



# EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mr A Mohamed**

v

**Royal Mail Group Limited**

**Heard at:** Reading

**On:** 24,25,26,28 April,  
31 May and 2 July 2017.

**Before:** Employment Judge Skehan  
**Members:** Mrs Watts-Davies  
Mr Walters

## Appearances

**For the Claimant:** Mr J Khalid - Barrister  
**For the Respondent:** Mr I Hartley- Solicitor

## RESERVED JUDGMENT

The claimant's claim for race discrimination and harassment contrary to Section 13 and 26 of the Equality Act 2010 fails and is dismissed.

## REASONS

1. This hearing was listed for five days commencing on Monday 24 April 2017. We had the benefit of Mr Jama, a Somali interpreter who assisted the claimant and the claimant's witnesses as required. Unfortunately, on 23 April 2017, a member of the tribunal (from the employees' side) became unwell and was unable to attend employment tribunal on Wednesday, 23 April 2017 and Thursday, 24 April 2017. The parties were given the option of continuing with a tribunal of two. The parties were informed that the medical advice received by the poorly member was that he expected be able to attend employment tribunal on Friday, 25 April 2017. The parties preferred option was to wait to proceed with a full tribunal. It was agreed that we had sufficient time within three days to hear the entirety of the evidence and in the circumstances the parties would submit their final

submissions in writing. Thereafter, the tribunal would convene for a deliberation day on their first available date, which was listed for 31 May 2017 and thereafter finalised on 2 July 2017.

2. At the commencement of the hearing, we revisited and amended the list of issues as set out by EJ Bedeau on 15 August 2016. Has the respondent treated the claimant less favourably on grounds of his Somali national origins in that :
  - 2.1. In February 2015 Mr Shamaris shouted at the claimant, put the claimant in a headlock and demeaned his work as being fit for old women;
  - 2.2. On or around 12 March 2015, Mr Shamaris told the claimant in the presence of a work colleague, also of Somali African origin, that all Somalis are dodgy people; and Mr Shamaris pointed at the claimant and told him that he and another Somali male worker were stupid;
  - 2.3. On a day in April 2015, Mr Shamaris swore at the claimant using the 'F' word
  - 2.4. Were the allegations set out in 2.1, 2.2 and 2.3 above brought to the attention of the employment tribunal within the statutory limitation period. If not, should that limitation period be extended;
  - 2.5. On 10 December 2015, Mr Shamaris poked at the claimant's stomach asking whether he was pregnant and who was the father;
  - 2.6. On 11 December 2015, Mr Shamaris sent the claimant back to work while allowing Pakistani and/or Asian work colleagues a longer break and telling the claimant that he would be sacked;
  - 2.7. On 12 December 2015, Mr Shamaris suspended the claimant cancelling his shift and sent him home but failed to follow the correct procedure;
  - 2.8. In December 2015, Mr Keith Balderston, assigned Mr Mohamed Iqbal, a friend of Mr Shamaris' and the manager also of Pakistani and/or Asian origin, to deal with the claimant's bullying and harassment claim against Mr Shamaris contrary to the claimant's request for somebody independent and outside of where he works;
  - 2.9. Between December 2015 and 28 February 2016, Mr Iqbal concocted and manipulated the evidence in the bullying and harassment complaint and failed to interview the claimant's witnesses and conducted interviews in such a way as to build a case against the claimant and to discredit his bullying and harassment complaint against Mr Shamaris;
  - 2.10. On or around 4 March 2016 Mr D Bithal, another manager of Asian origin, who was assigned to deal with the claimant appeal, relied upon the concocted interviews and failed to conduct a fair and unbiased appeal hearing;
  - 2.11. On or around 3 August 2016 Mr Bithal dismissed the claimant's appeal.

3. Has the respondent treated the claimant as alleged less favourably than it treated or would have treated a hypothetical comparators, namely a person doing the same job as the claimant but is of Pakistani national origins or of Asian ethnic origins?
  - 3.1. If so, has the claimant proved primary facts from which the tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?
  - 3.2. If so, what is the claimant's explanation? Does it prove a non-discriminatory reason for any proven treatment? It is the respondent's case that the claimant knew that he was to be the subject of a conduct investigation and concocted the allegations of race discrimination and harassment. The conduct of his grievance and of the appeal were not tainted by race.
4. The claimant relies upon the factual matters set out above as constituting unwanted conduct by the respondent. Was the conduct related to the claimant's race?
  - 4.1. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
  - 4.2. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. In considering whether the conduct had that effect, the tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

### **The Law**

5. S13 Equality Act 2010 (EqA 2010) provides the definition for direct discrimination being a person (A) discriminates against another (B) if, because of a protected characteristic, in this case race, A treats B less favourably than A treats or would treat others. Harassment is defined by S26 EqA 2010 as a person (A) harasses another (B) if— (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of— (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has the effect referred to, each of the following must be taken into account—(a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect.
6. S123(1) of the EqA 2010 provides that a claim "may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. It is also the case that conduct extending over a period is to be treated as done at the end of the period. The tribunal is entitled to take into account anything that it deems to be relevant when considering whether or not it is just and equitable to extend the statutory limitation period (Hutchinson v Westward Television Ltd [1977] IRLR 69). The tribunal's discretion is as wide as that of the civil courts under section 33 of the Limitation Act

1980 (LA 1980) (British Coal Corporation v Keeble [1997] IRLR 336. A tribunal has a wide discretion when considering whether it is just and equitable to extend time, and an appeal against a tribunal's decision should only be allowed if it had made an error of law or its decision was perverse (Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576). The court also held that time limits are applied strictly in employment cases, and there is no presumption in favour of extending time. In fact, tribunals should not extend time unless the claimant convinces them that it is just and equitable to do so. The burden is on the claimant, and the exercise of discretion to extend time should be the exception, not the rule. This was followed by the Court of Appeal in Department of Constitutional Affairs v Jones [2008] IRLR 128.

### **The Evidence**

7. We heard evidence on behalf of the claimant from the following witnesses:
  - 7.1. the claimant, by reference to a typed witness statement;
  - 7.2. Mr Raja Hussain, by reference to notes in the employment tribunal bundle contained at page 238 to 239;
  - 7.3. Mr Mustafa Hassan, a colleague of the claimant's, by way of a typed witness statement;
  - 7.4. Mr Mohammed Ali, CWU rep, by reference to notes contained within the employment tribunal bundle at page 201 to 202;
  - 7.5. Mr Ahmed Haashi, CWU late shift union IR and Health and Safety rep by way of a typed witness statement;
  - 7.6. Mr Adedokun Aderwale, by way of notes contained within the employment tribunal bundle at page 240 to 241
  - 7.7. Mr Duodu, area CWU rep, by way of reference to the notes contained within the employment tribunal bundle at 220 to 221.
  
8. We heard evidence on behalf of the respondent, by way of typed witness statement, from:
  - 8.1. Mr Shamaris, employed by the respondent as a Production Area Manager for the late shift at the ILC;
  - 8.2. Mr Devinder Bithal, employed as a work area manager based at the ILC;
  - 8.3. Mr Mohamed Iqbal, employed as a work area manager; and
  - 8.4. Ms Amanda Bethal, a CWU rep.
  
9. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which we heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
  
10. This is a case where the facts were far from clear. Confused and conflicting witness evidence was provided on both sides. The claimant is employed as

an Operational Postal Grade (OPG) at the respondent's International Logistics Centre (ILC). The claimant commenced employment with the respondent on 2 July 2012 and remains employed. Mr Shamaris was the claimant's manager. The claimant claims that he has been discriminated against on the grounds of his race by his managers, who are of Asian and/or Pakistani origin. Prior to the altercation that occurred between the claimant and Mr Shamaris on 11 December 2015, the claimant alleges various specified instances of race discrimination. The claimant's evidence in his witness statement is vague.

Allegation of 12 March re: 'all Somalis are dodgy people' and Mr Shamaris pointed at the claimant and told him that he and another Somali male worker were stupid;

11. The claimant alleges that Mr Shamaris told him, on 12 March 2015 that, "all Somalis are dodgy people". The claimant does not address the background of this matter within his witness statement however further information can be gained from the claimant's grievance letter dated 14 December 2015 at page 85 of the bundle.

*On a particular day he [Mr Shamaris] came over to me and informed me without me asking him, that all Somalis are dodgy people. I was firstly shocked but as someone that I have worked with before, I thought this was normal banter and that he did not mean what he had just told me. I quickly found that he was dead serious and was waiting for a response from me. I then informed him that Somali is a nation and it was unreasonable for him to make such sweeping judgement. I also asked him why he was making such discriminatory statement and if he had a problem with somebody from the Somali community. He pointed at me and blatantly and in my face told me that I and Mr Artan who is also of Somali origin fall under that category (being Somali) and in particular he said that Mr Artan was stupid. I was concerned that he was making such serious statements, something I had never heard him say before and so asked him why he was acting in this uncouth manner. He then told me that he was joking and that he did not mean what he said. I accepted [his] excuse and thought nothing of it.*

12. Mr Mustafa Hassan gave clear evidence that he heard Mr Shamaris say "all Somalis are dodgy". He said when he heard, he was shocked and surprised and it did not make him feel good. He said that the claimant was not sitting far from him when Mr Shamaris said the words consciously and clearly. Mr Mustafa Hassan was asked why he did not report the behaviour. Mr Mustafa Hassan explained that he was an agency worker and did not believe that the agency workers would be looked after. Mr Mustafa although clear in his evidence relating to the comment, does not give any evidence as to the background or context of the comment or exchange between the claimant and Mr Shamaris as described by the claimant within his grievance dated 14 December and set out above.

13. The claimant does not give any evidence as to why he accepted this comment from Mr Shamaris in March *and thought nothing of it* yet raises it as a complaint of race discrimination and harassment in December and within these tribunal proceedings. This comment is not specifically mentioned within the bullying and harassment form as contained at page 91 of the bundle. Mr Shamaris denies the allegation and says he works closely with many colleagues of Somali origin. Mr Shamaris considers the allegation slanderous towards him he says he is deeply hurt by the accusation that has been made in bad faith and is far from the truth.
14. The notes taken during the interview conducted by Mr Iqbal with the claimant at page 107 repeats the claimant's concerns in respect of this comment as set out above. This includes the conclusion that *'he then told me that he was joking and that he did not mean what he had said. I accepted [his] excuse and thought nothing of it.'* Mr Iqbal said in cross examination that he believed Mr Shamaris had said the 'all Somalis are dodgy' comment however he believed this to be 'banter' as previously stated by the claimant. In addition, as this comment was in excess of three months old, he did not investigate it further.
15. Mr Devinder Bithal, who carried out a very comprehensive appeal process, said that the claimant and Mr Shamaris had a history of making jokes and having fun with each other, and they had always tolerated each other until Mr Shamaris challenged the claimant on performance and breach of business standards. Within the appeal summary at page 285, Mr Devinder Bithal explains that the claimant and Mr Shamaris were initially good friends and colleagues when the claimant worked as agency staff and Mr Shamaris was an OPG. This continued when the claimant was an OPG and the Mr Shamaris was an OPG and deputy manager. However, their personal relationship deteriorated when there were complaints from third parties against the claimant and Mr Shamaris, as a manager, had to deal with those complaints. Mr Devinder Bithal considered that the claimant was using those historic jokes and events that have been tolerated by both parties during their friendship. Both the claimant and Mr Shamaris said that while they had worked together prior to the incident in question they could not be described as friendly nor were there any historic jokes.

The claimant alleges that in February 2015 Mr Shamaris shouted at the claimant, put the claimant in a headlock and demeaned his work as being fit for old women;

16. The claimant did not address these allegations in his witness statement. However the claimant demonstrated what he meant by a headlock by putting his arm around a volunteer's shoulder and pulling the volunteer's head towards him. We heard evidence from Mr Mustafa Hassan who said that he saw Mr Shamaris place the claimant in a headlock. He said he was surprised as he had never seen a manager do a similar thing. He did not report it as nobody asked him. He

clarified that as an agency worker he felt was less protected. Mr Mustafa Hassan was asked to demonstrate the headlock that he saw. He did so with a volunteer from the employment tribunal by putting his arm round the volunteer's shoulder and pulling the volunteer's head towards him. Mr Shamaris denies that any such incident took place.

On a day in April 2015, Mr Shamaris swore at the claimant using the 'F' word.

17. Mr Mustafa Hassan heard Mr Shamaris say the word "fucking" however, other than use of the swearword itself, he was unable to remember the sentence that was used by Mr Shamaris or the gist of that sentence. Mr Mustafa Hassan said that the claimant never used the 'F' word. Mr Adedokun Aderwale gave evidence that he recalled Mr Shamaris said 'fucking or fuck' to the claimant. He recalled hearing the swearword and it is not possible that he misheard that word. He was surprised and looked at Mr Shamaris. During cross examination Mr Adedokun Aderwale confirmed that he only heard the swearword and there was no racial element to the swearing. Mr Adedokun Aderwale was unable to give any context or provide the gist of what was said by Mr Shamaris when using the swearword.

18. Mr Raja Hussain gave evidence that he had heard the allegation that Mr Shamaris had sworn at the claimant from the claimant. He did not witness the incident. He said that the Royal Mail was a workplace where managers did not swear. Raja Hussain said that he was present during a discussion with the claimant and Claude Forbes. The claimant said that he was spoken to inappropriately by Mr Shamaris and when he [the claimant] ignored Mr Shamaris, Mr Shamaris used the F word and said, "fucking talk to me". This appears to be a separate occasion to the above allegation. According to Raja Hussain after that discussion, Mr Forbes left the room and went outside to speak to Mr Shamaris and he returned with Mr Shamaris. Mr Shamaris apologised and everyone agreed that that was the end of the matter.

19. Although Mr Forbes was not present to give evidence, a witness statement produced during Mr Iqbal's subsequent investigation, at page 236 of the bundle, provides a different account saying that Mr Shamaris was not required to apologise to the claimant as he was just you doing his job as manager. According to the statement, the altercation related to an unwillingness on the claimant's part to cooperate with his line manager. Mr Forbes confirmed that his witness statement was true as part of the appeal process carried out by Mr Devinder Bithal.

On 10 December 2015, Mr Shamaris poked at the claimant's stomach asking whether he was pregnant and who was the father;

20. The claimant says that Mr Shamaris pointed a finger at his stomach and said "Ali, are you pregnant? Who is the father of the baby? The claimant says he reported this incident to the union rep, Mr Ahmed Haashi who advised him to leave Mr Shamaris alone. The claimant did

not make any further complaint. Mr Ahmed Haashi stated in his witness statement that *"[the claimant] phoned me on 10 December 2015 in the afternoon, he told me that Mr Shamaris had poked [his] stomach, and said to him, are you pregnant? And who is the father of the baby?"*

21. The claimant mentions this allegation within his grievance at page 87 paragraph 9 and within page 91 on the form of bullying and harassment complaint form. This complaint was identified as an issue by Mr Bithal within the appeal process and we refer to page 281 of the bundle.

