



EMPLOYMENT TRIBUNALS

Claimant: Mr O O Okanlawon
Respondent: London City Airport Limited
Heard at: East London Hearing Centre
On: 28 to 30 October 2020
Before: Employment Judge R Barrowclough
Members: Ms S Harwood
Mr P Lush

Representation

Claimant: In person
Respondent: Ms V Brown (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's complaints of (a) direct race discrimination, (b) refusal of annual leave, (c) unauthorised deductions from wages, (d) holiday pay, and (e) breach of contract (both outstanding notice pay and a breach of the Respondent's disciplinary procedure) all fail and are dismissed.

REASONS

1 By his ET1 claim form, which was presented to the Tribunal on 18 January 2019, the Claimant, Mr Olusegun Olugbenga Okanlawon, who was born on 5 December 1965 and who identifies himself in as being a black British man of Nigerian ethnicity or background, raised a number of complaints against London City Airport Ltd, his former employers, who resist and dispute all such claims. There have been a number of Preliminary Hearings of the Claimant's claim, including in particular before Employment Judge Jones on 17 June 2019 and Employment Judge Russell on 8 November 2019. As a result, the complaints originally advanced by the Claimant which were permitted to go forward for determination by the full Tribunal are (a) allegations of direct race

discrimination, (b) claims for outstanding payments, and in particular (i) unlawful deductions from wages, (ii) accrued holiday pay and (iii) notice pay, and (c) breach of contract.

2 We heard the Claimant's claim over the course of a three day hearing between 28 and 30 October 2020. With the agreement of the parties, the full merits hearing proceeded by way of a hybrid hearing. Until shortly before 28 October, it had been expected that the hearing would be conducted at the East London Hearing Centre on a face to face basis, but that was changed more or less at the last moment due to concerns concerning the Covid19 pandemic, and the case was then listed to proceed by way of a remote hearing adopting the CVP platform. However, that proved not to be possible because, as a result of the belated change of plan, electronic copies of the substantial trial bundle had not been provided to the Tribunal. The Tribunal members very helpfully agreed to travel to and sit at the Hearing Centre, where hard copies of the trial bundle and of the other documents in the case were available. Accordingly, whilst all members of the Tribunal sat together at the Hearing Centre, the parties and their witnesses attended remotely.

3 The Claimant represented himself and gave evidence in support of his claim. The Respondent was represented by Ms Victoria Brown of Counsel who called as witnesses (a) Mr Kashim Uddin, the Respondent's HR Project and Programmes Lead; and (b) Ms Stephanie Powell, the Respondent's Reward Manager, who deals with payroll and pensions and who has overall responsibility for employees' remuneration. We were given a number of documents, as follows. As already noted, an agreed trial bundle was provided, together with a cast list, chronology, and a list of issues prepared by the Respondent. There were witness statements from both Mr Uddin and Ms Powell, and whilst the Claimant had not prepared a witness statement, he verified and confirmed the contents of his ET1 claim form, and also of the emails which he sent to the Tribunal on 6, 7, and 26 September 2020, the latter being re-sent on 26 October, which together formed the basis of his evidence. Finally, after we had heard from all the witnesses, we were provided with written closing submissions by Ms Brown, to which she spoke, and with a further statement together with attachments prepared by the Claimant on 29/30 October 2020.

4 At the conclusion of the hearing, we reserved our judgment. We discussed both the issues and the evidence we had heard on 30 October, following our adjournment of the full merits hearing, and the members of the Tribunal have since corresponded in unanimously reaching this judgment and these reasons.

5 We find the following to be the relevant facts. The Respondent is a well-known business airport with approximately 730 employees situated in East London, where the Claimant was employed as an engineering shift technician. He started work in that role on 30 July 2018, remaining in the Respondent's employment until 26 December 2018, when his initial probationary period was terminated. The Claimant's duties included carrying out routine and essential planned maintenance tasks; investigating, reporting and rectifying faults and equipment failures; and deputising for the leader of his shift during absences. The Respondent's offer of employment letter (pages 102–106 in the agreed trial bundle) and a summary of details of the terms and conditions of employment document (pages 109-122) had been sent to the Claimant by Mr Uddin on 13 July 2018.

6 That letter and the annexed summary contain a number of important matters concerning the Claimant's employment and his claim. In particular, the Respondent's letter set out that the Claimant's continued employment was subject, inter alia, to successful completion of a probationary period of between six to nine months; that his normal hours of work were 42 hours per week; that the Claimant would be paid a salary of £38,467.41 per annum, based on that normal working week; and that he would accrue holiday over the course of his initial probationary employment in accordance with the formula therein set out. The letter further provides that the Claimant's employment could be terminated by either party after more than one month but less than six months' service by the giving of one week's notice; by one month's notice for six months to five years' service; and thereafter of one week for each continuous year to a maximum of twelve.

7 In relation to holiday entitlement, the summary provides that the Respondent's holiday year runs from 1 January to 31 December; that for an employee working the Claimant's hours he would be entitled to a total of 247 holiday hours in his first year of employment; that leave accrued at the rate of one twelfth of his annual entitlement for every completed month of service during that year; and that no leave could be taken during an employee's probationary period unless (a) leave was awarded to avoid forfeiture (although such leave could be carried over into the following year, at the discretion of a manager), or (b) there were exceptional circumstances, when leave could be taken with the approval of an executive director of the Respondent

8 On the first page (102) of the offer of employment letter, the Claimant was advised that his full terms and conditions of employment were set out in the 'Handbook for Employees', which could be accessed via the Respondent's intranet or supplied by a manager on demand. The Claimant replied on 14 July, the day he received Mr Uddin's letter, accepting the Respondent's offer of employment on the terms stated.

9 Given the nature of the Respondent's business and of the Claimant's role, it was not in dispute that it was necessary for the Claimant (as well as other employees) to have access to what is usually described as the "airside" areas of the London City airport in order to undertake at least some of his day to day duties. Whilst no specific definition was provided, we understand those to be restricted areas to which members of the public do not have access, unless when catching a plane and having passed through security and passport controls. Again, it was not controversial that the Civil Aviation Authority ('CAA') have put in place stringent regulations concerning who may or may not have such access, for obvious security reasons. The assessment of an individual's suitability to obtain airside access requires not only criminal record checks, but also the provision by employees of details of and references for their work, education or occupation, including any gaps, covering the whole of the preceding five years before commencing employment with the Respondent. That requirement, with instructions on how to provide those references and of what is/is not acceptable to the Civil Aviation Authority and the Respondent, is summarised and set out in the documents at pages 121 (part of the pack sent to the Claimant on 13 July) and 132 – 140 (the ID Pass regulations).

