EMPLOYMENT TRIBUNALS

Claimant: Mr A Pyne-Bailey

Respondent: B&Q Plc

HEARD AT: HUNTINGDON **ON:** 27th, 28th & 29th March 2017.

BEFORE: Employment Judge G P Sigsworth

MEMBERS: Mr C Davie
Mrs L Gaywood

REPRESENTATION

For the Claimant: In person

For the Respondent: Mr D Piddington (Counsel)

JUDGMENT

The unanimous judgement of the Tribunal is that:

1 The Claimant was not unfairly dismissed by the Respondent.

2 The Respondent did not unlawfully discriminate against the Claimant because of his race.

3 The Respondent's application for costs is refused.

REASONS

1. The Claimant's claims are for unfair dismissal and direct race discrimination. The Respondent concedes that the Claimant was dismissed and the reason given is some other substantial reason – a potentially fair reason. At the Preliminary Hearing on 1st October 2016, Employment Judge Bloom recorded that the Claimant alleges that the

dismissal was unfair because the representative on the Forum had not been elected, and more particularly because he had been given insufficient time for submitting alternative proposals of the restructure to the Respondent on a date between 4th and 22nd March 2016 until he was subsequently told of his termination of employment on 24th March effective 31st March 2016. The process was unfair, he said, which renders his dismissal unfair. After a lengthy discussion at this Preliminary Hearing, two specific allegations of race discrimination were identified and recorded. First, that the Claimant was never offered the chance of having counter balance fork lift training during the period he worked within the warehouse. He worked within the warehouse on and off throughout his employment leading up to the last few days of his employment in March 2016. He states that white employees were, however, given an opportunity of having counter balance fork lift training. He states that he was denied this opportunity because of his colour. Second, despite being give good appraisals and the Respondent having recognised that he was a good performing employee he was demoted, or at least down-graded from a level 4 employee in July 2015 having been upgraded or promoted to a level 4 employee in April 2015. There is a dispute between the parties as to the date of the upgrading and down-grading. The Claimant contends that the reason for his demotion or down-grading was because he is black. He had good appraisals and performance record so there was no justification otherwise for down-grading him. By reference to that case management record, it follows that other complaints of race discrimination made in the claim form are to be regarded as background – possibly because they may be out of time or because they are put as claims of institutional racism, or because the Claimant decided not to pursue them. He does not challenge the accuracy of the recording of the issues by Employment Judge Bloom.

2. The Tribunal heard oral evidence from the Claimant and from three witnesses called on behalf of the Respondent. These were Mr George Wakely, Director of Talent and Organisational Effectiveness; Mr Leigh Cleary, Retail Operations Partner; and Mr Michael Downer, Trading Manager – Technical and Building. We also read and took into account the short statements of three witnesses for the Claimant who give evidence of character. Documents in a bundle of 550 pages were identified by parties and read by the Tribunal. Other documents were handed to us during the course of the hearing. At the end of the evidence, the parties' representatives made oral submissions.

FINDINGS OF FACT

3. The Employment Tribunal made the following relevant findings of fact:-

   (1) The Claimant was employed by the Respondent as a customer adviser from 14th January 2005 until the effective date of termination of his employment on 31st March 2016. He was based at the Respondent's Wellingborough store which at the material time had some 18 employees, both full time and part time. The

Claimant has worked in a number of different areas of the store during his employment, including in the warehouse, and at the material time was working in the goods receiving area. His duties included receiving goods into the store, driving stock to where it was needed and putting stock out. He also dealt with customer queries when he was on the shop floor and he was responsible for replenishing the stock in the building yard and the garden centre. At the time of the events concerning the promotion/demotion race discrimination claim – January to June 2014 – the Claimant was working in the seasonal department (garden centre). He had a fork lift truck licence to drive Bendi trucks, but not the counter balance fork lift trucks. As a fork lift truck driver, he was entitled to a monetary allowance. Until he was promoted to level 4 by Mr Downer in January 2014, and then from June 2014 until the effective date of termination of his employment the Claimant was a level 3 customer adviser.