On 11 December 2015, Mr Shamaris sent the claimant back to work while allowing Pakistani and/or Asian work colleagues a longer break and telling the claimant that he would be sacked;

22. The claimant's evidence was that as the claimant entered the canteen Mr Shamaris approached him and said, 'what fucking time you come in?' Mr Shamaris shouted at the claimant asking why he was at the canteen at that particular time and further shouted that the claimant should immediately go back to work. The claimant said that he asked Mr Shamaris why he was shouting at him and why he was using the F word. The claimant immediately left the canteen and reported the matter to Mr Babaqa. The claimant reports that Mr Babaqa told the claimant to cool down and he would have a word with Mr Shamaris. The claimant said that he was upset and that he did not bother to chase the case further. The claimant said that he [the claimant] ignored Mr Shamaris because he was 'always bullying and harassing' him. Mr Shamaris says that he went to the canteen and said to all those present that, "if you are not on a break please go back to your work areas". Mr Shamaris claims that he spoke to all present. He asked all present to be quick and go back to work. Mr Shamaris explained that the claimant was treated no differently to his colleagues and as he [Mr Shamaris] was the manager, he could not allow people just wandering about.
23. The claimant had commenced Christmas duty on 8 December 2015. This particular type of duty was treated differently to normal duty and overtime and was subject to a specific agreement that had been negotiated between the respondent and the CWU. That agreement was not provided within the bundle. Mr Duodu and Mr Mohammed Ali gave evidence that only a senior manager (above the level of Mr Shamaris) could require an OPW to be transferred or moved away from his allocated Christmas duty.
24. On 11 December 2015, the claimant was working his Christmas duty at Unit 6, a workplace connected to ILC during the Christmas period. There was an altercation between Mr Shamaris and the claimant. Mr Shamaris alleges that he had received complaints from agency workers during that week in respect of the claimant's behaviour. The gist of these alleged complaints was that the claimant was interfering in the agency workers' duties, questioning their performance, threatening to report them to management and threatening their job security. Mr



Shamaris alleges that he had spoken to the claimant about these complaints informally earlier during that week, and attempted to take a more formal approach and conduct a fact-finding interview with the claimant on 11 December 2015. The claimant's response to the agency workers' concerns was that he was just joking. However, the claimant thereafter became involved in an argument with Mr Shamaris. During this argument, the claimant told Mr Shamaris that he considered that Mr Shamaris was racist against Somalis. The claimant added that he considered all Pakistanis were racist against Somalis. The note from Jamil Kayani, who was also present is at page 84 of the bundle and confirms that Jamil asked the claimant to leave before things became out of hand. Mr Shamaris called Ms Amanda Bethal, the union rep, in an attempt to resolve matters informally.

25. Ms Amanda Bethal confirmed that she was called to unit 6 because the claimant was accused of making some racist remarks towards Mr Shamaris. Ms Amanda Bethal attempted to explain to the claimant that his comment "all you Pakistanis are racist against Somalis" was a racist comment towards Mr Shamaris. Ms Amanda Bethal considered at this time that all communication had broken down between the claimant and Mr Shamaris. In an attempt to find an informal resolution Ms Amanda Bethal suggested, and she says it was agreed by the claimant, that on 11 December the claimant would perform the remaining four hours of his Christmas duty within the ILC (not unit 6) and continue there until further notice. This appeared to Ms Amanda Bethal to be less punitive approach than the claimant not performing the remaining four hours of his Christmas duty.
26. Ms Amanda Bethal followed up this incident with an email to various managers including Mr Shamaris and Mr Devinder Bithal confirming that both Mr Shamaris and the claimant are disputing what happened in relation to the alleged incident and that it will become impossible for both parties to work alongside each other Ms Amanda Bethal states " *[the claimant] is actually performing Xmas duty 06:00 -06:00 PM, Tuesday- Sunday within unit 6, I suggested that a positive way forward, would be to allow [the claimant] to perform his Xmas duty up to 14:00 hours, and then remaining hours to be performed in ILC until all issues are resolved?*"
27. Ms Amanda Bethal confirms that at no point on 11 December was the claimant suspended. He was asked to move to an alternative site as an alternative to suspension from duty. Ms Amanda Bethal was not present on 12 December, the next day.

On 12 December 2015, Mr Shamaris suspended the claimant cancelling his shift and sent him home but failed to follow the correct procedure;

28. The evidence in relation to what happened on 12 December is difficult to decipher. It appears that initially the claimant considered the matter resolved at least on a temporary basis. The claimant's grievance letter

drafted on 14 December 2015 states that *“on Saturday, 12 December 2015 I went to work and after I finished my early shift, I tried to call the union representative [Amanda Bethal] to finalise an interrupted discussion and to affirm if there were any written instructions for me to start the later shift at ILC. As I could not find Amanda I called [Mr Mohammed Ali]..... I then started my work as usual .....*

29. Mr Mohammed Ali, who stepped in as a union rep in Ms Amanda Bethal's absence, said that on Saturday 12 December the claimant was accused of misconduct when, to the best of his [Mr Mohammed Ali's] knowledge there were only verbal complaints from the agency workers. He had seen no written complaints and no evidence in relation to any allegations made by the agency workers. Mr Mohammed Ali confirmed that he thought Ms Amanda Bethal was trying to cool down a difficult situation and this reflected her way of doing things. He agreed that if matters were not sorted out informally they would need to be sorted out formally. Mr Mohammed Ali said that it is possible for the respondent to send home an employee without suspending him however in that scenario, the employee must come back within 24 hours and be allowed to work. In addition, only a senior level manager, above Mr Shamaris, could send the employee home. Mr Mohammed Ali said that the respondent had formal agreements with the CWU in respect of Christmas and Easter etc and it was not for him as a rep to decide to change those agreements. Mr Mohammed Ali requested that Mr Shamaris allow the claimant to perform his Christmas duty in unit 6. According to Mr Mohammed Ali, Mr Shamaris said that, *“either the claimant goes to the International Logistics Centre (ILC) or I will suspend him.”* Mr Shamaris went on to say that he was the person in charge and he could suspend the claimant. Mr Mohammed Ali was of the opinion that Mr Shamaris did not have the authority, as a deputy manager, to suspend anyone. Mr Shamaris thereafter attempted to contact James Culpin and he reverted to Mr Mohammed Ali to say that James said that he [Mr Shamaris] could suspend the claimant. At this point Mr Mohammed Ali called Mr Duodu who was the area union rep. Mr Duodu advised Mr Mohammed Ali that Mr Shamaris could not suspend the claimant as he did not have authority to do so.
30. Mr Duodu also confirmed that it was possible for the respondent to send home the claimant rather than suspending him on a precautionary basis. Mr Duodu's evidence was that this can be done when a proper complaint is made, you have the facts and thereafter decide who to move. Depending on the facts and the issues concerned you check their positions, seniority etc. You cannot just move with word-of-mouth and without any basis or justifiable complaint. In the claimant's case, there was no written complaint and Mr Shamaris could not inform Mr Duodu what the complaint was. Mr Shamaris could not explain how the claimant's presence affects the company or the other party and Mr Shamaris made no arrangements to assist the claimant due to his loss of earnings and changes to his Christmas duty time.