10 When the Claimant started work at the airport on 30 July 2018, he was provided with a temporary airside pass, described as a "60 day temporary pass" in the regulations at page 133 of the bundle. As is there explained, such passes are designed and provided for staff who are in the process of applying for a full airside pass, or those working temporarily at the airport for a third party, and are only valid for a maximum of 60 days

within any rolling 12 months period. The regulations further provide that such temporary passes will not be extended within any such 12 months period, save with the CAA's written permission, and only in what the CAA deem as extenuating circumstances; and that a permanent airside pass should be sought by anyone employed by the Respondent who will require access to the airside or critical part of the airport on a regular basis in order to carry out recognised business for the Respondent. There is no dispute that the Claimant fell into that category, and on 10 August 2018 he provided the Respondent with details of his employment history covering the previous five years, as required.

11 The details then supplied by the Claimant are at page 123 of the trial bundle, and they were provided to Mr Kashim Uddin, who had as noted sent him the original offer of employment letter with its various enclosures. Part of Mr Uddin's role includes obtaining full or permanent passes for suitable employees, and, as he explains in his witness statement in evidence that was not contested, it is only after an employee has received clearance for a permanent airside pass that he or she will be provided with a master key, which gives access to all doors within the airport, including restricted areas, as well as the "electric gate" key. No description of that was provided, and we assume it to be some form of restricted access barrier; although, for the reasons given below, its precise function is not material.

12 As can be seen from page 123, the Claimant initially provided four references in respect of the five year referencing period, although two of them in fact pre-date that period. Secondly, one of the other references provided by the Claimant was CBRE, a substantial real estate and property management undertaking, covering the period from July 2010 until July 2018. On enquiry, it became clear that the Claimant had not been an employee of that company, but had worked for them via an agency, so the Claimant was told to provide a referee from that agency instead. Finally, the Claimant had also indicated that he had been self-employed for the whole of the period from 1 May 2011 until joining the Respondent in July 2018, and, in accordance with the referencing requirements, had provided details of his accountant, who practised in Nigeria. However, the Respondent's ID Centre, whose function is to check applications and issue full passes to appropriate personnel, could find no record on the relevant online register of the identified accountant.

13 As well as work references, the Claimant was asked to and did provide his British passport to the Respondent as part of the security checking process mandated by the CAA. That is in order to establish that an applicant has the right to work in the UK. The Claimant has dual nationality, and also submitted his Nigerian passport. Mr Uddin could not recall having asked the Claimant to do so, although he accepted that he had seen the Claimant's Nigerian passport before. He said that it was possible that the Claimant might have been asked to provide it, since the Claimant's account was that he had been travelling abroad during the preceding five years, and entries in his passport might help to confirm the Claimant's history in that period; but that the Claimant's British passport alone would be sufficient for all the formal requirements was confirmed by Mr Uddin.

14 On 19 August and whilst at work, the Claimant sustained an apparently minor injury when he hit his head on the door frame of a works van whilst getting into it. That resulted in a cut to his head, for which the Claimant received first aid at the time before continuing with his duties. Thereafter the Claimant of his own volition attended a hospital A&E department, where a dressing was applied to the cut, but no stitches were required. No further investigations or X-rays were undertaken. On 23 August, the Claimant

consulted his GP, who diagnosed him as suffering from hypertension, for which medication was prescribed.

15 On 31 August Mr Wide, the head of engineering and service delivery, raised a concern about the Claimant's performance and communication skills with one of the Respondent's HR staff members (Ms Sahinoglu), noting in particular that communicating effectively was a key part of the Claimant's role, and necessary for the protection of both himself and his colleagues.

16 On 5 September, Mr Uddin wrote to the Claimant by email, asking him to provide alternative evidence of his self-employment since his nominated accountant could not be traced; and also suggesting that he contact HMRC in order to clarify his employment history over the previous five years. The Claimant did so, and the resulting letter from HMRC is at pages 289/290. Mr Uddin points out that the information provided by HMRC was very different to the Claimant's initial version of his recent employment background, and says that the process of compiling a compliant list of references for the Claimant was a lengthy and painstaking one, involving his calling two meetings with the Claimant and a significant amount of email correspondence (see pages 293-312,314-317,and 327-329). A good example is page 314, an email from Mr Uddin to the Claimant, in which Mr Uddin highlights what the Claimant had provided in terms of verifiable employment history, but also what was still required from him to complete the picture. The Claimant however did not accept that his alleged delay and/or failure to provide accurate information concerning his employment history was the reason why his full airside pass was not obtained until significantly later (in fact, 14 November).

17 Whilst the Claimant accepted that on 18 September he wrote to the Respondent effectively thanking them for their support and assistance (pages 316/317), and that there was no allegation from him then of discrimination of any sort, he did raise such a suggestion six days later. In his email of 24 September (page 321), the Claimant complained that, as a British Black African, he was being asked offensive and unnecessary questions about his work references, which he believed would not have been raised with a white employee. He said that he felt '*victimised*' because the Respondent would not simply accept what the Claimant told them about his relevant work history, which he was having difficulty in establishing, for example in contacting some of the people he had worked for.

18 On 24 September the Claimant did not attend work, and was signed off sick from that date, initially until 14 October, and subsequently until 11 November 2018, due to poorly controlled hypertension and headaches, as the fit notes from his GP made clear. In order to assess the effect that this might have on the Claimant's ability to return to work, the Respondent referred him to their Occupational Health advisers, writing to the Claimant on 2 October to tell him that they had arranged a telephone appointment for him to speak to an OH nurse on 5 October. The Claimant did not confirm that he would participate, and the proposed phone consultation did not go ahead, although it is not clear why it could not. Subsequently, on returning to work on 14 November, the Claimant completed a 'return to work' form, confirming that he was able to do so as from that date. A few days later, on 19 November, the Claimant duly saw an OH adviser, and was passed as being fit to return to his current post with no restrictions, and with no requirement for any help or support in order to manage his condition.

