.

1.2 Detriment: 12 and 13 of my acts of direct race discrimination against Michael Brennan**.**

2. **Racial Victimisation claim Against Andrew Laybourn**

2.1 **Protected Acts:**

B. My grievance about race discrimination dated 12 April 2016;

C. My emailed to Mr Brennan dated 20/04/2016.

D. My email dated 26/04/2016

2.2 **Detriment:** 14 to 22 of acts of direct race discrimination against Andrew Laybourn.

3. Racial Victimisation claim against people services

3.1 Protected Acts:

E. My grievance about race discrimination dated 12 April 2016;

F. My emailed to Mr Brennan dated 20/04/2016.

G. My email dated 26/04/2016

3.2 Detriment: 23 to 25 of acts of direct race discrimination against people services.