(2) The Respondent is a large national employer, with some 32,000 employees in the United Kingdom. When Mr Wakely took over responsibility for Reward in 2012, the Respondent's approach to employee pay and benefits had remained the same since 2004 for long serving employees. However, the Respondent recognised that certain elements of the overall reward package were no longer fit for purpose, and had ceased offering these elements to new joiners. This lead to a substantial degree of inconsistency and unfairness between employees, depending on when they joined the business. Additionally, and over time, the existing package of reward measures had become less relevant for how the Respondent's business operated and they believed that they were significantly out of line with the approach that much of the rest of the retail market was taking to pay and reward. Customer advisers (the largest single group of B&Q employees) were paid at five different levels, level 1 to level 5, based on their completion of certain elements of the Respondent's learning and development framework and also dependent on continued performance at the standard expected of their LDF level. Level 5 CAs were paid £8.04 per hour, but level 1 CAs just £6.70 per hour. However, differentiation between the type of work done by the different levels of CA were insufficient to justify the different role expectations and differential rates of pay. There was also inconsistency between stores as to the standard applied when promoting CAs, and ensuring that they continued to perform at the level they had been promoted to. A number of stores attracted geographical/market allowances. However, these had not been reviewed for a number of years and were not in line with current market conditions for each store. Some stores attracted allowances they could no longer justify and others did not attract allowances that they should have had. Another legacy issue was that a significant proportion of B&Q's employees had an entitlement to an annual summer and winter bonus worth 6% of their salary. New starters had not

received this bonus from 1st September 2009 but it still applied to longer serving employees. The bonus could not be justified in any way based on employee or store performance, so it could not be used as a tool to drive the behaviours and performance the Respondent needed to be a successful business. Sunday premium was paid at time and a half, but the amount of Bank Holiday premium differed depending on when the employee joined the business. There were a number of other allowances that made up an employee's pay. However, when the Respondent advertised roles vacant they looked poorly paid compared to roles at other retailers. This was not actually the case in practice when the different allowances, premiums and summer/winter bonus were taken into account. This made recruitment difficult.

(3) Therefore, at the Board's request, Mr Wakely put in place a new pay and reward framework in June 2014. However, at that date it was decided not to go forward with it. Then, in July 2015, the Government announced that, with effect from 1st April 2016, it would be introducing a National Living Wage for over 25s which would start at £7.20 an hour and increase to an expected level of £9 an hour by 2020. B&Q decided to apply the National Living Wage to all employees, whether they were under or over the age of 25. This would represent a significant increase in basic pay for most of the employees. The Respondent believed in July 2015 that it was the right time then to implement the new pay and reward framework. The summer/winter bonus would be withdrawn, and all employees moved to a bonus scheme that was already in operation for new joiners. There would be just one rate of pay for customer advisers, at £7.66 ph, reviewable on an annual basis. All CAs at levels 1, 2 and 3 would receive a significant rise in their basic pay. It was resolved to remove the allowance paid to employees who drove fork lift trucks as part of their role. All existing geographical allowances would also be removed and replaced with seven new "hot spot" rates. Sunday premium was removed and Bank Holiday pay standardised at 1.5 times pay. Nine months compensation pay was decided upon for the removal of the summer/winter bonus.

(4) The Respondent worked to a target implementation date of 1st April 2016. They decided that they would consult with all affected employees and seek their agreement to the change. Feedback from employees would be considered and changes made as appropriate before the scheme went ahead. After taking legal advice, the Respondent decided that they would dismiss and re-engage all employees who declined to accept the changes. Employees who were dismissed and then agreed to be re-engaged under the new terms would not get the compensation payments, but only those employees who signed up to the new proposals initially. The Respondent then embarked on a six week consultation period, beginning with collective consultation, and then

moving to individual consultation. As the Respondent did not recognise a trade union, they decided to use the People's Forum (representatives from each store nominated as regional representatives) to conduct the collective consultation. The National People's Forum had been in existence for a number of years and had worked well in other consultation exercises. Two weeks was allowed for the collective consultation with four weeks for individual consultation.

(5) Collective consultation with the National People's Forum began with a presentation from the Chief Executive Officer and HR Director. Then Mr Wakely briefed the employee representatives on the National People's Forum on the detail of the proposed changes and the business case for them. We have seen the details of the process and the documentation and the presentations, and it was certainly a comprehensive process. A summary of the meeting with the representatives of the National People's Forum was issued to employees after the second day of collective consultation meetings. Then store managers were responsible for announcing the proposal to their store employees, and further explanations given at a second meeting. As a result of the feedback from the National People's Forum, there was a reversal by the Respondent of the decision to remove the fork lift truck allowance. This was not in the end removed. Second, approval was obtained to increase compensation payments for loss of summer/winter bonus and other elements on which employees were negatively affected to 12 months (from 9 months). The Respondent then moved on to individual consultation.