31. Mr Duodu confirmed that as an area rep, he can override any reps decision if that helps the situation. Mr Duodu confirmed that he signed the Christmas agreement with the management. This was important to the staff as it was potential earning. Mr Duodu also confirmed that it was his understanding that if respondent staff and agency staff have any issues, agency staff should be moved first.
32. Mr Duodu said that Mr Shamaris told him that he was going to suspend the claimant. Mr Shamaris told Mr Duodu that he had authority to suspend the claimant from his shift manager, Mr James Culpin, who had agreed. Mr Duodu suggested that Mr Shamaris involve a senior manager from ILC or HWDC, however Mr Shamaris confirmed that he was suspending the claimant. Mr Duodu requested that Mr Shamaris provide a letter confirming his actions and Mr Shamaris said he would send one to the claimant at home. Mr Duodu's evidence was that Mr Shamaris suspended the claimant in front of him and told the claimant to go home until he received a letter. Mr Duodu said that there was confusion between Mr Shamaris and James Culpin as to who had suspended the claimant
33. Mr Mohammed Ali denied that he and/or Mr Duodu told the claimant to go home. He said that he heard Mr Shamaris say that he would suspend and then Mr Shamaris did suspend the claimant. Mr Mohammed Ali was asked during cross examination why he considered this matter to be related to the claimant's race. He responded that he believed that one negative action may be accidental however the second time you ask why are you doing it and why are you pointing out one person? Mr Mohammed Ali was referred to the alleged allegations as made by the agency worker against the claimant as contained at paragraph 16 of page 75 of the bundle. Mr Mohammed Ali confirmed that he had not seen that document previously however he acknowledged the alleged behaviour, if true, could be reasonably considered to be unacceptable behaviour on the claimant's part.
34. Mr Shamaris denies suspending the claimant however his witness statement only deals with the agreement reached with the assistance of Ms Amanda Bethal on 11 December 2015, it does not mention the discussions on 12 December 2015. The claimant denies that he refused to work or simply went home. During cross examination he said that when you are staff at Royal Mail, you cannot refuse to work. The claimant said he could not work in unit 6 because Mr Shamaris suspended him.
35. Mr Duodu was asked cross examination, should Mr Shamaris have made a mistake in suspending the claimant, what did it have to do with race? Mr Duodu responded that at the time he didn't have the full story however now that he is seen later events he believes it was a conspiracy against the claimant related to his race.

36. Mr Mohammed Ali reiterated during the examination that Ms Amanda Bethal as a union rep could not make a business decision to send the claimant home this must be made by the shift manager and reference was made to page 90 of the bundle, confirming that the claimant was sent home from duty with full pay on 12 December 2015. Mr Ahmed Haashi says that within the respondent, nobody goes home and gets paid. They either must be on annual leave, domestic leave, sick leave or some form of recognised leave. He considered that the claimant must have been on fully paid suspension. The claimant says in his witness statement that Mr Shamaris suspended him in the presence of Mr Duodu and Mr Mohammed Ali and that Mr Shamaris told him not to return to work until he got a letter. The claimant says that he was at home for three days.
37. On 14 December, Golden Opportunity Youth Association submitted a long letter of grievance on behalf of the claimant (page 85). The claimant also filled in the bullying and harassment complaint form that is date stamped 17 December 2015 (page 91).
38. The claimant says that he was called back to work for a fact-finding interview on 15 December 2015. This fact-finding interview related to the initial incident between the claimant and the agency staff on 11 December 2015. These allegations are disputed by the claimant. The claimant points out that he had only started working Christmas duty on 8 December and it would be most unlikely for him to have issues with different people within three days particularly as the claimant says that he has been working with those people for the last five years. The claimant questions why the purported statements prepared by Mr Shamaris from Yasir dated 12 December were not included within Mr Iqbal's investigation. The claimant believed that had the statements existed as of 12 December they would have been provided and used within Mr Iqbal's initial investigation. The claimant said that the first time he saw those statements from the agency workers was during the appeal part of the process. The claimant also points to alleged inconsistencies within the statements from the agency workers. He considers it strange that Mr Shamaris did not have a notetaker when he claimed to have interviewed the agency workers. The claimant alleged that these statements had not been taken on 12 December and that Mr Shamaris had made up the case against the claimant. The claimant further referred to a letter from Mr G Singh, who was one of the agency workers alleged to have complained. Mr Singh's letter to the claimant, page 70 of the bundle states "you did not do or say anything wrong to me".
39. Mr Ahmed Haashi was present at a meeting on 15 December 2016, as was Mr Duodu. Mr Ahmed Haashi, Mr Duodu and the claimant say that during this meeting Mr Shamaris denied that he had suspended the claimant on 12 December. Mr Shamaris said that James Culpin suspended the claimant. James Culpin was thereafter called into the meeting and denied suspending the claimant. It appeared to Mr Ahmed

Haashi that neither wanted to take the blame of suspending the claimant. At the end of the meeting managers decided to send the claimant home to continue his suspension. James and Mr Shamaris assured those present that they would make a decision as to who suspended the claimant and get back to them. That did not happen.

40. Mr Duodu called Mr Bithal, to join the meeting briefly. Although this meeting was intended to be a fact-finding meeting in relation to the disciplinary concerns raised by Mr Shamaris against the claimant, Mr Duodu informed Mr Shamaris that as the claimant had raised a bullying and harassment claim against Mr Shamaris this fact-finding meeting should not proceed. The fact-finding meeting did not proceed.

In December 2015, Mr Keith Balderston, assigned Mr Mohamed Iqbal, a friend of Mr Shamaris' and the manager also of Pakistani and/or Asian origin, to deal with the claimant's bullying and harassment claim against Mr Shamaris contrary to the claimant's request for somebody independent and outside of where he works;

41. The claimant says in his witness statement that after Mr Shamaris made the 'all Somalis are dodgy' comment he knew that if he ever made a complaint against Mr Shamaris his complaint would not be fairly and properly considered if it was investigated by one of Mr Shamaris' friends. When he was told that Mr Iqbal would be investigating his grievance, the claimant said that he immediately knew that Mr Iqbal would conspire against the claimant so as to absolve his friend Mr Shamaris of blame.
42. The claimant wrote to the respondent on 19 December 2015 reminding the respondent that he had requested that no manager from ILC should be conducting his case. The claimant says that ILC is a unit where managers help each other, are friendly with each other and obviously look out for each other. Mohamed Iqbal happened to be Pakistani origin which is the same origin as Mr Shamaris. They speak the same language, share the same belief, they work together and are known as best friends. The claimant also raises issues in respect of confidentiality. Mr Balderston on behalf of the respondent replies to the claimant by letter dated 22 December 2015 acknowledging his letter and referring to a conversation on 21 December. Mr Balderston confirmed that the respondent will not change the investigating manager unless they have had any involvement with the claimant's case. Mr Balderston confirms that the matter will continue to be investigated by Mr Iqbal.
43. The notes of the meeting carried out by Mr Iqbal and the claimant on 15 January 2016 at page 102 confirmed that Mr Iqbal requested the claimant to confirm if he was happy for Mr Iqbal to investigate the case and the claimant and Mr Mustafa Hassan (who was present as the claimant union rep) responded, "yes, we are happy".

Between December 2015 and 28 February 2016, Mr Iqbal concocted and manipulated the evidence in the bullying and harassment complaint and failed to interview the claimant's witnesses and Mr Iqbal conducted interviews in such a way as to build a case against the claimant and to discredit his bullying and harassment complaint against Mr Shamaris.