19 In the meantime, the Claimant's 60 day temporary airside pass had expired on 28 September. As already noted, it could not be extended by the Respondent, and without a pass, the Claimant was unable to perform his role at the airport. Ms Sahinoglu, at the time the Respondent's landside HR business partner, had written to the Claimant on 26 September, asking him to provide the outstanding work references by 5 October, an additional week being allowed him since he was signed off sick, following that up by a further letter to him on 1 October, by which time the required references had been outstanding for over two months. The Claimant accepted in evidence that the Respondent had treated him favourably, and was apparently trying to help him, by providing that one week extension. Since the Claimant continued to be absent from work due to sickness until mid-November, it was not possible for the meetings with him to try to clarify and progress his outstanding references (on 26 September and 5 October, when his probationary period was due to be discussed as well) to go ahead. Instead, Ms Sahinoglu wrote to the Claimant on 12 October (page 330), suggesting that he be placed on paid leave in order to facilitate the referencing process, and further extending the deadline for compliance with that process from 5 to 22 October. Although the paid leave proposal did not come to fruition, since the Claimant remained on sick leave, the Claimant once again accepted in his evidence that those actions by the Respondent were apparently designed to assist him. Together with her HR colleague Ms Amati, Ms Sahinoglu endeavoured to try and complete the Claimant's complicated and protracted referencing process, liaising with the Respondent's ID centre, finally succeeding on 14 November when the Claimant's five year referencing history was cleared by the ID centre. In fact, as can be seen at pages 364 to 373, a last minute query was raised by the ID centre on that day, but that was immediately addressed and resolved by HR, and the application successfully resubmitted that same day. The Claimant agreed that his security clearance was then being treated by the Respondent as an urgent matter, and that by doing so Ms Amati was trying to help him obtain a full airside pass as quickly as possible.

20 Mr Uddin (who was himself absent from work from 2 October until 5 November on paternity leave) states that it is very uncommon for the referencing process for new staff to take anything like the initial 60 day period covered by a temporary pass. The process in the Claimant's case was made more difficult by his initial inability to provide accurate reference details, his continuing failure to, or at least delay in, doing so, and by the complicated nature of his particular work history over the preceding five years; and, Mr Uddin says, had nothing to do with the fact that the Claimant is black and/or of Nigerian nationality.

21 In relation to the comparators relied upon by the Claimant concerning the delay in his obtaining a full airside pass, Mr John Swallow is white and Mr Nandra of Asian ethnicity. Both of them, Mr Uddin states, provided accurate references for the preceding five year period. In Mr Swallow's case, he had worked for only one employer for the whole period (page 439); his full airside pass was issued within a month of his submitting his references and within two weeks of his commencing employment with the Respondent on 28 August 2018. Mr Nandra had worked for two employers in the relevant period, and his full pass was issued within one month of his submitting his references and within one week of his starting work at the airport on 7 August 2017 (see pages 437 to 441). In both their cases, work references from their previous employers had in fact been received from their former employers before they began work for the Respondent. It is for these reasons, according to Mr Uddin, that they quickly obtained full airside passes, whereas it took a great deal longer in the Claimant's case. Whereas Mr Swallow only required one reference to cover the relevant period, and Mr Nandra two, the Claimant had needed

fourteen: that process would inevitably take significantly longer, Mr Uddin said, and also that the same requirements are applied to all UK airports.

22 It was not disputed that all of the Respondent's employees whose roles necessitate airside access are required to complete three safety courses, and to sit and pass an exam at the end of each of them, before a full airside pass is granted and issued; and to retake further such courses annually thereafter. The courses are in ramp safety, fire awareness, and general safety awareness. The Respondent's case is that, as indicated on the certificates of completion on pages 355 to 357, the Claimant successfully sat the three exams on 26 October. The Claimant disagrees, and states that he in fact did so on 13 October. However, the parties disagreement on this point is not material, since on either version the Claimant had taken and passed all three exams in October 2018, some time before his full airside pass was able to be issued. Mr Uddin confirmed that both Mr Swallow and Mr Nandra were required to attend those courses and sit and pass the exams at their conclusion before being issued with airside passes, Mr Swallow's certificates being at pages 442 to 444, and Mr Nandra's at pages 447 to 449.

23 Following the issuing of a full airside pass to the Claimant on 14 November and his return to work that day, two incidents involving him occurred later that month. The first was on 27 November, when the Claimant was attending a training session, including the use of a new piece of equipment (an 'A-Frame') to lift manhole covers. The Respondent's case, which is set out in the memo of that date from the relevant training manager at page 376 is that it took a number of repeated attempts before the Claimant followed instructions as to how to use this equipment, and concerns were expressed about his ability to do so unsupervised and 'for real'. The Claimant's case is set out in the grievance he submitted following his suspension on 30 November, and in the written representations in support which he sent the Respondent on 8 December, when he disputed that he had been at fault or that there were any grounds for concern about his performance, and instead suggested that he was being picked on and bullied as a means of discrimination.

24 Two days later, on 29 November, the Claimant was asked to change a light fitting in the airport terminal. In the course of doing so, it is said that the Claimant mistakenly switched off the electricity supply for the lighting in the main concourse, rather than the power to the fitting on which he was working, thereby at least potentially seriously endangering his own health and safety. The Respondent regarded this as a serious matter, and wrote to the Claimant on the following day suspending him pending their own investigation into the incident. In response, and also on 30 November, the Claimant submitted a grievance to Ms Sahinoglu and her colleague Ms Andersen arising from the Respondent's decision to suspend him.

25 Those matters resulted in the Respondent sending the Claimant two letters on 7 December. In one (page 388), the Claimant was invited to attend a meeting on 14 December to discuss his grievance; in the second (389), he was informed that the incident on 29 November and his performance in his role to date would also be addressed then, since his probationary period of employment was due to expire on 30 January 2019. However, no such meeting took place, since on 10 December the Respondent received a medical certificate (page 403) stating that the Claimant was signed off and would not be fit to attend work until 9 March 2019. Unfortunately, it is not possible to discern the reason for this absence from the very poor photocopy of the certificate. The Claimant had in fact responded to at least one of the Respondent's letters, submitting written representations

in support of his grievance on 8 December (pages 398, 401/402) and also raising allegations of bullying and unlawful discrimination.