(6) The Claimant's individual consultation was with his store manager, Mr Cleary. Mr Cleary had a meeting with the Claimant on 2nd March and subsequent meetings. A personalised illustration of the Claimant's new terms and conditions was given to him, explaining how he would be affected by the changes. It was explained to him that if he did not sign the new terms and conditions at the end of the individual consultation period then he would be dismissed on the grounds of some other substantial reason and would not be eligible for any one off payment or the accrual of summer/winter bonus for the year to date. He would, however, be given the opportunity to be re-engaged on the new terms within the next week. If he was dismissed he would receive payment in lieu of notice. The Claimant was not persuaded by the proposed reasons for the changes and did not believe that there had been a proper consultation. He declined to attend further meetings with Mr Cleary. As he did not sign the new terms and conditions the next stage in the process was for Mr Cleary to invite him to a final meeting. This took place on 24th March 2016. The queries that were raised by the Claimant were responded to by Mr Cleary, but the Claimant did not agree with what the Respondent was proposing in a number of different respects. Mr

Cleary gave the Claimant another opportunity to sign the terms and conditions at the end of the meeting on 24th March, but he declined to do so. Mr Cleary's recollection was that the Claimant was the only employee in his store who did not sign the new terms and conditions on the final day. Mr Cleary felt that he had no option but to dismiss the Claimant. The Claimant had the opportunity to appeal but did not subsequently exercise that right.

(7) The first specific allegation of direct race discrimination is the demotion from level 4 CA to level 3 CA. The Claimant's case is that he was demoted because of his race. Mr Downer was the Claimant's line manager at the material time. He told the Tribunal that initially he had a good working relationship with the Claimant and the Claimant performed well. The Claimant contributed significantly to improving standards in the seasonal department, bringing it up to achieving retail basics (as it is called), and also did well at buddying less experienced CAs to improve their knowledge. Because of his good performance, at his appraisal performance review on 6th January 2014, Mr Downer said that he would be promoting the Claimant from a level 3 CA to a level 4 CA, with a small increase in his hourly rate of pay from £7.28 to £7.66. The Claimant had a 39 hour week contract, which was more than most CAs in seasonal, so he had a significant role to play in maintaining the consistency in the department. Mr Downer asked him to put together a personal development plan and advised that if he wanted to progress he would need to see the Claimant taking ownership of something in the store and driving it forward.

(8) We have seen the performance indicators document. Mr Downer's issues with the Claimant's performance over the next 6 months were around product and availability. The Claimant's presentation was good and his customer service really good. However, Mr Downer's perception was that the Claimant's standards had fallen in the context of daily routines, sweeps, split bags, tidiness and stock loss. The Claimant had key responsibility for this side of the department and the stocking up, and he worked more hours than the other CAs. There were failures in not sponsoring a product, not communicating with the team in a more highlighted role, and not producing a PDP as requested, and also not taking full responsibility for the lay flat area. This lead to Mr Downer deciding to bring the Claimant back to a level 3 CA at his next appraisal in June 2014. This was because of a lack of consistency in performance at the higher level, which requires more supervision of colleagues and so on. Plus, the Claimant was graded at below performance expectation at that appraisal. After the meeting, the Claimant told Mr Downer that he was having personal/family difficulties. Because of this Mr Downer changed the Claimant's rota so he could spend more time with his children. By the date of the next appraisal in December 2014, the Claimant was again performing well and was awarded with a plus one. Mr Downer told

him that if maintained that performance at the next appraisal he could be expected to be put back up to a level 4. However, the Claimant then moved to a different team. The Claimant has not identified any actual comparators. There was one level 5 CA in the team and three level 1s, one of whom was promoted to level 2.