44. Mr Iqbal was appointed on behalf of the respondent to deal with the claimant's grievance in relation to Mr Shamaris. Mr Iqbal's statement said that the claimant told him that Mr Duodu, the claimant's union rep didn't want this complaint to be dealt with by way of informal resolution and the claimant will only do what his rep advises him to do. There was a slight delay in Mr Iqbal dealing with this matter due to Christmas holidays and staffing issues. Mr Iqbal interviewed:
- 44.1. the claimant on 15 January 2016. The claimant was accompanied by Mr Ahmed Haashi who also acted as an interpreter for the claimant;
  - 44.2. Mr Shamaris on 20 January 2016 and the notes of this meeting are at page 114 to 127 of the bundle;
  - 44.3. James Colburn and the notes of this meeting are at page 128 to 132 of the bundle;
  - 44.4. Amanda Bethel and the notes of this meeting are at page 133 to 136 of the bundle;
  - 44.5. Jamil Kayani and the notes of this meeting are at page 139 to 145 of the bundle;
  - 44.6. Sean Williams and the notes of this meeting are at page 148 to 150 of the bundle;
  - 44.7. Claude Forbes and the notes of this meeting are at page 151 to 153 of the bundle;
  - 44.8. Baber Khan and the notes of this meeting are at page 154 to 156 of the bundle;
  - 44.9. Cynthia Roxas and the notes of this meeting are at page 157 to 160 of the bundle, and
  - 44.10. Abdulrahman Yusaf and the notes of this meeting are at page 161 to 163 of the bundle .
45. Mr Iqbal did not interview Mr Mustafa Hassan, Mr Adedokun Aderwale, Mr Mohammed Ali, Raja Hussain, Mr Ahmed Haashi or Mr Duodu. Mr Iqbal concluded that none of his investigation interviews suggested that Mr Shamaris had discriminated against the claimant or that Mr Shamaris had bullied harassed or intimidated the claimant. Mr Iqbal concluded that Mr Shamaris did not suspend the claimant and concluded that the claimant's transfer had been agreed on 11 December. Mr Iqbal concluded that the option of going home was entirely the claimant's own decision as he [the claimant] had made his own mind up to go home because he refused to accept the option of working at ILC between 1400 and 1800 on 12 December 2015. Mr Iqbal found that staying at home for over 72 hours was entirely the claimant's own decision as he was advised to return to work for his following shift but he did not return to work.

46. Mr Iqbal found no evidence to substantiate Mr Shamaris having used the F word against the claimant, poked him in the stomach and said 'you're pregnant who's the father?', He concluded that Mr Shamaris did not discriminate against the claimant nor did he abuse the conduct code policy by suspending the claimant. Mr Iqbal said that he considered it appropriate for Mr Shamaris to initiate the fact-finding investigation against the claimant on Friday, 11 December 2015 following several complaints against the claimant from the agency staff. Mr Iqbal also considered that the claimant had misbehaved by making racial comments towards Mr Shamaris and that the claimant had falsely accused Mr Shamaris of discriminating against him [the claimant]. Mr Iqbal went on to find that the claimant's complaint against Mr Shamaris had been made in bad faith and his behaviour warranted further action under the conduct code in respect of his making a complaint of bad faith against Mr Shamaris and for refusing to follow a line manager's reasonable request to move to the ILC unit.

47. The claimant alleges that Mr Iqbal deliberately conspired against the claimant to protect his friend Mr Shamaris and untrue allegations were fabricated against the claimant. The claimant alleges that as Mr Iqbal and Mr Shamaris are both best of friends, they speak the same language, they worked closely together and are strongly and closely associated with each other they share the same religion, and their roles supported each other. The claimant alleges that they hold the same attitudes in similar values and are influential on each other. He says that the association is so strong that they think alike.

On or around 4 March 2016 Mr D Bithal, another manager of Asian origin, who was assigned to deal with the claimant's appeal, relied upon the concocted interviews and failed to conduct a fair and unbiased appeal hearing and on or around 3 August 2016 Mr Bithal dismissed the claimant's appeal.

48. Mr Bithal was appointed to conduct the appeal. Mr Bithal met with the claimant to discuss his appeal on 15 March 2016 the notes are contained at page 179 to 187 bundle. The claimant was accompanied by Mr Ahmed Haashi during this meeting as his union rep. Mr Bithal asked whether the claimant wanted him to continue to hear the appeal. Mr Ahmed Haashi and the claimant confirmed that they wished for Mr Devinder Bithal to conduct this case as they considered that would be fair and consistent with the respondent's procedures.

49. The claimant's detailed appeal letter appears at page 190 to 198 of the bundle. Mr Devinder Bithal met with the claimant again on 24 March 2016. Mr Bithal interviewed:

- 49.1. Mr Mohammed Ali on 12 April 2016.
- 49.2. Gursewak Singh;
- 49.3. Mr Duodu;
- 49.4. Ms Amanda Bethal;
- 49.5. Mr Shamaris;

- 49.6. Suhena Begum;
- 49.7. Saheed Khan;
- 49.8. Naeem Aslam; and
- 49.9. Mr Iqbal.

50. Mr Devinder Bithal also wrote to Ihas UIHaq, Abdulahrman Yusaf, Claude Forbes, Sean Williams and Cynthia Roxas asking them to confirm the evidence previously provided to Mr Iqbal;

51. The claimant claims that he first became aware of the written statement of the agency workers outlining their complaints against him at the appeal stage of the process. We had no evidence from the respondent to suggest that these had been supplied to the claimant prior to this time. The claimant considered the timing of these witness statements to be suspicious and concluded that they were fabricated.

52. Mr Devinder Bithal produced a comprehensive appeal outcome report consisting of over 20 pages contained at page 280 - 302 of the bundle. Mr Devinder Bithal concluded that:

- 52.1. there was insufficient evidence to conclude that Mr Shamaris had discriminated against the claimant by abusing the conduct code;
- 52.2. it was appropriate to initiate a fact-finding investigation against the claimant on 11 December following both the complaints against the claimant from the agency staff and the claimant's inappropriate behaviour towards Mr Shamaris including his racial comments towards Mr Shamaris;
- 52.3. Mr Shamaris and Ms Amanda Bethal rightly decided to move the claimant on 11 December
- 52.4. the claimant was given cooling off time on 11 December
- 52.5. was insufficient evidence to conclude that the claimant was bullied, harassed or intimidated, humiliated, victimised or discriminated against by Mr Shamaris;
- 52.6. the claimant and Mr Shamaris had a history of making jokes and having fun with each other and on the whole tolerated each other until Mr Shamaris challenged the claimant's performance and breach of business standards;
- 52.7. Mr Devinder Bithal concluded that the claimant and Mr Shamaris were friends and colleagues at the time when the claimant was part of the agency staff and Mr Shamaris was a post-person and then when the claimant became a post-person and Mr Shamaris was a post-person and deputy manager;
- 52.8. There were complaints from a third party (the agency workers) against the claimant and Mr Shamaris as his manager, was required to deal with those complaints. The claimant is using alleged historic jokes and events that had been tolerated by both parties during the friendship.
- 52.9. All of the union reps note that the claimant wished to stay in unit 6 to carry out his normal duties under Mr Shamaris' authority. If the claimant was bullied, victimised or being given a hard time by Mr Shamaris, why would the claimant wish to stay within his work area.



Normally when this arises, the employee wouldn't want to work with the manager who bullies them and gives them a hard time.