26 More or less simultaneously, the Claimant submitted a request to take annual leave, although the parties disagree about the details. The Respondent suggests that the Claimant's request was submitted on 7 December, and was for the period from 11 December until 15 January 2019; the Claimant insists that his request was made on 2 December, covering the period from 3 December (the following day) until 17 January in the New Year. Ms Powell, whose duties include processing payroll and pensions and overall responsibility for all employees' reward packages, told us that requests for annual leave are presented by employees via the ADP software system, which the Respondent uses to process such requests. The relevant request from the Claimant's ADP log is at page 434, which we find confirms that the details suggested by the Respondent, rather than by the Claimant, are correct. Ms Powell goes on to state that by the time of the Claimant's holiday request on 7 December, he would only have accrued approximately one third of his annual leave entitlement, equivalent to 80 hours or just under two weeks' leave, so that in any event he was not entitled to the period of about one month's leave which he in fact requested. Finally, whilst it was the leave administrator (Kelly Hunt of HR) rather than Ms Powell who refused the Claimant's request shortly after it had been presented, Ms Powell points out that it was submitted very shortly before the period requested commenced, and additionally covered the Christmas and New Year period, which is the airport's busiest time of the year. It is very likely that the period requested would have been fully booked with leave requests already, since as the Respondent's employee handbook at page 181 makes clear, it is necessary to restrict the number of employees taking leave at any one time for operational reasons. Page 428 is another entry in the ADP software system, which reveals that lots of employees in the Claimant's department had requested and took leave in December/January 2018/9. In Ms Powell's view, the decision to refuse the Claimant's request was fully justified and in accordance with the Respondent's usual process, and there is nothing to indicate that it had anything to do with the Claimant's race or nationality.

27 The Claimant, whilst accepting that his request for effectively five weeks leave was refused, that in accordance with the terms and conditions he had initially agreed there is a limit of three weeks continuous leave for employees, and that he was only then entitled to a maximum of two weeks' holiday, suggests that the additional leave he requested in December was for compassionate reasons, in that he had lost his uncle. However, Employment Judge Russell determined at the preliminary hearing on 8 November 2019 that that was an amendment or addition to the Claimant's claim which would not be allowed. In any event, and as an apparently contradictory alternative, the Claimant suggested in his evidence to the Tribunal that there were exceptional circumstances in his case because he had been injured at work, and that he needed the extra time to recuperate and in order to get fit to return to work. Whilst the Claimant said that he had told his manager, Mr Russell Wide, of his request for extended leave, Ms Powell's evidence was that only a director of the Respondent would have authority to extend annual leave for either reason, that Mr Wide is not such a director, and that she was unaware of any such director being asked for or granting such an extension. Thirdly and as a further alternative, the Claimant said that he was told that he had to utilise his holiday entitlement before the following April, which is why he asked for five weeks leave at the Christmas/New Year period.

28 In the light of the Claimant's medical certificate dated 10 December (page 403), the Respondent contacted the Claimant by email on 12 December (404) suggesting a telephone appointment with OH staff to determine whether or not he would be fit enough to attend and participate in the meetings scheduled for 14 December. When the Claimant had not responded nor contacted OH as suggested by 14 December, the Respondent re-scheduled the meeting at which the Claimant's grievance and probationary period would be discussed to 18 December, notifying the Claimant on that day (page 405).

29 The Claimant did not reply to that email, nor did he attend the rearranged meeting on 18 December, which was conducted by Ms Melanie Burnley, the director of 'Transformation & Development'. Ms Burnley considered the Claimant's grievance, including the representations which he had submitted on 8 December, which she did not uphold for the reasons set out in her letter to the Claimant at page 409. In relation to the incident on 29 November which had given rise to the Claimant's suspension (and thus to his grievance), Ms Burnley determined that the Claimant had probably made an innocent mistake in turning off the incorrect switch before working on the light fitting in question. The switches in the relevant fuse box had not been labelled correctly. However, the Claimant had all the necessary equipment with which to check whether the circuits he was working on were live and, had he carried out a preliminary check to establish whether or not they were in fact live, which would be expected and required of any qualified electrician, he would have appreciated his mistake and the potential danger to himself. In the light of that finding, and of the performance issue arising from the training session on 27 November, Ms Burnley determined that the Claimant's performance in his role had been unsatisfactory, and that it would not be appropriate for him to pass his probationary period. Accordingly, the Claimant was given one week's notice of the termination of his employment on 26 December in the Respondent's letter to him of 19 December (page 410).

30 The Claimant submitted an appeal against the Respondent's decision to terminate his employment, by email sent at 1510 hours on 19 December (page 411). The Respondent suggested that the Claimant's appeal should be heard on 21 December, but on 20 December the Claimant responded (412-414) indicating that he would be unable to attend on that date, simultaneously submitting representations in support of his appeal (pages 418-419). The Respondent replied later that same day, asking the Claimant to notify them by 24 December of when he would be available to attend his appeal hearing, and stating that if they had not heard from him by then, the appeal would be heard on 31 December (413). No such notification was received from the Claimant, nor to the Respondent's subsequent invitation (413) to the appeal hearing at 1100 hours on 31 December, when the Claimant's appeal proceeded in his absence, heard by Seila Becerra Terrado, the Respondent's head of asset integration, who did not uphold it, as the Claimant was notified by letter of 2 January 2019 (page 422).

31 In relation to the Claimant's claim for unlawful deductions from wages, Ms Powell noted that the Claimant had a period of sick leave from 24 September until 14 November. The Respondent's employee handbook provides that during the probationary period of employment, an employee is only entitled to statutory sick pay ('SSP'), and that SSP is paid when an employee has been absent sick for four days or more (page 219). The Claimant was paid in accordance with that policy, as was a white British male employee called Jason Adams, who was also in his probationary period in the autumn of 2018, during the months of October and November that year, as his payslips at pages 445 and

446 demonstrate. The Claimant's race and/or nationality therefore had no impact on the way in which he was treated, Ms Powell says. She goes on to point out that deductions from employee pay are made in arrears, in the month following the particular employee's absence. Thus the deduction of full pay from the Claimant's wages for the period from 24 to 30 September was made in the October payroll, for October in the November payroll, and so on. The same applies to payment of SSP – it is paid in the month following the relevant absence. The Claimant's case initially was that he had never been provided with or had access to the Respondent's employee handbook, which sets out sick pay entitlement and which he had seen for the first time in the bundle. When it was pointed out to him by Ms Brown that the same provisions are contained in the documentation accompanying the offer of employment letter, at page 176, the Claimant responded that those provisions did not apply to him, because the reason that he was signed off sick was due to the cut to his head which he had sustained at work on 19 August.