(9) The second allegation of direct race discrimination is that the Claimant was denied training on the counter balance fork lift truck. He trained as a Bendi fork lift truck operative, from October 2010, and received an allowance of £25 per week for this. The Respondent's case is that the Claimant was not trained on the larger fork lift truck because there was no need for him to be trained. On the information given to us towards the end of the hearing, some eight employees were trained on the counter balance fork lift truck over a period of time, and they were employees who worked in the warehouse, building and replenishment. However, not all employees working in these areas were counter balance fork lift trained. Even if we add in the four further four employees identified by the Claimant as being counter balance fork lift trained, there remained other employees who were not so trained. Some of the eight or twelve employees who were able to use the counter balance fork lift truck had come to B&Q already trained in its use, by a previous employer.

(10) Three findings can be made. First, not all employees by any means in the warehouse, replenishment or building were counter balance fork lift trained. Second, training is given where there is a need for an operator – not simply because an employee asks for it. It is external training, at a cost to the Respondent. Third, there is little or no evidence that the Claimant requested such training, or if he did when he did. Certainly, so far as Mr Downer and Mr Cleary were concerned, no request was made to them, and there is no reference to any such request being made in the appraisals we have seen. If there was a request in 2009 or 2010, after which the Claimant was trained on the Bendi fork lift truck, there is no evidence that he made any request later. Thus, a time point would arise.

(11) In his witness statement, the Claimant makes general complaints of lack of progress in the company and being blocked in his desire to move forward. However, these matters are not specific complaints of race discrimination that we have to determine and are background only, and not matters that the Respondent has called any evidence on. The complaints concern not being put on to the fast track programme, not getting onto the Aspire programme and in respect of vacant supervisor vacancies etc.

THE LAW

4. By section 94(1) of Employment Rights Act 1996, an employee has the right not to be unfairly dismissed by his employer.

   By section 95(1)(a), for the purposes of the unfair dismissal, provisions, an employee is dismissed by his employer if the contract under which he is employed is terminated by the employer (whether with or without notice).

   By section 98(1)(2), it is for the employer to show the reason (or, if more than one, the principle reason) for the dismissal, and in the context of this case that it was for some other substantial reason. In *Abernethy v Mott, Hay and Anderson [1974] IRLR 213, CA*, it was held that the reason for a dismissal is a set of facts known to the employer or beliefs held by him which cause him to dismiss the employee.

   By section 98(4), where the employer has shown the reason for the dismissal, the determination of the question whether the dismissal is fair or unfair having regard to that reason;

   (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

   (b) shall be determined in accordance with equity and the substantial merits of the case.

   The law to be applied to the reason or band of responses test is well established. The Tribunal's task is to assess whether the dismissal falls within the band of reasonable responses of an employer. If the dismissal falls within the band, the dismissal is fair. If the dismissal falls outside the band, it is unfair. We refer generally to the well known case law in this area; namely, *Iceland Frozen Foods Ltd v Jones [1982] IRLR 489, EAT; Foley v Post Office; HSBC Bank Plc v Madden [2000] IRLR 827, CA*. The band of reasonable responses test applies equally to the procedural aspects of the dismissal, such as the investigation, as it does to the substantive decision to dismiss – *Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23, CA*.

5. We were referred to some case law by the parties. In *St John of God (Care Services) Ltd v Brooks and Others [1992] IRLR 546, EAT*, it was held that whether a dismissal for refusing an offer of new terms and conditions made to the whole workforce was fair or unfair cannot be unaffected by the fact, if it were one, that either only 1% or 99% of the other employees accepted the offer. We understand that in the case before us, over 99% of the employees nationally who are customer advisers accepted the offer.

In *Slade v TNT (UK) Ltd [2011], UKEAT/0113/11*, it was held that where an employer has sought to change terms of employment and has made an offer to "buy out" certain existing terms, but warned that refusal would result in dismissal with an offer of re-engagement on the proposed new terms, the Tribunal did not err in concluding that the employer did not act unfairly where the terms of the offered re-employment did not include the terms of the "buy out" as part of the new terms.

There is no rule of law that dismissal for refusing to accept a pay cut is only fair where the employers are in a situation so desperate that the method of saving the business is to impose a pay cut. So held the EAT in *Garside and Laycock Ltd v Booth [2011] IRLR 735, EAT*. The EAT went on to say that there was nothing lacking in cogency about a business facing trading difficulties which sought to reduce it's costs, and nothing inherently unreasonable in seeking to ensure that all members of the workforce are on the same pay scales and that one person did not stand out by being paid more purely by rejecting a pay cut that all his colleagues had accepted.