- 52.10. There was evidence that the claimant had demonstrated inappropriate and unwanted behaviours to his manager Mr Shamaris along with several agency staff. Therefore, Mr Devinder Bithal concludes that the claimant's temporary move to ILC was the best solution.
- 52.11. Mr Devinder Bithal was satisfied that the claimant and his CWU reps being Mr Mohammed Ali and Mr Duodu were aware of the situation and in the circumstances, they were aware that the policy was not being abused by Mr Shamaris. Therefore, Mr Devinder Bithal upheld Mr Iqbal's finding that Mr Shamaris did not discriminate against the claimant by abusing the conduct code policy. Mr Devinder Bithal found there was not sufficient evidence to prove that Mr Shamaris had used the F word against the claimant or poked at the claimant's stomach and said "you're pregnant and who is the father" or "all Somalis are dodgy". Mr Devinder Bithal noted that the claimant did not make any formal complaints against Mr Shamaris until a fact-finding and bullying and harassment investigation was initiated against him on Friday 11 December following several complaints from the agency staff and following the claimant's inappropriate behaviour towards Mr Shamaris as his line manager. Mr Devinder Bithal concluded that the claimant had made his complaint in bad faith and that the claimant made a formal complaint under the bullying and harassment process just to avoid the form of fact-finding investigation under the Royal mail's conduct code procedure which was initiated by his line manager, Mr Shamaris, on 11 December 2015.

### **Determinations and Findings**

53. This was a claim where the evidence provided by both parties appeared to us to be confused and incomplete. We acknowledge that English is not the claimant's first language and that his letters were written with the assistance of third parties, which may account for some inaccuracies.

In February 2015 Mr Shamaris shouted at the claimant, put the claimant in a headlock. Demeaned his work as being fit for old women;

54. The allegation, denied by Mr Shamaris, that Mr Shamaris put the claimant in a headlock is serious allegation of physical assault. Our understanding of the word 'headlock' is a method of restraining someone by holding an arm firmly around their head, and the move is probably most commonly seen in wrestling. Both the claimant and Mr Mustafa Hassan gave evidence in respect of a headlock allegation and demonstrated what they meant by 'headlock'. Both demonstrations involved the witnesses putting their arm around the volunteer's neck and pulling it towards them. This did not correspond with our understanding of the word 'headlock', however we consider the actions as demonstrated to be an inappropriate, overly tactile move that would be considered inappropriate in the workplace.

55. In light of the claimant's evidence corroborated by Mr Mustafa Hassan we conclude on the balance of probabilities that in February 2015, Mr Shamaris inappropriately placed his arm around the claimant's neck and pulled the claimant towards him. We have heard no evidence in relation to the context of this incident. There was no evidence linking this incident directly or indirectly to race. Although it was denied by both Mr Shamaris and the claimant, we note that both Mr Iqbal and Mr Bithal concluded that prior to the incident in question the claimant and Mr Shamaris had a friendly relationship. Although we consider it inappropriate, it is possible, given the description of the action above, that it was misguided or clumsy. It is possible that Mr Shamaris has forgotten this incident that occurred over two years ago. Although we have found that this incident was unconnected to the claimant's race our comments in respect of limitation set out below apply equally to this allegation.

56. Other than the claimant's allegation, we heard no evidence that Mr Shamaris shouted at the claimant or demeaned the claimant's work as being fit for old women. The claimant does not touch on this allegation or give any context in respect of it within his witness statement. We conclude that on the balance of probabilities this did not happen. Although we have found that this incident, on the balance of probabilities, did not happen, our comments in respect of limitation set out below apply equally to this allegation.

On or around 12 March 2015, Mr Shamaris told the claimant in the presence of a work colleague, also of Somali African origin, that all Somalis are dodgy people.

57. Although denied by Mr Shamaris, the claimant's evidence in respect of this comment was supported by Mr Mustafa Hassan who was a clear and convincing witness. We find that this comment was said by Mr Shamaris. However, Mr Mustafa Hassan did not give any evidence as to the context of this comment or the discussion the claimant alleges to have had with Mr Shamaris following this comment. The claimant attitude to this comment at the time "*He then told me that he was joking and that he did not mean what he said. I accepted his excuse and thought nothing of it.*" gives some explanation as to why the subsequent investigation may have found that the claimant and Mr Shamaris were friends and a certain level of 'banter' was entertained or at least tolerated between them. This comment was made on 12 March 2015. As the ET1 was not lodged until 24 May 2016, there is an obvious limitation point in respect of this matter discussed below.

On or around 12 March 2015 Mr Shamaris pointed at the claimant and told him that he and another Somali male worker were stupid;

58. This is denied by Mr Shamaris. The claimant does not touch or expand upon this allegation within his witness statement. The main information available to us is that contained within the claimant's grievance set out above. We heard no evidence from other witnesses to support this allegation. From the claimant's grievance, it appears that this allegation

is closely linked to the above comment. The claimant's conclusion set out within his grievance letter following this incident was that he "*thought nothing of it*" For the same reasons as set out above in respect of the above comment, we conclude that this particular allegation has been brought to our attention outside the statutory time limit and it would not be just and equitable to extend that limit in the circumstances.

On a day in April 2015, Mr Shamaris swore at the claimant using the 'F' word.

We heard evidence from the claimant, supported by witnesses that Mr Shamaris had used the 'F' word within earshot of the claimant. We accept that use of swear words in the respondent's workplace is relatively uncommon and noteworthy. While it is inappropriate to use a swearword, the context in which the swearword is used is in our opinion of utmost importance in relation to a race discrimination or harassment claim. In relation to this particular instance, while the witnesses heard the swearword they did not hear any context. They also confirmed that they did not hear anything that would lead them to believe that there was any racial element to the swearword. We conclude that use of the swearword was inappropriate. The fact that Mr Shamaris was the claimant's manager adds to that sense of inappropriateness. However, the use of the word by itself without some form of evidence to indicate some connection with race cannot be automatically assumed to be way connected to race. Although we have found that this matter was not in any way connected to the claimant's race, for the sake of completeness, for the same reasons as set out below, we conclude that this particular allegation has been brought to our attention outside the statutory time limit and it would not be just and equitable to extend that limit in the circumstances.

Were the allegations occurring between February and April 2015 brought to the attention of the employment tribunal within the statutory limitation period. If not, should that limitation period be extended;

59. The allegations arising between February and April 2015 are on the face of the allegations, outside the three month statutory limitation period. We refer to our below findings and note that we have found no evidence to support any claim for race discrimination or harassment on the grounds of race in relation to the allegations arising from incidents occurring from December 2015 onwards. We consider that these later events were triggered by an altercation between the claimant and the agency workers and the escalation between the claimant and Mr Shamaris on 11 December. This was compounded by a confused process on the part of the respondent however we have seen no evidence that would suggest any of the flaws within the process amount to less favourable treatment of the claimant on the grounds of his race. For this reason, we conclude that the allegations arising between February and April 2015 do not form part of any conduct extending over any period following April 2015. Therefore, we must

consider whether or not it is just and equitable to use our discretion to extend the statutory time limit.