32 Turning to holiday pay, Ms Powell's evidence was that the Claimant's last pay slip (page 130) was generated on 21 December, two days after the decision to dismiss him had been taken, covering the month of December. Because no payslip was created for the Claimant for January 2019, no deduction from wages was ever made in relation to the period from 26 to 31 December, after the Claimant's employment had terminated. Accordingly, the Claimant was overpaid five days wages, which has never been corrected. The flaw in the Respondent's administrative system has since been corrected. Secondly, Ms Powell accepts that the Claimant had not taken any annual leave by the date of his dismissal on 26 December, and was therefore entitled to accrued leave for the almost five month period of his employment. It was only whilst Ms Powell was preparing a response to the Claimant's Tribunal claim in April 2019 that she realised for the first time that the Claimant had not been paid for that accrued but untaken leave. She therefore processed a payment equivalent to six months such leave in the April payroll, which was paid to the Claimant that month (see page 131). That was a further error, as Ms Powell agrees: the Claimant should have been paid for five, rather than six, months' untaken leave, a total of 95 rather than 109 hours. So here too there has been a mistaken overpayment to the Claimant, amounting to £247 gross pay. In any event, the Claimant accepted in his evidence that he had been paid his apparently outstanding holiday pay.

33 Finally, Ms Powell confirms that the Claimant was paid one week's notice pay, up until 26 December, following the termination of his employment on 19 December, in accordance with the summary of details (pages 109-122) which was sent to the Claimant on 13 July and agreed by him on the following day: in fact, for the reasons set out in the preceding paragraph, the Claimant was paid up until 31 December. The Claimant's evidence was that, since he should not have been dismissed on December 26, he is entitled to one month's notice.

34 The only matter the Claimant wished to raise with Ms Powell concerned the P45 which he received following the termination of his employment with the Respondent. Ms Powell confirmed that the form would have been generated by the software which the Respondent uses, and that she would have signed it before the form was sent to the Claimant. There is no copy of the form in the agreed trial bundle.

Submissions

35 The Claimant's case can be summarised as follows. First, that the Respondent

had purposefully delayed and obstructed the obtaining of the Claimant's full airside pass, and had lied to him during the protracted application process, and that once the Claimant had showed them what was required, the pass had been obtained without further difficulty or delay. In the Claimant's submission, he was and is an experienced and qualified electrician, but his full airside pass was unlawfully withheld by the Respondent, and should have been obtained by 15 August 2018. Essentially the same is true in relation to the 'lifting' certificate related to the November training session. The Claimant asserts that he and up to four other members of staff were 'targeted' by the Respondent, and that in his case at least that was because of his race or nationality. The Claimant holds dual nationality, and provided the Respondent with his Nigerian as well as his British passport, but the fact of his Nigerian nationality had resulted in his airside pass being intentionally delayed. The Claimant further alleges that he should have received full pay, rather than SSP, during his sickness absences; that his request for leave at the end of 2018 was submitted on December 2 and should have been granted; and that he was entitled to one month's notice on termination, rather than the one week that the Respondent paid.

36 Ms Brown on behalf of the Respondent had prepared and spoke to written closing submissions. We address the points that she and the Claimant made, in so far as they may assist us, when we come to consider the individual issues to be determined hereafter.

The applicable law

37 The most significant complaint advanced by the Claimant in his claim is an allegation of direct discrimination, in breach of s.13 Equality Act 2010. That provides that a person (in this case the Respondent) discriminates against another (here, the Claimant) if, because of a protected characteristic (in this case race and/or ethnic origin), he treats him less favourably than he treats or would treat others.

38 The approach which the Tribunal should adopt in relation to such complaints was helpfully and definitively set out by the Court of Appeal in Igen Ltd v Wong & others [2005] ICR 931. The first question for us is whether a claimant has established, on the balance of probabilities, facts from which, in the absence of a satisfactory explanation, we could reasonably conclude that the respondent was guilty of the discriminatory act(s) alleged. If not, then the complaint fails and must be dismissed. It is important for the Tribunal to bear in mind that it is unusual to find direct evidence of discrimination, and few employers would be prepared to admit such discrimination, even to themselves; so the outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal. If a claimant has proved facts from which inferences could be drawn that the respondent has treated him/her less favourably on a protected ground, then the burden of proof shifts to the respondent employer to prove, once again on a balance of probabilities, that its treatment of the claimant was in no way attributable to or infected by unlawful discrimination. If the employer can do so, then the complaint fails; if he cannot, then the claim succeeds.

39 That approach is reflected in the burden of proof provisions in s.136 of the same Act; and, as Ms Brown pointed out, the Court of Appeal have more recently confirmed in Ayodele v Citylink Ltd [2018] ICR 748 that until a claimant has shown that there is a prima facie case of discrimination that needs to be answered, there is no burden of proof to be discharged by a respondent employer. Secondly, it is well established that the simple fact

of a difference in the 'status' (in this case, race or ethnic origin) and the treatment of the claimant when compared to others is not sufficient in itself to shift the burden of proof to the employer: 'something more' is required (per Mummery LJ in Madarassy v Nomura International plc [2007] ICR 867 CA). Finally, less favourable treatment is an objective test: the fact that a claimant may feel that he has been treated less favourably does not of itself establish such treatment (Burrett v Bexley Community Centre [2003] IRLR 7 EAT).

40 As reflected in the list of issues, whether or not the Claimant's claims of discrimination were presented in time is a matter in dispute. S.123 Equality Act 2010 provides that a complaint under that Act may not be brought after the end of three months starting with the act (or the last incident in a continuing series of acts extending over a period of time) to which the complaint relates, or such other period as the Tribunal deems just and equitable, failing which the Tribunal will have no jurisdiction to determine it. Ms Brown reminds us that the exercise of the Tribunal's discretion to extend time beyond the initial three month period is the exception rather than the rule; and the Tribunal should look for genuine reasons why the complaint was not presented within that period.

41 The right not to suffer unauthorised deductions from wages, unless the deduction is authorised by a relevant provision of the worker's contract or the worker has given prior written consent to the making of such deductions, is set out at s.13 Employment Rights Act 1996. Here, the Claimant claims that he was entitled to full pay during his periods of sick leave; that is disputed by the Respondent, who asserts that in any event the overpayment of the Claimant's December salary and of holiday pay to him should be brought into account in relation to any liability established by the Claimant, pursuant to s.14 ERA 1996.