6. By section 13 of the Equality Act 2010, a person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than (A) treats or would treat others. This is direct discrimination. We are concerned with the protected characteristic of race.

Section 39: Employees and applicants

(2) An employer (A) must not discriminate against an employee of A's (B) –

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training, or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

Section 123: Time limits

(1) Proceedings on a complaint [within the Tribunal's jurisdiction] may not be brought after the end of -

(a) the period of 3 months starting with the date of the act which the complaint relates, or

(b) such other period as the Employment Tribunal thinks just and equitable.

…

(3) For the purposes of this section -

(a) conduct extending over a period is to be treated as done at the end of the period; …

Section 136: Burden of proof

(1) This section applies to any proceedings related to a contravention of this Act.

(2) If there are facts on which the (Tribunal) could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Tribunal must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

7. We are familiar with the two stage process in applying the burden of proof provisions in discrimination cases, and we referred to the well know authorities of *Igen v Wong [2005] IRLR 258, CA, and Madarassy v Nomura International Plc [2007] IRLR 246, CA*. The Claimant must first establish a first base or prima facie case of direct discrimination by reference to the facts made out. If he does so, the burden of proof shifts to the Respondent at the second stage to prove that they did not commit those unlawful acts. The burden of proof does not shift to the employer simply by a Claimant establishing a difference in status (e.g. race) and a difference in treatment. Those bare facts only indicate the possibility of discrimination. They are not, without more, sufficient material from which the Tribunal "could conclude" that on a balance of probabilities the Respondent has committed an unlawful act of victimisation. Save that the Tribunal has, at the first stage, no regard to evidence as to the Respondent's explanation for its conduct, the Tribunal must have regard to all other evidence relevant to the question of whether the alleged unlawful act occurred, it being immaterial whether the evidence is adduced by the Claimant or the Respondent – see *Laing v Manchester City Council [2006] IRLR 748, EAT,* as approved by The Court of Appeal in *Madarassy*.

The basic question in a direct discrimination case is what are the grounds/reasons for the treatment complaint of – see *Amnesty International v Ahmed [2009] IRLR 884, EAT*. The EAT recognised the two different approaches of *James v Eastleigh Borough Council [1990] IRLR 288, HL*, and of *Nagarajan v London Regional Transport [1999] IRLR 572, HL*. In some cases, such as *James*, the grounds/reasons for the treatment complaint of are inherent in the act itself. In other cases,

such as *Nagarajan*, the act complained of is not discriminatory but is rendered so by discriminatory motivation, i.e. by the mental processes (whether conscious or unconscious) of the alleged discriminator for acting in the way he/she did. Intention, in the case of both direct discrimination and victimisation, is irrelevant once unlawful discrimination is made out. We should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions) – see *Anya v University of Oxford [2001] IRLR 377, CA*.

In *Shamoon v Chief Constable of the RUC [2003] IRLR 285, HL*, Lord Nichols said that, when discussing the question of the relevant comparator, the Tribunal may sometimes be able to avoid arid and confusing debates about the identification of the appropriate comparator by concentrating primarily on why the complainant was treated as he was, and leaving the less favourable treatment issue until after they have decided why the treatment was afforded. Was it on the proscribed ground or was it for some other reason? If the former, there will usually be no difficulty in deciding whether the treatment afforded to the Claimant on the proscribed ground was less favourable than that afforded to another. In *Glasgow City Council v Zafar [1998] IRLR 36, HL*, it was held that it is not enough for the employee to point to unreasonable behaviour. He must show less favourable treatment one of whose effective causes was the protected characteristic relied on.

CONCLUSIONS

8. Having regard to our findings of relevant fact, applying the appropriate law, and taking into account the submissions of the parties, we have reached the following conclusions:-

(1) The reason for dismissal has been established as some other substantial reason. Although the Respondent had a number of options in how and when to reform the structure of pay and reward, they chose the option we have outlined above. They did so as it was best for their business going forward, for the reasons they gave. Thus, this meant the dismissal of those employees who did not accept the new pay and reward structure. In the Claimant's case, he did not accept the new terms and conditions and refuse to sign up to them. He declined to be re-engaged on the new terms and conditions after his dismissal.