60. The alleged comments made on 12 March, clearly have the potential to be classed not only as an allegation of direct discrimination but also of harassment in accordance with the definition set out above. This is a serious allegation and we have considered the limitation issues surrounding this allegation at length. We have concentrated on this particular allegation as we have found that this is the only occasion where there is potential evidence linking the claimant's treatment to his race. We have found no evidence to support the allegations that the other matters complained of during this time were connected to the claimant's race.
61. All of the relevant information was available to the claimant to make his claim at the time, yet he chose to take no action because he *accepted Mr Shamaris' excuse that he had been joking and thought nothing of it*. It would appear that while the comment may be seen as an obvious derogatory comment related to race, there is an argument identifiable from the documentation, that at the time the comment was made, it neither had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. From the documentation, it appears that that the claimant did not follow up this allegation as he did not consider it to be serious. It is clear that the claimant had access to union representation, he was aware of the concept of race discrimination, yet he took no action. There is clearly considerable context to this comment as the claimant at the time *"thought nothing of it"*. The claimant did not explain why thought nothing of this comment at the time. The claimant did not explain why he now considers the allegation to constitute race discrimination and harassment. This allegation was not covered within the claimant's witness statement and we were obliged to dig through the correspondence to try to gain an understanding of the allegation.
62. There may be an argument that this comment has been re-evaluated by the claimant following what he considered to be incidents of race discrimination by Mr Shamaris in December 2015. If this were the case, the comment would potentially fall within a pattern of conduct extending over a period and be considered within the statutory limitation period. This is not the case and we found that this allegation is a one-off incident that happened over two years ago. We have not found any evidence to link the respondent's treatment of the claimant in December 2015 to his race. In the circumstances, it is not possible for the claimant to revisit this historic allegation because he considers that he was subject to unreasonable actions by Mr Shamaris without persuading the tribunal that it is just and equitable to extend the statutory limitation period.

63. We are concerned that the delay between the making of this comment and bringing it to the attention of the employment tribunal is likely to affect the cogency of the evidence. The allegation of race discrimination or harassment on grounds of race are serious allegations that can rightly have serious consequences. In this case this particular allegation that occurred in March 2015 was not brought to the attention of the employer prior to December 2015, because the claimant did not consider it important, the cogency of the evidence in relation to any context of the comment is likely to be affected by the delay. We note that Mr Mustafa did not provide any background whatsoever in relation to the exchange that the claimant claims took place between the claimant and Mr Shamaris. If it is the case that the comment may have been said within the context of a jovial environment, while it does not explain the clearly inappropriate language, it is likely that the context will be an essential part of the circumstances to be examined by the tribunal to determine the claim. As the claimant has confirmed that at the time he 'thought nothing more of it', it is possible that Mr Shamaris also thought nothing more of the comment and cannot recall it. In these particular circumstances, we find that the delay has affected the cogency of the evidence of any context of that particular comment. Our emphasis is on whether the delay has affected the ability of the tribunal to conduct a fair hearing and we conclude that it has.

64. A limitation issue was clearly identified within the list of issues at the commencement of the hearing and is addressed within the respondent's written submissions. A complaint of unlawful discrimination must be presented to an employment tribunal before the end of the three months beginning with the date of the act complained of in accordance with S123(1)(a) EqA. The limitation point has not been addressed within counsel for the claimant's written submissions. The time limits are applied strictly in employment cases, and there is no presumption in favour of extending time. In this case the claimant has not convinced us that it is just and equitable to do so. From our review of the documentation available to us within the employment tribunal bundle, we do not consider that it would be just and equitable to do so. We conclude that the allegations occurring between February 2015 and April 2015, are brought to our attention outside the statutory time limit and we have no jurisdiction to determine them.

On 10 December 2015, Mr Shamaris poked at the claimant stomach asking whether he was pregnant and who was the father;

65. The claimant's evidence in relation to this matter was supported by Mr Ahmed Haashi. We accept the balance of probabilities, that this comment was made and that the claimant was poked in the stomach. We accept that the claimant was upset about it and spoke to his union representative. We can understand why the claimant would be upset about such a comment as it was unkind, however, we have heard no evidence to suggest that this comment was connected to the claimant's race in any way. We note that Mr Haashi's advice was for the claimant

to leave the matter alone. We do not consider that this advice is likely to have been given should Mr Haashi have considered the comment action to be linked to the claimant's race. We have heard no evidence to suggest that when the claimant reported this matter to his union rep that the claimant linked the comment in any way to his race. In conclusion, we find it more likely than not that this comment and action was not linked to the claimant's race.

On 11 December 2015, Mr Shamaris sent the claimant back to work while allowing Pakistani and/or Asian work colleagues a longer break and telling the claimant that he would be sacked;

66. We heard evidence from Mr Shamaris in respect of this incident that he sent all workers who were not on an official break back to work. That evidence is supported by Mr Forbes within the evidence obtained during the internal process. This evidence was verified by Mr Devinder Bithal during the appeal process. We find it was more likely than not that while the claimant may have perceived that he was the only one being asked to return to work, this instruction was given to all who were not on an official break. There was no evidence of any connection between this instruction given to the claimant and the claimant's race.

On 12 December 2015, Mr Shamaris suspended the claimant cancelling his shift and sent him home but failed to follow the correct procedure;

67. The evidence in respect of this particular matter was difficult to follow however it appears to us that the relationship between the claimant and Mr Shamaris had deteriorated. On consideration of the evidence as a whole we conclude that there had been complaints from the agency workers in respect of the claimant's conduct. In the process of discussing these complaints the relationship between the claimant and Mr Shamaris deteriorated. The claimant, who we accept felt genuinely aggrieved, made allegations that Mr Shamaris was racist and expanded that allegation to say that all Pakistanis are racist.
68. It appears to us that Ms Amanda Bethal, identified that the claimant and Mr Shamaris should be separated and brokered a sensible arrangement whereby the claimant would be moved. We find that both the claimant and Mr Shamaris were happy with this arrangement on 11 December.
69. We find that the difficulty arose on 12 December when the matter was considered by alternative union reps being Mr Mohammed Ali and Mr Duodu. We accept the evidence given by the union reps that the Christmas duty was subject to a specific agreement which could not be altered without the agreement of senior management. Mr Mohammed Ali and Mr Duodu identified that Mr Shamaris could not enforce the proposed change. Following their input, the claimant refused to move voluntarily and Mr Shamaris was faced with the position whereby the claimant either returned to work on 12 April or Mr Shamaris suspended him. We do not accept that the claimant simply decided to go home.

We find it more likely than not that faced with a refusal by the claimant to move on a voluntary basis, Mr Shamaris suspended him. We find it more likely than not that Mr Shamaris did not have the authority to suspend the claimant.

70. Listening to the evidence as it is difficult to escape the suspicion that the union reps may also have attempted to preserve the integrity of their Christmas duty deal and perhaps this came into conflict with the claimant's best interests. Advising the claimant to back away from an agreement that allowed matters to be dealt with informally and advising the claimant to force the matter, added to the claimant's sense of injustice and escalated matters.
71. We find that Mr Shamaris suspended the claimant cancelling his shift and sent him home but failed to follow the correct procedure in that he did not have sufficient authority to suspend the claimant. Notwithstanding the fact that we find Mr Shamaris had breached the respondent's own procedures, from the detailed evidence we have reviewed, we consider that Mr Mohammed Ali and Mr Duodu had effectively caught Mr Shamaris out on a technicality. They correctly identified this breach of process. However the evidence that we have seen, and accepted, shows that the concerns as raised by the agency workers with Mr Shamaris were genuine. We acknowledge that at the time neither of the union reps, nor the claimant had seen written confirmation of these allegations. We consider that the claimant's treatment was as a result of the complaints made by the agency worker and subsequent deterioration of the relationship between the claimant and Mr Shamaris. We have seen no evidence to suggest that Mr Shamaris suspended the claimant and sent him home for reasons connected to the claimant's race.

In December 2015, Mr Keith Balderston, assigned Mr Mohamed Iqbal, a friend of Mr Shamaris' and the manager also of Pakistani and/or Asian origin, to deal with the claimant's bullying and harassment claim against Mr Shamaris contrary to the claimant's request for somebody independent and outside of where he works;

72. It is correct that the claimant's request to replace Mohamed Iqbal with somebody independent and outside of the claimant's area was refused. While we can appreciate the request for an independent person to carry out a grievance process. We can understand concerns that an employee may have when a grievance process is to be handled by a person who is perceived as being a personal friend of the alleged perpetrator. We have seen no evidence to support the allegation that Mr Keith Balderston's refusal to replace Mr Iqbal was in any way motivated by connected with the claimant's race. We do not accept the claimant's argument that it was inappropriate to appoint Mr Iqbal to handle this grievance because of his Pakistani and/or Asian origin. In our view, it would be inappropriate and discriminatory for the respondent to attribute prejudice to Mr Iqbal by reason of his Pakistani and/or Asian origin.

Between December 2015 and 28 February 2016, Mr Iqbal concocted and manipulated the evidence in the bullying and harassment complaint and failed to interview the claimant's witnesses and conducted interviews in such a way as to build a case against the claimant and to discredit his bullying and harassment complaint against Mr Shamaris

73. Mr Iqbal's evidence during cross examination was difficult to follow. Mr Iqbal did not interview the claimant's witnesses to the allegations. He chose instead to take evidence from the supervisors who were said to be present during the various allegations. This evidence conflicted with the claimant's allegations and was preferred by Mr Iqbal. We consider it to be a flaw in Mr Iqbal's investigation to miss out the claimant's witnesses. We note that these witnesses were interviewed by Mr Devinder Bithal and we consider that Mr Bithal undertook a very comprehensive appeal process.

We also note that Mr Devinder Bithal requested that the witnesses interviewed by Mr Iqbal confirm their evidence in writing. This evidence was confirmed. We have seen no evidence to suggest that the flaws or mistakes within the processes carried out by Mr Iqbal were in any way connected to the claimant's race. Much was made during the hearing of allegations that Mr Iqbal had copied and pasted witness statements. We find it more likely than not that when conducting multiple interviews that a new statement may be prepared from a previous precedent. We place very little weight on what we consider to be administrative issues in the preparation of the statements and do not consider these types of issues to be evidence of improper conduct on the part of Mr Iqbal. We accept the claimant's claim that he did not see the written evidence of complaints made by the agency workers until the appeal process. We can see why the absence of those documents at an early stage may give the claimant reason to suspect that the documents were not in existence at that early stage. However we accept that the agency workers had made complaints relating to the claimant and these were in the process of being discussed between the claimant and Mr Shamaris when matters became heated on 11 December. We find that there is no evidence to support the allegation that Mr Iqbal concocted and manipulated the evidence in the bullying and harassment complaint or that he conducted interviews in such a way as to build a case against the claimant and to discredit the bullying and harassment complaint against Mr Shamaris.

74. Mr Iqbal admitted during cross examination that he considered that the 'all Somalis are dodgy' comment had been said by Mr Shamaris however Mr Iqbal chose not to include it and referred to the fact that it was over three months old at the time. We were troubled by Mr Iqbal's conclusion that the claimant's allegations were brought in bad faith. We have found that the claimant's relationship with Mr Shamaris had deteriorated was thereafter the claimant was subject to a suspension by Mr Shamaris in circumstances where Mr Shamaris had no authority



to suspend him. While we do not believe that the claimant's allegations can be tied to his race, the evidence shows that the claimant's grievance was a genuine one and we heard no evidence to support the conclusion that it was raised to frustrate potential disciplinary proceedings.

On or around 4 March 2016 Mr D Bithal , another manager of Asian origin, who was assigned to deal with the claimant appeal, relied upon the concocted interviews and failed to conduct a fair and unbiased appeal hearing and on or around 3 August 2016 Mr Bithal dismissed the claimant's appeal.

75. We consider that it was appropriate for the respondent to appoint Mr Devinder Bithal to conduct the appeal hearing. We acknowledge that Mr Devinder Bithal had been called to an early meeting with the claimant on 12 December, however this meeting did not proceed and he had taken no active part in that meeting. We do not consider his dealing with the appeal inappropriate. We note that during the process the claimant was asked and agreed to Mr Devinder Bithal conducting the process. The fact that Mr Devinder Bithal is of Asian origin is, in our view, irrelevant to his appointment. To suggest otherwise, appears to us to infer a racist predisposition to an entire continent.
76. We consider that Mr Devinder Bithal undertook an extensive investigation and comprehensive review of the claimant's issues and we do not criticise the process. From our consideration of the evidence as a whole, we do question some of his findings. We have found that the claimant was suspended by Mr Shamaris and Mr Shamaris made the 'all Somalis are dodgy' comment. We question the basis for Mr Devinder Bithal's conclusion that the claimant brought his bullying and harassment complaint maliciously and in bad faith and consider that conclusion to be unsupported. While we have not found any connection between the claimant's allegations and his race, we have found evidence that supports a genuine sense of grievance on the part of the claimant.

Has the respondent treated the claimant as alleged less favourably than it treated or would have treated a hypothetical comparators, namely a person doing the same job as the claimant but is of Pakistani national origins of Asian ethnic origins?

77. Counsel for the claimant has submitted that race was the motivation for the claimant's treatment as all of the managers who it is claimed discriminated against the claimant were all Asian, two of whom were Pakistanis (Mr Shamaris and Mr Iqbal) sharing the same religion, language and being close friends as well as work colleagues and managers. We reject this argument. It is not possible in our view to impute a discriminatory motive to individual managers for any reason connected to their race. It appears obvious to us that any such inference would be discriminatory. We also consider that an inference of discriminatory behaviour cannot be drawn from the alleged attitudes of friends or work colleagues and we have seen no evidence to support

any such argument. For the sake of completeness, we note that the claimant also shared the same religion as his Mr Shamaris and Mr Iqbal.

78. Counsel for the claimant submits that the stereotype assumption held by Mr Shamaris that “all Somalis are dodgy” was one that was shared through association and communication between Mr Shamaris and Mr Iqbal and the significant influence of race can be reasonably inferred if the “reason why” question is posed. Counsel for the claimant submits that there was no other reason for the less favourable treatment but the race of the claimant. We do not accept the submissions. While we have identified flaws within the process and we have acknowledged reasons why the claimant may have a genuine sense of grievance or a genuine belief that he has been unfairly treated, on consideration of the evidence as a whole, the reason why the claimant was both subject to the initial fact-finding process and suspended (albeit not in line with the respondent’s procedures), was because of the altercation that occurred between the claimant and the agency workers that was addressed on 11 December 2015 and his subsequent argument with Mr Shamaris. We have seen no evidence of any link between the arguments as to whether or not the claimant was suspended, and if so, whether Mr Shamaris had authority to suspend the claimant, and whether Mr Shamaris may have acted outside of his authority or the respondent’s processes, and the claimant’s race.

79. In light of the above findings and considering the entirety of the evidence as presented to us we conclude that the claimant was not less favourably treated because of his race, nor was the claimant subject to unwanted conduct relating to his race that had the purpose or effect of violating his dignity or creating an intimidating, hostile degrading, humiliating or offensive environment for him. The claimant’s claim therefore must fail and is dismissed.

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Employment Judge Skehan

Date: ...2 August 2017..

Sent to the parties on: 2 August 2017

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For the Tribunal Office