42 The right to annual leave is set out in regulation 13 of the Working Time Regulations 1998, and the statutory rate at which annual leave accrues is contained in regulation 15. Those provisions are broadly the same as the contractual position contained in the summary of details and employee handbook set out above, insofar as relevant to the matters in dispute in this case, so it is not necessary to repeat them here; although (a) the statutory 'rounding up' provisions apply, and (b) it should be noted that regulation 15 contains notice provisions for annual leave requests applicable to both employer and employee, to both of which points we will return to hereafter.

43 The Claimant's breach of contract claims (for notice pay, accrued holiday pay, and that he was entitled to receive a warning before being dismissed) are governed by the agreement between the parties, as set out in the Respondent's offer letter and summary of details, which the Claimant accepted in writing on 14 July 2018, and the Respondent's employee handbook, if applicable.

Discussion and Conclusions

44 We consider first the Claimant's allegations of direct discrimination because of his race as a black man, or alternatively his ethnic origins or nationality as a Nigerian, before focusing on whether or not those complaints were presented in time, and if not whether it would be just and equitable to extend time in relation to them.

45 The Claimant's allegations fall into five categories: that he was not allowed to take annual leave from 3 December 2018 to 17 January 2019; that the Respondent delayed in

providing him with a full airside pass; that he was required to sit three competence exams in October 2018, rather than only one or two; that the Respondent '*bounced back*' documentation provided by the Claimant because he provided a Nigerian passport; and that the Claimant did not receive full pay during his lengthy sickness absence, rather than SSP. Ms Brown is correct in submitting that the Claimant never suggested to Mr Uddin or to Ms Powell during the course of their evidence that they had behaved or acted as they had because of his race or ethnicity, or that his race or ethnicity played any part in their conduct. That in our view is significant, since the process of obtaining full airside passes for qualifying employees (to which process three of the Claimant's complaints relate) is part of Mr Uddin's role and duties; whilst employees' annual leave entitlements and pay issues are within Ms Powell's remit.

46 Focusing first on the Respondent's refusal of the Claimant's leave request, we are satisfied that the Respondent's records are correct, and that the Claimant's request for leave was from 11 December until 15 January, and was presented on 7 December, rather than the slightly different dates which the Claimant suggests. Secondly, under both the parties' agreement and regulation 15A of the Working Time Regulations 1998, an employee's leave entitlement accrues at the rate of one twelfth of the annual allowance per month of service. Rounding up in accordance with the statutory provisions, the Claimant had accrued five months' worth of annual leave at the time of his request on 7 December. Applied to the Claimant's entitlement of 247 hours per annum, that produces a figure of just under 103 hours as at 7 December, which on the basis of the Claimant's 42 hour working week we round up to two and a half weeks' leave entitlement. In fact, the Claimant requested five weeks' leave, double his accrued entitlement. Additionally, and even if he was entitled to five weeks' leave, the Claimant was obliged under regulation 13 to present his request ten weeks in advance, instead of the four days' notice which he actually gave. Finally, the Respondent had provided the required notice for the purposes of regulation 15(2)(b) that ordinarily leave could not be taken in an employee's probationary period in the summary of details at page 114. Accordingly, it follows that the Respondent was well within both its contractual rights and its statutory obligations in refusing the Claimant's request.

47 We also agree with Ms Brown that there is no basis for suggesting that the Respondent's refusal was unreasonable, arbitrary or capricious. We accept that the Christmas and New Year period is usually a very busy time for the Respondent, and that a considerable number of the Claimant's colleagues had already been granted leave during that period on the basis of requests presented much earlier, whereas the Claimant was asking for a lengthy holiday period with only four days' notice. There is no evidence to suggest that the Claimant had approached any of the Respondent's executive directors to seek leave on an exceptional basis, or that he had sought to do so; the Claimant's suggestion that his request was due to a bereavement was put forward very belatedly, and once again was unsupported by evidence; and is in any event contradicted by his later evidence that the leave provisions did not apply to him and that he should have been granted leave because he had sustained an injury whilst at work and needed to recuperate and recover from it. As to that suggestion, the clear evidence is that the cut to the Claimant's head was a minor injury sustained months earlier, treated at the time and which did not require any medical follow-up, and we dismiss it. Overall, in our judgment there are no facts from which we could draw inferences or conclude that the Respondent treated the Claimant less favourably because of his race or ethnicity in refusing his request for annual leave. If we were wrong in coming to that conclusion, we would in any event find that this allegation had not been presented in time. The Claimant's leave

request was refused within a few days of its presentation on 7 December 2018, whilst this allegation was not raised until the preliminary hearing before Employment Judge Russell on 17 June 2019. Prima facie, it is three months out of time, and no grounds or reasons why time should be extended under the just and equitable principle have been put forward.

48 We turn to the issue of alleged delay in providing the Claimant with a full airside pass. Two preliminary points arise. First, that it was not in dispute that the master key and electric gate key are only given to those with such a pass: so in themselves they add nothing to the issue to be determined. Secondly, it is necessarily implicit in the Claimant's allegation of less favourable treatment because of his race or ethnicity that the alleged delay in his receiving a pass was deliberate and intentional, and not simply the result of any error or inefficiency.

49 In our judgment, the Respondent's stipulation that relevant employees like the Claimant provide comprehensive employment histories covering the previous five year period was entirely justified, since it is a standard requirement imposed by the CAA at all UK airports. Additionally, the referencing documents required of employees were clearly identified in the documents provided to and signed for by the Claimant on 14 July 2018, including in particular the explanation and illustration at page 121, and the example on the following page. Finally, it is equally clear that unless and until an employee completes an acceptable referencing process, usually within 60 days of starting work for the Respondent, he or she will not receive a full airside pass.

50 Plainly the Claimant failed to provide anything like full details and information in the employment history he submitted on 10 August 2018 (page 123), for the reasons set out at paragraph 12 above. It was only after a letter from HMRC was obtained at the Respondent's suggestion in September 2018 that a fuller and more accurate picture of the Claimant's recent work history started to emerge, including the need to obtain a further thirteen confirmatory references to cover parts of the five year period. We accept that that process would inevitably take time. Once again as the email correspondence referred to in paragraph 16 above establishes, the Respondent repeatedly tried to follow up the gaps and the missing information in the Claimant's work history. At page 314, Mr Uddin wrote to the Claimant summarising what relevant information had been received, and what gaps or missing information still needed to be addressed. The Claimant replied on 18 September thanking Mr Uddin for his assistance, before raising allegations of discrimination against him six days later (321), despite accepting in his evidence that nothing of substance had changed in the interim. The Claimant was then signed off sick continuously from 24 September until 14 November, receiving his full airside pass on his first day back at work thereafter.

51 There is literally no evidence to suggest that Mr Uddin or indeed anyone else, acting alone or together, delayed or tried to delay or prejudice the Claimant's application for a full airside pass. It is difficult to see why the Respondent or anyone employed by it would wish to do so or what purpose it would serve; and since the allegation was never put to Mr Uddin, there is nothing to suggest any hostility towards the Claimant or other malign intent on his part. In fact, all the relevant evidence points in the opposite direction: that the Respondent was trying to help the Claimant obtain a permanent pass, and if anything treated him more favourably than it treats other applicant employees. Ms Brown sets out at paragraph 29 of her closing submissions the steps taken by the Respondent to

assist the Claimant in the process. Perhaps the most noteworthy are that the Respondent twice extended the Claimant's temporary 60 day pass, on 26 September and 12 October 2018, on the latter occasion suggesting that the Claimant take paid leave of absence, when they would have been entitled under the parties' agreement to terminate his employment on the expiry of the 60 day temporary pass, had they wished to do so; that the Respondent arranged for the Claimant to take his capability tests whilst on sick leave to avoid his having to obtain a further DBS certificate; and the urgency with which the Respondent dealt with the ID centre's last minute query concerning the Claimant's referencing to ensure that he obtained his full pass on his first day back at work.

52 The evidence at pages 437 to 441 in the bundle clearly shows that the Claimant's chosen comparators, Mr John Swallow and Mr Nandra, also had to provide comprehensive five year employment histories as part of the same referencing process on joining the Respondent. The difference between them and the Claimant is that both of them provided accurate details and information on their first attempts, and that they had been employed for only one or two previous employers respectively during the previous five years; whereas the Claimant had fifteen required references over the same period, and provided inaccurate and incomplete details. We accept that it was for those reasons, and the Claimant's continuing inability to provide the required information about his recent working history, that the process in Messrs Swallow and Nandra's cases took a significantly shorter period than that for the Claimant. There is nothing to suggest that the Claimant was treated less favourably by the Respondent than it treated either Mr Swallow or Mr Nandra because of his race or ethnicity.

53 Here again there are no facts from which we could conclude or draw inferences of less favourable treatment of the Claimant because of his race or ethnicity; and once again the complaint is out of time. The Claimant's case is that he should have been given a full pass no later than mid-August 2018; this allegation was first raised at the preliminary hearing on 17 June 2019, nearly one year later; and no material or reason was advanced as to why time should be extended.

54 The Claimant's third allegation of discrimination is that he was required to sit three competence exams, rather than only one or two, in October 2018. The requirement to sit (and pass, which the Claimant did) all three such exams as a prerequisite to obtaining a full airside pass is clearly set out at page 134, part of the Respondent's ID Pass regulations. Both Mr Swallow and Mr Nandra were required to and did sit all three exams, as their certificates at pages 442 to 444 and 447 to 449 establish. If anything, the Claimant was treated more favourably than other employees, in that he was provided with an 'approval slip' which enabled him to take one of the exams (the general safety awareness test) on the very day that his referencing process was provisionally completed (see pages 352-354), whereas ordinarily that exam can only be taken once all reference checks have been not only completed but also approved by the Respondent's ID centre, as Mr Uddin confirmed in his unchallenged evidence. There are no facts in relation to this allegation from which we could conclude or draw inferences of less favourable treatment of the Claimant because of his race or ethnicity. This allegation is also substantially out of time: the Claimant was required to sit the exams on 26 October 2018, as his certificates at pages 355 to 357 establish, but the allegation was not put forward until the preliminary hearing on 8 November 2019, more than one year later.

55 The Claimant's fourth discrimination allegation is described as that the Respondent '*bounced back*' an email from the Claimant on 17 October 2018 which contained post-examination documents. We understand the Claimant's complaint to be that because he had sent the Respondent a copy of his Nigerian passport as part of the referencing process documentation, the Respondent adopted an obstructive approach towards him and the overall process, rejecting documents submitted and delaying the completion of the process and his obtaining of a full airside pass. It was clear both from Mr Uddin's evidence, which was substantially unchallenged and which we accept, and from the contemporaneous documentation that the fact that the Claimant had and submitted a Nigerian passport had no impact on the progress of the Claimant's referencing process. As Mr Uddin explained, the Claimant's British passport was used by the Respondent as proof of not only the Claimant's identity, but also of his right to work in the UK; and since the Respondent's systems permit only one nationality to be identified, the Claimant was entered as being a British citizen. Had the Respondent relied on the Claimant's Nigerian passport alone, then proof of his right to work in the UK would have been needed, which would have further delayed the process. The only use of the Claimant's Nigerian passport by the Respondent, Mr Uddin said, was to see whether it contained exit and/or entry stamps which might help prove the Claimant's whereabouts during the five year period, since the Claimant had himself said that he had been travelling during that time. There is no evidence to support the Claimant's allegation, and we have already found that in fact the Respondent was taking appropriate steps and trying to progress the Claimant's referencing process as quickly as reasonably possible. Here too the Claimant's allegation is substantially out of time: whilst the act complained of took place on and after 17 October 2018, the allegation was only raised on 8 November 2019.

56 The Claimant's fifth and final discrimination allegation is that he only received reduced pay during his sickness absence from September to December 2018. In fact, and as we have found, the Claimant was continuously absent signed off sick from 24 September until 14 November, when he returned to work and received a full airside pass; and then from 10 December until the termination of his employment on 26 December. It is not disputed that the Claimant received only SSP for virtually all of his first lengthy absence, rather than full pay; but, as can be seen from his final pay slip for December at page 130, the Claimant was paid in full for the whole of that month, notwithstanding his sickness absence for part of the month and the fact that his employment ended five days before its conclusion. (It should also be borne in mind that, for the reasons set out at paragraph 31, deductions relating to the Claimant's sickness absence in November are included in that payslip). Accordingly, we concentrate on the sickness absence from 24 September to 14 November only.

57 Both the summary of details, accompanying the Respondent's offer of employment letter, which the Claimant signed for and accepted on 14 July 2018, and the employee handbook make clear (at pages 109 and 176 respectively) that an employee is not entitled to company sick pay during the probationary period of employment. The handbook also states (at page 219) that SSP will be paid to sick employees after four days absence, mirroring the statutory provisions in s.155 Social Security Contributions and Benefits Act 1992. There is no dispute that that is what happened in the Claimant's case. In relation to the allegation of less favourable treatment of the Claimant because of his race or ethnic origins, Ms Powell referred us to pages 445/446 in the bundle. Those are the payslips for the months of October and November 2018 for Jason Adams, a white British male employee who was also in his probationary period at that time and who was also signed off sick. As can be seen, and like the Claimant, he too was only paid SSP

during his sickness absence. We have no hesitation in accepting that evidence, or in finding that there is nothing to support the Claimant's allegation of less favourable treatment. The allegation is also out of time: the payment of SSP for November was recorded in the Claimant's payslip dated 21 December 2018, and the Claimant's allegation was first raised at the preliminary hearing on 17 June 2019, rendering it just under three months out of time.

58 It follows that for these reasons we find that there is no material to support the Claimant's claim of discrimination because of his race or ethnic origins, and that the burden of proof does not shift or pass to the Respondent in respect of any of the Claimant's allegations of discrimination, which must all be dismissed.

59 In case we were wrong in coming to that conclusion, we have already determined that all such allegations are out of time, since none of them featured in the Claimant's ET1 original application or grounds of claim, but were all subsequently added as amendments. As already noted, the Claimant has advanced no reason or evidence to explain why his claims were not made in time, or included in his original claim, so there is no basis for extending time under the just and equitable principle. Ms Brown submits that there is no continuing act or course of conduct, since the Claimant's allegations relate to different individuals within the Respondent undertaking, and that there is no obvious connection between them, let alone reason for or evidence of any conspiracy between them against the Claimant. Giving the Claimant the benefit of the doubt, and even if that submission were wrong and there was a continuing act (as to which we have grave doubts), none of the alleged acts of discrimination are in time, or even only slightly out of time; and we would conclude that the Tribunal had no jurisdiction to determine them, and that they should be struck out.

60 We turn next to the Claimant's discreet complaint that the Respondent refused to permit him to exercise his right to annual leave, pursuant to regulation 13/13A of the Working Time Regulations 1998. For the reasons already set out at paragraphs 49 & 50 above, we find that the Claimant was not entitled to take any of his accrued annual leave as requested on 7 December, that the Respondent had the right to refuse the Claimant's request under regulation 15(2)(b), and that their refusal of the Claimant's request was reasonable in all the circumstances. We would only add that even if the Claimant's request arose from the minor injury he sustained at work in August, and the Claimant was seeking leave in order to recuperate, neither of which suggestions we accept, then the appropriate course would be to take sick leave supported by a medical certificate in relation to that alleged injury or condition; and that we are not aware of any provision, either contractual or statutory, that would entitle the Claimant to take leave simply because he had sustained a minor injury whilst at work. We dismiss this complaint.

61 In relation to the Claimant's complaint of unauthorised deductions from wages, and as noted already, the Claimant alleges that he should have been paid his full monthly salary for the period from 24 September to 14 November 2018, rather than SSP only. For the reasons set out at paragraphs 59 & 60 above, this complaint must fail. The Claimant was not contractually entitled to be paid more than SSP during the probationary period of his employment, and there is no dispute that the sums due to him as SSP were in fact paid. Insofar as the Claimant alleges that he should have been paid more because he sustained an injury whilst at work, we dismiss any such suggestion since that happened on 19 August and no medical follow-up was required, the Claimant remaining at work; the

Claimant visited his GP on 23 August in relation to hypertension rather than any physical injury; and the reasons given in his fit notes dated 24 September and 15 October once again having nothing to do with any such injury. Put another way, the Claimant's period of sick leave was not in any way attributable to the minor injury sustained.

62 There is no doubt that the Claimant was not paid the holiday pay to which he was entitled on the termination of his employment on 26 December 2018. Nor was the sum of £1923.01 in respect of holiday pay paid until April 2019, after he had issued this claim, and only because Ms Powell then appreciated for the first time the Respondent's failure to pay the Claimant what he was due. However, that figure, which the Claimant accepted in his evidence he had received, in fact represents the holiday pay due to the Claimant had he been employed for six months, rather than the rounded up period of five months between 30 July and 26 December 2018 of his actual service. Accordingly, there has in fact been a mistaken overpayment of holiday pay to the Claimant; and this complaint must be dismissed.

63 Finally, it is convenient to take the Claimant's complaints of unpaid notice monies and breach of contract together. Whilst the Claimant does not dispute that he was paid one week's notice monies – in fact with an additional five days up until 31 December due to another error by the Respondent – he alleges that he was entitled to a warning before his employment was terminated, pursuant to the Respondent's disciplinary procedure; and that had the Respondent not breached its own procedure, he would have been employed for a period of at least six months, thereby entitling him to one month's notice of termination, in accordance with the Respondent's offer letter at pages 102 to 106. However, and as the Respondent's letter at page 410 dated 18 December makes clear, the Claimant's employment was terminated because the Respondent decided that he had not successfully completed his probationary period, rather than for any breach of the disciplinary policy and procedure. Whilst it is correct to say that the Claimant had been suspended for potential misconduct on 29 November, that had not led to any completed investigation and/or disciplinary hearing. Accordingly, the Respondent's disciplinary procedure (which Ms Brown reminded us was not contractual – see page 232) has no relevance or application. It follows that in our judgment there was no breach of contract by the Respondent, and the Claimant has been paid in full for his notice period, and in accordance with the terms of the Respondent's offer letter at pages 102 to 106.

64 Before leaving this case, we make clear for the avoidance of doubt that in our judgment the Respondent's employee handbook was in fact a contractual document and its provisions were binding on the Claimant. Whilst the Claimant's evidence was that he had not seen it, we accept that it was available to him, if he wished, on the Respondent's intranet or on demand from a manager. There is nothing to suggest, and indeed the Claimant did not assert, that he had tried to obtain access but been unable to do so, or was prevented from doing so. Secondly, and whilst not included in the agreed list of issues, there was no evidence to support or substantiate the Claimant's allegation in evidence that he and up to four other (unidentified) employees had been 'targeted' by the Respondent or any of its employees; or that the concerns expressed concerning the manhole covers incident on 27 November were an example of such a course of action.

65 For these reasons, none of the Claimant's complaints succeed, and they must all be dismissed.

**Employment Judge R Barrowclough
Date: 18 December 2020**