(2) The Respondent has established a business case for the pay and reward restructure. This is fairly low hurdle for them to surmount. The business case included a number of elements. First, it eliminated anomalies, making it transparent and fair between employees. Second, it simplified the structure making it easier to understand and apply. Third, the new structure made it easier to recruit and meant that the Respondent was better

placed to compete with competitors. Fourth, the new structure was better placed to incentivise employees by a bonus scheme that reflected performance from both individual and store. Fifth, the new structure was put in place to comply with the National Living Wage. It may also have meant harmonisation with other employees in the Kingfisher Group. These are all factors that establish a reasonable business case for the new structure.

(3) We recognise that there were winners and losers among the employees. The Claimant was a long standing employee and therefore lost out overall. However, his pensionable pay would increase, he would retain his fork lift truck allowance, he would receive compensation for his loss of earnings, and he would get a bonus as per new employees. So far as the Respondent was concerned, they had put in place a pay and reward structure that was fit for purpose and no doubt putting their business in a good position going forward. 99.8% of the workforce signed up to it.

(4) The consultation process was well thought out, with collective consultation, properly appointed people's representatives and individual consultation with those employees affected, including the Claimant. Further, that consultation lead to modification of the proposal in the employees' favour, such as the retention of the fork lift truck allowance (which benefitted the Claimant and others), and extending the period of compensation for loss of benefits from 9 months to 12 months. The period over which consultation took place was sufficient, and there were some 7 weeks between the announcement on 3rd February and the implementation on 24th March 2016. The Claimant appeared to accept in cross examination that Ms J Merrells was a proper representative for the Wellingborough store on the People's Forum.

(5) It is a fact that the vast majority (over 99%) of affected employees accepted the change in the terms and conditions of their employment. On the case law (*St John of God v Brooks*), this is a material factor in the fairness of a dismissal (of an employee who does not accept the changes). The Claimant was given a choice, right up until the last moment at the meeting of 24th March 2016, and he had ample opportunity to change his mind in the individual consultation period. Even after dismissal he could have accepted the offered re-engagement on the new terms and conditions, and the fact that this did not include the "buy out" provisions would not have been unfair – see *Slade v TNT*. It could be said that an appeal was pointless, because it is difficult to see how any appeal would have been successful. However, it would not have been fair to the vast majority of the workforce to allow the Claimant to remain on his original terms and conditions and thereby being remunerated better than his fellow CAs - see *Garside v Booth*. We conclude that overall the process was fair,

and the decision to dismiss the Claimant was within the band of reasonable responses.

(6) The alleged race discrimination in the context of the Claimant's demotion. The Claimant has not identified any actual comparator or the characteristics of a hypothetical comparator. He has not identified any elements of race discrimination operating here, in other words operating on the mind of Mr Downer specifically. He is black and he was demoted. These bare facts are not enough – *see Madarassy*. There are no other facts in play. The Claimant has not made out a prima facie case of race discrimination. Even if we are wrong about this, and the burden switches to the Respondent, we are satisfied on the Respondent's evidence that the reason to demote was not related to the Claimant's colour. We have in mind particularly that it is not credible that Mr Downer would promote the Claimant and, 6 months later, demote him because of his race or colour. If Mr Downer was consciously/unconsciously biased against the Claimant because of his race, he would not have promoted him in the first place. Further, some (albeit somewhat subjective and woolly) criticisms of the Claimant's performance can be made in the period he was a level 4 CA. After his demotion he was again improving his performance and was on course for promotion again. Anyway, it is likely that the Claimant's claim is out of time as it was a one off act, albeit with continuing consequences. The Claimant has not established in evidence why it would be just and equitable to extend time.

(7) The race discrimination complaint in the context of the fork lift truck training issue. There is no or insufficient evidence on the facts that the Claimant was treated less favourably than others here. He was not trained to use a counter balance fork lift truck, but nor were many others. That supports the Respondent's case that it was a business need driven role. The Claimant was not required to be counter balance fork lift truck trained, and he was trained on the Bendi fork lift truck which he did need to use. In any event, he suffered no detriment because he received the fork lift truck allowance and would not have received more for being counter balance fork lift truck trained. No prima facie case has been made out. In any event, the claim is out of time as the issue did not arise after 2010 as it was not raised by the Claimant. He then worked in areas of the store where he was not required to use the counter balance fork lift truck. He has not established in evidence why it would be just and equitable to extend time.

Employment Judge G P Sigsworth, Huntingdon.
Date: 23 May 2015

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS