



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr D Jehovah-Nissi

v

West Suffolk College

**Heard at:** Cambridge

**On:** 17, 18, 19, 20 and 21 August 2020;  
22 and 23 September 2020 (no parties in attendance); and  
28 October 2020 (no parties in attendance)

**Before:** Employment Judge Ord

**Members:** Mr A Hayes and Mr C Grant

**Appearances**

**For the Claimant:** In person

**For the Respondent:** Mr Richard Hignett, Counsel

## RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that the Claimant's complaints are not well founded and his claim is dismissed.

## RESERVED REASONS

**Background**

1. The Claimant was employed by the Respondent from 14 August 2017 until 7 March 2018 as Head of Engineering. The Respondent is a Further Education College based in Bury St Edmunds.
2. Following a period of Acas Early Conciliation from 27 December 2017 until 10 February 2018, the Claimant presented a claim form to the Employment Tribunal on 11 March 2018. He made complaints of race discrimination and advanced a number of complaints regarding monetary claims.

3. At a Preliminary Hearing on 1 February 2019, the Claimant confirmed that his race claim was based on colour. The Claimant is black.
4. At that Hearing, he also withdrew some of his monetary claims, in particular his claim for outstanding notice pay (which had been paid), outstanding sick pay (the Claimant accepting that he was entitled only to statutory sick pay which had been paid), outstanding holiday pay (which had also been paid) and his other monetary claims for bank loans, credit card payments and other expenses.
5. The Claimant complains that he was due payment from the respondent's relocation fund in the sum of £854.04, continued.

### The Issues

6. At the second Preliminary Hearing held on 27 August 2019, the precise complaints which the Claimant pursues in this case were identified as follows:

#### Race Discrimination: direct and / or Victimisation

- 6.1 That on 28 September 2017, the Claimant was subjected to unwarranted, negative feedback at the hands of his Line Manager Gary Jefferson;
- 6.2 That on 22 October 2017, Mr Jefferson told the Claimant to register for an English as Second or Other Language (ESOL) course on the grounds that the Claimant's English was poor. The Claimant says this was an act of direct race discrimination;
- 6.3 The Claimant says that he was relegated, or silenced, at meetings by Mr Jefferson;
- 6.4 That Mr Jefferson, on 9 November 2017, instructed the Claimant to clear a back log of part time Student results when, according to the Claimant, it was "*not his job*";
- 6.5 That in late October or Early November 2017, Mr Jefferson instructed the Claimant to take lessons of Level 3, Year 2 Final Students when the Claimant said this was not his job;
- 6.6 That in November / December 2017, Mr Jefferson failed to deal with the Claimant's complaint that a co-ordinator (Michael Churchard) was not taking the Claimant's instructions and was reporting directly to Mr Jefferson;

- 6.7 That from 28 November 2017 onwards, the manner in which the Respondent dealt with the Claimant's complaint of 28 November 2017, (by not taking it seriously and leaving it to Mr Jefferson to deal with when it was a complaint about, inter alia, Mr Jefferson);
  - 6.8 That in January 2018, Laraine Moody failed to deal with the Claimant's complaints of discrimination in accordance with the Respondent's policy by not asking the Claimant for documents, failing to provide the Claimant with minutes and failing to provide the Claimant with an outcome;
  - 6.9 That in February 2018, the Claimant was subjected to unfounded Student complaints;
  - 6.10 That in November 2017, the Respondent had determined not to pay the Claimant's relocation expenses;
  - 6.11 That on 13 December 2017 and 7 March 2018, the Claimant was invited to a probationary review meeting; and
  - 6.12 That on 7 March 2018, the Claimant's was dismissed (whether constructively or directly).
7. In relation to the first such complaint, that the Claimant was subjected to unwarranted negative feedback, the Claimant says that he was told his Team had complained to Mr Jefferson about the Claimant's management style as being condescending and confrontational and allegedly told the Team that he knew more than them and they should not question his judgment. The Claimant told Mr Jefferson that these allegations were not true. The Claimant accepted at the Preliminary Hearing that this was background information as to what happened later and was not relied upon as a discreet act of race discrimination.
  8. The third allegation that Mr Jefferson relegated or silenced the Claimant at meetings was withdrawn on the first day of the Hearing before us.
  9. In relation to his complaint of victimisation, the Claimant relied on four protected acts, namely:
    - 9.1 Telling Mr Jefferson on 20 October 2017 that he found his comment that he should take an ESOL course, to be offensive, degrading and discriminatory;
    - 9.2 A written complaint on 28 November 2017 sent to Ruth Sadler, Colin Shaw and Nikos Savvas, that he was being discriminated against, bullied and harassed by Mr Jefferson who was making the Claimant's job extremely uncomfortable to carry out irrespective of his progress;

- 9.3 An email to Mr Jefferson of 13 January 2018, when he raised “*trust issues*” regarding their working relationship and Mr Jefferson’s conduct at the Resolution meeting; and
- 9.4 The Claimant’s email to Ms Moody of 25 January 2018, when he asked to escalate his complaint to an official complaint stating that there was evidence of discrimination.

### **The Issues for the Tribunal**

10. The questions which fell to be determined by the Tribunal were therefore as follows:
  - 10.1 Did the Claimant carry out the protected acts as alleged?
  - 10.2 If so, was the Claimant subject to detriment as alleged because of those acts or any of them?
  - 10.3 Was the Claimant treated less favourably than the Respondent treated or would have treated others because of his colour? The Claimant relies on a hypothetical white, or non-black comparator who was otherwise in the same situation as he?
  - 10.4 If the Claimant was so treated, what is the appropriate remedy?
  - 10.5 Is the Claimant entitled to relocation costs as claimed?

### **The Hearing**

11. The Claimant gave evidence and the Respondent called evidence from Gary Jefferson (Executive Director for the Engineering and Technology curriculum), Laraine Moody (Vice-Principal of Employer Engagement), Stephen Jones (Vice-Principal Finance and Resources) and Andrew Adamson (at the relevant time Curriculum Director).
12. All witnesses gave evidence by reference through written witness statements which had been exchanged in advance of the Hearing and in respect of which each of the witnesses confirmed the truth before being cross examined.
13. Reference was made to an extensive Bundle of documents.
14. Based on the evidence presented to us we have made the following findings of fact.

### **The Facts**

15. The Claimant applied for the advertised role of Head of Engineering with the Respondent College and was interviewed on a date that cannot now be stated by any person with precision, but which was believed to have

been during June 2017. On 3 July 2017, the Claimant was offered the role and he was issued with a Management Contract of Employment confirming his commencement of employment on 14 August 2017.

16. That contract was subject to a specifically recited probationary period of 12 months and it was said that during that period of employment the Claimant would be assessed as to his suitability for the position to which he had been appointed. The Respondent had the right to extend the probationary period if circumstances arose which required it. During the Claimant's probationary period, or at the end of it, his employment could be terminated by either party on the giving of one month's written notice.
17. The Claimant was advised that he would not be deemed to have passed his probationary period unless and until that was confirmed to him in writing.
18. The Claimant signed the Contract of Employment on 5 July 2017. The contract makes no reference to relocation costs and the Relocation Costs Policy is not mentioned at all. The record of interview does not indicate that the question of relocation costs was raised at all.
19. On 14 August 2017, the first day on which the Claimant was employed by the Respondent, he made an enquiry regarding the Relocation Policy and said that he was applying for relocation costs, having asked for a copy of the policy on 11 August 2017.
20. In the Respondent's Relocation Policy under the Hearing, 'Eligibility', reference is made to eligible staff of which are not defined.
21. The Claimant signed an Application under the Policy on 27 November 2017 indicating his wish to register his intention to submit a claim "*when I take up my appointment*". The Claimant's declaration also stated that he would submit a claim with receipts for reliable relocation expenses within one year of appointment to the Respondent and would refund any payments received if he ended his contract within 3 years, voluntarily.
22. Further, the Policy is stated to apply only to selected posts at the discretion of the Principal, in exceptional circumstances (which the respondent clarified in unchallenged evidence as meaning in relation to posts which are particularly difficult to recruit to). Claims are said to be subject to the approval of the Vice-Principal of Finance and Resources and must be supported by the HR Director. Claims have to be submitted by the appropriate claim form together with original receipts and, where appropriate, estimates.
23. The Claimant accepted in evidence before us that the advertisement for the post did not say that relocation expenses would be paid and there was no evidence before us that the role was difficult to recruit to.

24. Importantly, no question of relocation expense was raised by the Claimant prior to 11 August 2017 which was after his acceptance of the role and after he had signed his Contract of Employment. On that basis, we find as a fact that there was no contractual entitlement to relocation costs and the issue was not raised by the Claimant until sometime after he had agreed to join the Respondent.
25. In his evidence before us, the Claimant alleged that Mr Jones had approved the claim on 23 November 2017. Mr Jones denied that. He said he would not have approved an expenses claim verbally, would have advised anyone asking for verbal approval on a relocation claim to follow the appropriate process and described the granting of relocation costs as very rare. Mr Jones' evidence was that in five years there had been only two posts which had been granted relocation costs. He could not remember the Claimant coming to see him about his relocation costs, but accepted that these events took place a long time ago.
26. Based on the evidence we have heard, we are unanimous in finding that the Claimant had no entitlement to relocation expenses, did not raise the question of expenses until after he had agreed to join the Respondent and that the post into which he was recruited did not carry an entitlement to relocation costs. On the evidence before us, it was not difficult to recruit into.
27. When the Claimant began work with the Respondent, there was work which was incomplete from the previous academic year. On 31 August 2017, Alex Elliott (Course Director and Internal Verifier) emailed all Lecturers within the Engineering Department regarding part time Students who had outstanding assignments from the previous year.
28. On 20 September 2017, Gary Jefferson sent to all Engineering staff the Service Level Agreement covering teaching, learning and coaching, assessment processes and the general requirement to use the Microsoft calendar for all lessons and appointments to be shared with Mr Jefferson so that members of staff could be easily located if required.
29. On 27 September 2017, the Claimant sent an email to those working in his Team on the subject "*BTEC Assessment Verification Structure (those teaching HE only), part time Inclusive*" at 1:29 am.
30. At 9:48 pm on the same day, Alex Elliott contacted Mr Jefferson in writing regarding difficulties he and others were having whilst working with the Claimant. Mr Rose and Mr Jefferson had met earlier in the day, Mr Wright complained about the way in which the Claimant had addressed the Team meeting that morning and the email he and others had received from the Claimant that day. Mr Rose described the contents of the email as irrational and confusing and stated that whilst he was relatively insulated from the Claimant's management style (only working directly with the Claimant for 3.5 hours three days per week), he said that the general

environment was distracting, demoralising and that he was finding it increasingly impossible to work with the Claimant.

31. The following day, the Claimant had a one to one meeting with Mr Jefferson. It was reported to the Claimant that others had referred to his management style as condescending and confrontational. Mr Jefferson suggested that the Claimant should adopt a more considerate and softer approach. He was invited to develop “spotlights” from the agreed actions and Mr Jefferson said he was more than happy to discuss any of the points further. He confirmed the terms of the meeting to the claimant in an email.

32. Within 15 minutes of receiving an email setting that out, the Claimant said he would like to respond in writing, said that Mr Jefferson was misrepresenting what was discussed and described the email from Mr Jefferson as negative and a misrepresentation of the Claimant personally. The Claimant said he thought that he and Mr Jefferson were working together,

*“...but I guess I am wrong”.*

The Claimant further said that he would,

*“...delay seeking audience from the Vice-Principal until I make my presentation to you in writing as I can see unfairness in your handling of the matter”.*

33. The Claimant said that,

*“I am a protected characteristic and I know what I have been passing through. I have brought so many issues to you not and resolved by you but played down”.*

34. 10 minutes later a further email from the Claimant to Mr Jefferson stated,

*“Please I think is a second thought. I will need to copy the Vice-Principal in my communication because I see issues of picking on me, bridge of equality and diversity and neglective issues raised by me from the beginning of my resumption to date and making every effort to retard me in my role as Head of Engineering such as pushing me to the edge”.*

35. On 20 October 2017, Mr Jefferson held a meeting with the Claimant. The Claimant has produced notes of this meeting described as an ‘Informal Probation Review’. Mr Jefferson says it would have been part of the regular one to one meetings which he held with the Claimant.

36. It is common ground between Mr Jefferson and the Claimant that at that meeting there was a discussion about the Claimant’s communication style. Mr Jefferson considered communication issues to be at the core of the

problems between the Claimant and staff in the department and he suggested the Claimant attend an ESOL course. According to Mr Jefferson, the Claimant hit the desk with his hands and shouted that he felt insulted. The Claimant's notes indicated that he would not register for such a course because he did not have a communication problem.

37. In those contemporaneous notes, the Claimant says that Mr Jefferson "*was suggesting to me*" that the Claimant register for an ESOL course. Mr Jefferson maintained throughout his evidence that this was a suggestion only, and one which he made because another member of staff had benefitted substantially from attending such a course.
38. In his claim before us, however, the Claimant says that he was "*instructed*" to go on the course.
39. We find as a fact that the Claimant was not instructed to go on an ESOL course, but that it was suggested to him. We reach this finding because it is corroborated by the Claimant's own contemporaneous notes as well as by the consistent evidence of Mr Jefferson. Further, it is common ground that the Claimant did not attend such a course and the suggestion was not raised again. No action was taken against him for his failure to undertake such a course, which suggests that he was not instructed by a Manager to attend a course, but rather that it was suggested that he might benefit from it.
40. The Claimant claims that at that meeting he referred to the suggestion of attending an ESOL case as discriminatory and that he was thus making a protected act which he could rely upon for the purposes of his later allegations of victimisation. Mr Jefferson denied this. He referred to the claimant hitting his hands on the table, raising his voice and insisting that there was nothing wrong with his communication skills but insisted that there was no allegation of discrimination made.
41. We find as a fact that the Claimant made no allegation of discrimination at that time and carried out no protected act. We say this because the Claimant's report of that meeting is, we find, less consistent than Mr Jefferson's, the Claimant referring to an instruction rather than a suggestion, yet in his very own note produced at the time he refers to a suggestion and Mr Jefferson's evidence, which we accept, that there was no such complaint made at the relevant time. Had there been such an allegation we are satisfied that Mr Jefferson would have reported this matter contemporaneously, for his own protection if for no other reason.
42. The Claimant further complains that on 9 November 2017, he was instructed by Mr Jefferson to clear the backlog of part time Student results when that was not part of his job.
43. This was one of the inherited issues which existed before the Claimant took up his post. The Claimant's approach in his evidence before us, and at the time, was that the problem was not of his making and therefore it



was not his job to resolve it and that those who were in post at the time the problem arose should be the ones responsible for rectifying it. Indeed, in his evidence before us, the Claimant said that the task would have been part of his role if he had been recruited in the year earlier (i.e. the academic year when the problem had occurred).

44. The Claimant's job description states that he is to take responsibility for ensuring that the highest quality of delivery of engineering learning.
45. The historical background to this is that on 31 August 2017, Mr Elliott had emailed all the Lecturers, copied to the Claimant, setting out a list of Students and their outstanding work with a request that the Lecturers advised on a recovery plan. Mr Elliott chased the matter on 13 October 2017 when he stated that a significant number of Students' results were still outstanding. The Claimant was again copied into this email.
46. On 9 November 2017, Mr Elliott emailed the Claimant enclosing the chain of emails identifying that the issue had not been resolved. He asked the Claimant to "*please could you direct as necessary*". Mr Jefferson's email to the Claimant of the same date underlined the importance of the issue and asked for the Claimant's support.
47. It is clear from the emails, and we find as a fact, that there was no instruction to the Claimant to clear this back log. Rather, in accordance with his role as Head of Engineering and in accordance with his job description requiring him to take responsibility for ensuring the highest quality of delivery of engineering learning for the subject area, he was asked to manage and oversee the outstanding work and provide his support as necessary. At the time, the Claimant met with Mr Elliott to discuss the position and did not raise any objection.
48. The Claimant also complained that in October and November 2017, he was instructed to take lessons for Level 3 Year 2 Finals Students ('A' Level equivalent) when this was not part of his role.
49. The unchallenged evidence of the Respondent was that as Head of Engineering, the Claimant had a requirement to teach one half of his full time recruitment hours, which equates to 450 taught hours per year.
50. This target is annualised and the Respondent had asked the Claimant to teach Assignment Support Lessons ("ASL"). ASLs are additional lessons to help Students with their assignments. The Claimant said, on 6 November 2017 in an email to Mr Jefferson, that this would mean his teaching commitment was too onerous and in reply Mr Jefferson gave the Claimant free reign to assign ASLs to another Lecturer and counselled him to reduce his teaching commitment. No reply was made to that email and the Claimant accepted, in evidence, that within two weeks the work of teaching the ASLs was given to another Lecturer or Lecturers.

51. On 14 November 2017, there was a further meeting between the Claimant and Mr Jefferson, described in the emails sending the notes of it by Mr Jefferson, as a Review meeting. The discussion points raised during that meeting were the Claimant's management style and direction, his communications and daily briefing meetings, support for the Team, the "*improvement journey*" for engineering, marking of assignments and marking schemes.
52. Although the Claimant complains of negative feedback from Mr Jefferson, it is noted that in respect of one further matter (EAL) Mr Jefferson's specifically offered sincere thanks to the Claimant for the hard work and effort that he had undertaken to ensure the 2016 / 17 claims had gone through. The other discussion points highlighted concerns which Mr Jefferson had including the issues which had been raised with him by other members of staff.
53. On 28 November 2017, the Claimant wrote to Ruth Sadler, Colin Shaw and Nikos Savvas under the subject heading "*Complaint against executive director*", saying that he wished to raise a complaint against his Line Manager on the grounds of discrimination, bullying and harassment and making his job extremely uncomfortable to carry out, irrespective of progress.
54. This was the first indication in writing and we find as a fact the first time the Claimant alleged he was the victim of discrimination. It is therefore the first protected act on which the Claimant can rely in respect of his allegations of victimisation.
55. The Claimant complains that this complaint was not taken seriously, nor appropriately dealt with, and that it was Mr Jefferson himself who was left to deal with it. The Claimant says this amounted to victimisation.
56. The complaint was acknowledged by Ms Sadler (then Director of Human Resources, now no longer employed by the Respondent) on the same day as it was submitted. Thereafter, Annie Boswell (Human Resources) arranged for the Claimant to have an informal meeting with Colin Shaw (Vice-Principal Quality and Student Experience) who had been copied into the complaint to discuss the nature of the complaint being brought by the Claimant.
57. That meeting took place on 5 December 2017 (seven days after the complaint was lodged). The meeting concluded with an agreement that the Claimant and Mr Jefferson would meet with Mr Shaw with the aim of Mr Jefferson and the Claimant defining their mutual expectations of each other and that regular Review meetings would thereafter be held to improve the communication between them and the working relationship.
58. Before the first such meeting could be held, however, the Claimant raised further complaint on 12 December 2017 to Mr Shaw, stating that the situation had not improved and making fresh complaints regarding Mr

Jefferson, apparently prompted by an email from Mr Jefferson on 12 December 2017 in which Mr Jefferson complained that despite his advising the Claimant that his focus should be on the completion, before the Christmas break, of the Student assignments the Claimant was dealing with other matters (which Mr Jefferson said did not need the Claimant's attention) whereas assignments for work the Claimant had taken responsibility for were not shown as being marked or completed. The claimant complained that this email was evidence of his being subject to discriminatory treatment and we are satisfied that such complaint constituted the claimant's second protected act.

59. On the same day, 12 December, Mr Shaw asked Ms Boswell to arrange a meeting with the Claimant to discuss the matter.
60. On the 14 December 2017, the Claimant began a period of sick leave.
61. On 9 January 2018, Ruth Sadler met the Claimant to discuss his complaints. She agreed to the appointment of an investigator (Laraine Moody) to look into the discrimination complaints and to arrange a meeting between the Claimant and Mr Jefferson.
62. Ms Moody's investigation (which was an informal investigation, in accordance with the respondent's policy and as agreed to by the Claimant) began with her interviewing the Claimant on 11 January 2018. She interviewed Mr Jefferson on 17 January 2018 and reported to the Claimant and Ms Boswell on 25 January 2018. She found no evidence of discrimination but believed that there were communication issues between the Claimant and Mr Jefferson which she believed could be resolved through the mediation process already suggested by Mr Shaw.
63. She also concluded that Mr Jefferson had the right to raise concerns over the Claimant's performance, and the issues raised by colleagues, with the Claimant and that the offer of an ESOL course was made in good faith and was not intended to be an insult. She said she was formally closing the investigation.
64. On 29 January 2018, the Claimant asked to escalate the matter to a formal grievance. Stephen Jones, Vice-Principal of Finance was appointed as Grievance Manager and he interviewed the Claimant on 30 January 2018, the day after the formal grievance process was instituted.
65. Thereafter, Mr Jones interviewed Mr Jefferson on 5 February 2018, Alex Elliott (Course Director) on 8 February 2018, as well as Michael Churchurch and Michael Nelson on the same day. He also interviewed Graham Pitcher on 18 February 2018 and completed his investigation on 23 February 2018.
66. On 28 February 2018, the Claimant was invited to a meeting to discuss the outcome.

67. The Claimant complains that this process was inadequate because he was not “*kept up to date*”, there was no joint meeting and there was undue delay.

68. The Respondent’s Grievance Policy states that,

*“An appropriate Manager will... within ten days of receipt of the grievance letter arrange a meeting. Depending on the circumstances, the meeting will either involve the attendance of the relevant parties to the grievance, or in circumstances where this may not be appropriate, written statements may be submitted”*

and

*“The Manager will consider all the matters raised at the meeting and may decide to conduct further investigations prior to issuing a written decision”*

and

*“[the] decision will usually be communicated within 10 days of the grievance meeting unless there are... factors which could delay this from happening. The complainant will be kept informed of any delays to the process”.*

69. Mr Jones’ evidence was that it was not appropriate in his view to hold a joint meeting at the outset. He wished to hold a meeting with the Claimant first. He said a joint meeting might have been appropriate thereafter, but in his view, in the circumstances of this case, it was not. That we find was a matter entirely within the discretion of the grievance manager and there is no evidence whatsoever – nor was it alleged or put to Mr Jones – that in exercising his discretion in that was he was motivated by race or the claimant’s protected acts.

70. The Claimant asked on 15 February 2018, what progress was being made and he was brought up to date by a letter the following day.

71. The grievance was lodged on 29 January 2018. The Claimant’s meeting was on 30 January 2018 and the matter was concluded 18 working days later (23 February 2018). The invitation to a final meeting was sent 3 days later for a meeting on 8 March 2018; a total of 27 working days from the Claimant’s grievance meeting to the date fixed for the outcome meeting.

72. In fact, the day before the grievance outcome meeting was due to be held, the Claimant first resigned on three months’ notice and then later that same day was dismissed with one month’s payment in lieu of notice.

73. The outcome letter for his grievance was sent to him on 19 March 2018.

74. In the meantime, the Claimant had complained to Mr Jefferson that Mr Churchard, Course Director for Performing Engineering Operations (PEO) was not taking the Claimant's instructions and was reporting directly to Mr Jefferson.
75. The Claimant raised the matter by email by 9:25 am on 29 January 2018, stating that Mr Churchard was continuously confrontational ("*confirmational*") in communication with him and was "*wanting to dominate*" his Line Manager (i.e. the Claimant) using Mr Jefferson's name to hide behind not doing tasks the Claimant was giving him.
76. Four minutes later, Mr Jefferson replied inviting the Claimant to discuss this with him at 12 noon that day. He suggested that the next step should be for the Claimant to have an open dialogue with Mr Churchard, stating that,
- "...this is important so he knows you are a supportive manager. If this doesn't go as planned, I am happy to mediate a meeting between you."*
77. 21 minutes later at 9:50 am, the Claimant wrote again to Mr Jefferson stating that he,
- "...brought this to your attention before and how you override my decision to favour him is the problem... My suggestion is that you kindly advise him to put friendship aside and there is no executive director's favourite or special treatment for anyone".*
78. On the same day at 9:56 am, Mr Jefferson requested that the Claimant should discuss the matter at 12 noon and this was agreed between the parties.
79. The Claimant could not explain how Mr Jefferson had failed to deal with the complaint. In any event, the unchallenged evidence from Mr Jefferson, which we accept, was that Mr Churchard's role was split 50:50 between Further Education and Higher Education so that he had equal reporting lines to both Mr Jefferson and the Claimant.
80. Against that background the Claimant says that he was the subject of victimisation when Laraine Moody failed to deal with his complaints of discrimination in accordance with the Respondent's policy because she did not ask the Claimant for documents, failed to provide the Claimant with minutes of meetings and failed to provide the Claimant with an outcome to his complaint.
81. The Respondent's Grievance Policy has written in it an informal, initial, stage. According to the email from Ruth Sadler of 9 January 2018, to the Claimant (which the Claimant did not question either at the time or since), the Claimant had asked for the matter to proceed at the informal level, and that is what Ms Moody did. The Claimant's own evidence was that he

handed documents to Ms Moody when they met on 23 January 2018. If the Claimant had other documents he could not explain why he did not hand them over. Clearly Ms Moody would not be aware of precisely what documents the Claimant did or did not have and that he wished to rely upon.

82. The Claimant received an outcome to his complaint on 25 January 2018 which stated that Ms Moody was unable to find evidence of discrimination. He confirmed, as we have already said, that the Claimant's Manager (Mr Jefferson) had the right to raise issues of concern.
83. As the Hearing before us progressed, the claimant's complaint evolved intone that the outcome was not sufficiently detailed. The original complaint had been that there was no outcome.
84. The Claimant raised no complaint at the time that the outcome was in any way inadequate and nor is there any obligation under the Respondent's policy for the outcome letter to have any particular level of detail.
85. The Claimant complains that he did not receive minutes of the meetings when he should have done. Ms Moody's unchallenged evidence was that it was not her responsibility to arrange for those minutes to be sent to the Claimant, but rather it was the responsibility of Human Resources. The Respondent did not accept that the Claimant had failed to receive the minutes. There was no contemporaneous complaint about this, which, had one been raised, would presumably have resolved the matter. There is no evidence to suggest that the failure to provide minutes (if failure there was) was in any way a deliberate act or omission on behalf of anyone within Human Resources and we find as a fact that any failure to send the minutes would have been a simple error or oversight on the Respondent's behalf and not as a result of any protected act carried out by the Claimant. The claimant has not in fact satisfied us on the balance of probabilities that he did not receive the minutes in any event. If he did not receive them at the time we are surprised that no contemporaneous complaint or request for them was made.
86. The Claimant says that in February 2018, he was subjected to "*unfounded student complaints*" which he says amounts to an act of victimisation.
87. The Claimant's complaint is that he was the subject of complaint (although he indicated in evidence that he also felt that he should not have been required to answer them).
88. The Claimant's evidence before us included an implication that part of his complaint was not that the complaints had been raised, or that he had been required to answer them, but that there had been steps taken by the College to conspire with Students to produce the complaints in question. The Claimant referred to "*smelling a rat*" and "*foul play*", saying that Students had been guided, or "*teleprompted*".

89. Within the Bundle of documents, there were a number of Student complaints as follows:
- 88.1 On 22 November 2017, regarding the Claimant's interrupting a lesson being given by Pat Tozer and the Claimant's treatment of Mr Tozer;
  - 88.2 On the same day, a second complaint about the same matter;
  - 88.3 On 14 February 2017, regarding assignment work and in particular, instructions regarding an assignment set by Mr Tozer;
  - 88.4 On the same day, a complaint reporting work assignments being sent to the Claimant, but not marked;
  - 88.5 On 10 January 2018, a complaint relating to the delivery of Unit 1 Health and Safety, listing 6 bullet points of concern over the Claimant's lack of organisation, lack of teaching, lack of feedback, not using the internal "Moodle" system, but rather personal email and hostility from the Claimant when this was questioned. There was also complaint regarding the early cessation of teaching on the Unit;
  - 88.6 On 6 February 2018, a complaint that the Claimant had been shadowing and then interrupted a lesson being delivered by a colleague, requiring the Students to complete what the complainant said "*felt like a lecturer survey*" with the Lecturer still present. The Student in question considered this to be wrong in principle as well as causing an interruption to valuable teaching time;
  - 88.7 On 21 February 2018, a complaint relating to the Claimant's marking and feedback (or lack of both) of work and the limited teaching / instruction given by the Claimant; and
  - 88.8 A collection of concerns dated 22 February 2018.
90. The first complaint had been physically shown to the Claimant (anonymised). Mr Jefferson's evidence was that the claimant had become defensive and had demanded to know who had made the complaint which Mr Jefferson considered inappropriate. As a result, the subsequent complaints were not physically shared with the Claimant, but he was advised of their contents.
91. We find as a fact that the complaints referred to were genuine complaints raised by Students. There is no evidence at all of any collusion, or to support the allegation that Students were directed to complain or that the complaints were created at the instruction of members of staff, in particular Mr Jefferson.

92. The complaint that the Claimant was required to answer them, because they were “*unfounded*” is misplaced. Given that the complaints had been received, it was entirely appropriate that they should be shared with the Claimant and that his comments should be obtained on them. The Claimant says that subjecting him to these complaints (and presumably being required to answer them) was an act of victimisation. It was not. It was the inevitable consequence of the complaints being received.
93. The Claimant says that the decision not to pay relocation expenses was either direct discrimination or an act of victimisation. In the Preliminary Hearing on 19 August 2019, he said it was a complaint of direct discrimination only, but in his witness statement he pursues it also as an allegation of victimisation.
94. In any event, we have already found as a fact that the reason why the Claimant did not receive those expenses is because he was not entitled to them.
95. During the course of his evidence, the Claimant alleged that on 23 November 2017, Stephen Jones approved the Claimant’s complaint (notwithstanding the lack of receipts and the lack of a signed undertaking as required under the Policy as a precursor to making an expenses claim) orally. Mr Jones’ evidence was clear. He would not approve an expenses claim verbally. If someone came to him seeking to make an expenses claim without receipts or other documents, he would direct them to the Policy. We found as a fact that no such approval was given. As well as the evidence of Mr Jones, that finding is supported by the Claimant’s raising of the issue with Ms Boswell on 29 November 2017 and his subsequent email to her. He did not suggest that his expense claim had been approved; indeed, this was one of Ms Boswell’s questions to the Claimant - why did he think he was eligible and / or who told him that he was eligible? The Claimant took exception to being asked these questions and suggested that they were offensive and questioned whether the Relocation Policy was “*a secret*”. His reply was not that they had already been approved.
96. The Claimant states that it was an act of direct discrimination or victimisation to invite him to a Probationary Review meeting, initially by letter of 13 December 2017 and subsequently by letter of 7 March 2018 (which was the day the reorganised meeting was held).
97. The Claimant’s employment was subject to a 12 months’ probationary period, during which time the Respondent would assess his performance.
98. The Respondent’s probationary period procedure refers to an initial Probationary Review meeting and further “*spotlight*” meetings to discuss progress.



99. It is further said, that if a probationary period is to be extended, or if the Respondent is considering ending the employees' employment during the probationary period, a formal Probationary Review meeting is to be held.
100. The Claimant's complaint is about the fact that he was invited to such a meeting, which was called, properly, within the respondent's policy..
101. At the time the Respondent was considering terminating the Claimant's employment. Had he not been invited to a Probationary Review meeting; the Respondent would have been in breach of its own Policy.
102. The second written invitation to the meeting (the initial meeting was postponed due to the Claimant's illness) set out in writing the Respondent's concerns relating to Student complaints, colleague complaints, an alleged safeguarding breach and a failure to follow the Respondent's own procedures (which is identified as a breach of trust and confidence).
103. Although in his evidence, the Claimant alleged he did not receive that invitation letter, he discussed it during the meeting and so we have no hesitation in finding as a fact that he did receive it.
104. The Chair of the meeting was Andrew Adamson (Executive Director) who had not been involved in any of the matters in respect of which the Claimant had raised complaint of discrimination and we find as a fact, as he stated, that he was not aware of them.
105. During the Probationary Review meeting, the Claimant did not suggest that he considered being required to attend the meeting was and nor could it reasonably be construed as an act of discrimination.
106. We find as a fact that the Claimant was required to attend a Probationary Review meeting because the Respondent was considering terminating his employment for the reasons set out in the letter of 7 March 2018 and in accordance with the Respondent's own Policy.
107. The fact that the respondent was considering terminating the claimant's employment was not, we find on the basis of the evidence we have heard, motivated in any way by race nor was it in response to the claimant's protected acts. The claimant has established no facts from which we could conclude that the decision was motivated by either or both of those matters. The Claimant has not produced any evidence to suggest that a white male, or non-black male, Lecturer in the same position would not have been invited to such a meeting, or would have been treated in any way differently to the way in which the Claimant was treated.
108. Earlier that same day, 7 March 2018, the Claimant had submitted a letter of resignation giving three months' notice (although his contract required him to give only one month's notice during his probationary period).. Although the Claimant refers to his termination as a constructive dismissal,

in fact, he was dismissed as his resignation was on notice and thus his employment was continuing at the time of the Probationary Review meeting when the decision as taken to terminate his employment.

109. On the 7 March, Mr Adamson concluded the probationary review meeting by terminating the Claimant's employment with immediate effect subject to payment of one month's pay in lieu of notice, that being the Claimant's notice period in his contract.
110. The Claimant referred Mr Adamson to the fact that he had already resigned, but Mr Adamson confirmed that he was still an employee of the respondent and that he was terminating the claimant's employment because of the volume of complaints which had been raised against the Claimant and the concerns the College had about the Claimant's performance.
111. The dismissal was confirmed in writing to the Claimant on 10 March 2018.
112. Mr Adamson's evidence before us was clear and precise. He had no significant prior knowledge or contact with the Claimant other than knowing who he was and what his role was.
113. Mr Adamson was concerned about the volume and nature of the complaints raised against the Claimant as Head of Department. He told us that in respect of every issue which he raised with the Claimant during the meeting, the Claimant avoided all responsibility and blamed others and claimed that his work load was too big.
114. We find as a fact that Mr Adamson's decision to terminate the Claimant's employment was based on the evidence before him and the Claimant's responses to them at the Probationary Review meeting, and for those reasons alone. His decision was not made for any other reason and in particular was not motivated in any way by race nor by any reason connected to the Claimant's protected acts. The claimant has not established any fact from which we could conclude that it was..

### **The Law**

115. Under the Equality Act 2010, Section 4, race is a protected characteristic.
116. Under Section 9, race includes: colour, nationality, ethnic or national origins.
117. Under Section 13, a person discriminates against another if because of a protected characteristic they treat that person less favourably than they treat or would treat others.
118. Under Section 27, a person victimises another if they subject that person to a detriment because they do a protected act, or because they believe that that person has done or may do a protected act.

119. Under Section 27(2), it is a protected act to make an allegation (whether or not expressed) that another person has contravened the Equality Act 2010.
120. Under Section 136 of the Equality Act 2010, if there are facts on which a Court could decide in the absence of any other explanation that (A) has contravened the provisions of the Act, or any of them, the Court must hold that the contravention has occurred, unless A shows that they did not contravene the provision.
121. In the well known case of Madarassy v Nomura International Plc [2007] EWCA Civ 33, it was established that the simple facts of a difference in status and a difference in treatment only indicate a possibility of discrimination and are not, without more, sufficient material from which a Tribunal could conclude that on the balance of probabilities there had been an unlawful act of discrimination.
122. Unreasonable treatment is not enough to establish a prima facie case of discrimination (Bahl v The Law Society [2004] IRLR 799).
123. Applying the facts found to the relevant Law, we have reached the following conclusions.

## Conclusions

124. The Claimant carried out three protected acts within the meaning of Section 27 of the Equality Act 2010.
125. The first alleged protected act, namely that he told Mr Jefferson on 20 October 2017 that he found his comment that he should take an ESOL course to be offensive, degrading and discriminatory, is not made out. We have found as a fact that no allegation of discrimination was made at the time. The Claimant's recollection of this meeting was imprecise. He alleged that he had been "*instructed*" to take such a course when he had not been told to do so, rather it was made as a suggestion. We have preferred, for the reasons set out, Mr Jefferson's evidence in relation to this meeting which is that no allegation of discrimination was made.
126. The Claimant's first protected act was his written complaint of 28 November 2017 sent to Ruth Sadler, Colin Shaw and Nikos Savvas. In that complaint he said that he had been the victim of discrimination and had been bullied and harassed by Mr Jefferson.
127. The Claimant's email to Mr Jefferson on 13 January 2018 was the second protected act carried out by the Claimant. In that email he repeated allegations of discriminatory conduct.

128. The Claimant's third protected act was on 25 January 2018 in an email to Ms Moody when he asked to escalate his complaint to an official complaint and again alleged discrimination.

129. The twelve specific complaints of discriminatory conduct (whether direct or as an act of victimisation) as set out in the List of Issues at paragraph 6 above, are dealt with as follows:

129.1 The allegation that on 28 September 2017, the Claimant was subjected to "*unwarranted negative feedback*" from Mr Jefferson, was withdrawn as a direct allegation. It was stated to be a matter of background only. In any event, it does not indicate any discriminatory conduct by Mr Jefferson. Mr Jefferson gave the Claimant critical feedback at this meeting (as well as positive feedback) and advised the Claimant that his Team members found his management style to be confrontational. This came out of complaints which Mr Jefferson had received about the Claimant from staff. The Claimant's contemporaneous notes confirmed that Mr Jefferson raised these points because of Team complaints and was appropriate, in our view, for the Claimant to have these matters brought to his attention by his Line Manager. Indeed, the Claimant's own email emphasised the need for early feedback.

129.2 The second issue was whether or not Mr Jefferson had told the Claimant to register for English as a Second or Other Language course on the grounds that the Claimant's English was poor. The Claimant said this was an act of direct discrimination. He claimed also to have carried out a protected act at that meeting by alleging discrimination.

We have already found as a fact that the Claimant did not allege discrimination at this meeting and thus, he did not carry out a protected act.

In any event, the Claimant was not instructed as alleged to attend an ESOL course. As his own contemporaneous note confirmed, this was a suggestion made by Mr Jefferson. The Claimant did not wish to go on a course and the suggestion was not repeated at any stage. The offer was made by Mr Jefferson because of another member of staff had previously found the course very beneficial in terms of improving her written and oral English.

129.3 The allegation that the Claimant was "*relegated*" or "*silenced*" by Mr Jefferson at meetings was withdrawn on the first day of the Hearing.

129.4 The allegation that Mr Jefferson instructed the Claimant to clear a backlog of part time Student results when according to the Claimant it was "*not his job*", was advanced as an allegation of victimisation. As we have already found, the Claimant had not by this stage carried out any protected act, therefore the claim of victimisation

fails. In any event, the backlog of part time Student results was an inherited issue which had arisen before the Claimant's appointment. However, the Claimant, as Head of Department, was responsible under his job description and was to take responsibility for ensuring that the highest quality of delivery of engineering learning took place. We find as a fact, therefore, that if there was a back log of unmarked papers, then as Head of Department the Claimant had a responsibility to ensure that that backlog was cleared, notwithstanding the fact that he was not in post at the time the backlog was created.

Further and in any event, the Claimant was not told to clear the back log personally. Mr Elliott had emailed all the Lecturers, copied to the Claimant, setting out a list of the Students and their outstanding work with request that the Lecturers advise on a recovery plan. On 9 November 2017, Mr Elliott emailed the Claimant enclosing a chain of emails and asked the Claimant to *"please could you direct as necessary"*.

In accordance with his role as Head of Engineering, the Claimant was asked to take responsibility for ensuring that the back log was cleared. There was a meeting between the Claimant and Mr Elliott to discuss the position, the Claimant did not raise any objection and in any event the reason for the request was not related to any protected act. The motivation for seeking the back log to be cleared, was to ensure that Students' work was properly marked and to ensure a high standard of education.

129.5 The Claimant's next allegation of victimisation was that in late October or early November 2017, Mr Jefferson instructed him to take lessons of Level 3 Year 2 Final Students, when that was *"not his job"*.

This allegation of victimisation again fails because the event complained of took place before any protected act was carried out by the Claimant.

In any event, however, as Head of Department the Claimant was required to teach 450 hours per year (one half of his full time equivalent hours). This is an annualised target. Mr Jefferson asked the Claimant to teach Assignment Support Lessons which the Claimant did not want to do because he thought it would mean his teaching commitment would be too high and said so in an email of 6 November 2017 to Mr Jefferson, who by reply advised the Claimant to assign those lessons to another Lecturer and counselled him to reduce his teaching commitment. The Claimant did not reply to that email, but accepted before us that within a fortnight the work of teaching the Assignment Support Lessons was given to another Lecturer.

In any event, taking these lessons was within the Claimant's job description and the Claimant did not establish before us that teaching them would have required him teach in excess of 450 hours per year. They were only to be held in one semester and stop.

- 129.6 The sixth allegation of victimisation was said to take place in November or December 2017 when Mr Jefferson failed to deal with the Claimant's complaint that a co-ordinator (Michael Churchard) was not taking the Claimant's instructions and was reporting directly to Mr Jefferson.

Prior to the Claimant's evidence before us at this Hearing, the Respondent, reasonably, thought that this was a complaint regarding Mr Tozer who was the previous PEO Co-ordinator. PEO is "*Performing Engineering Operations*" which is a practical engineering course.

Mr Churchard did not become Course Director for PEO until January 2018 following the dismissal of Mr Tozer. The Claimant raised complaint in an email of 29 January 2018 and the matter was promptly dealt with by Mr Jefferson. He sought to have a meeting with the Claimant the same day to discuss the position.

Mr Jefferson did not fail to deal with the Claimant's complaint at all. The Claimant misunderstood Mr Churchard's reporting lines which were to both the Claimant and Mr Jefferson. Mr Jefferson did not ignore the Claimant's concerns. He dealt with them. A meeting took place on the day the Claimant raised his concerns and there was no further complaint about Mr Churchard's position raised by the Claimant.

- 129.7 The Claimant's seventh complaint is that from 28 November 2017 onwards, the manner in which the Respondent dealt with his complaint of that date (by not taking it seriously and leaving it to Mr Jefferson to deal with when it was a complaint about, amongst other things, Mr Jefferson himself) was an act of victimisation.

That complaint was the Claimant's first protected act.

The Claimant's complaint was acknowledged the very same day that it was made and an informal meeting was arranged for the Claimant to discuss it with Colin Shaw.

That meeting took place on 5 December 2017 and concluded with an agreed way forward. The Claimant and Mr Shaw would meet with Mr Jefferson to define the mutual expectations which Mr Jefferson and the Claimant had of each other and to establish a process of regular review meetings.

Before those steps could be put into place, however, the Claimant (on 13 December 2017) advised Mr Shaw that the situation had not improved and raised further complaints against Mr Jefferson. He asked for a further meeting with Mr Shaw, who on the same day acknowledged the Claimant's further complaint and asked Ms Boswell to arrange a further meeting.

The following day (14 December 2017) the Claimant began a period of sick leave. The matter was next handled by the HR Director Ruth Sadler on 9 January 2018 when she met the Claimant. At that meeting Ms Sadler agreed to appoint an Investigator to investigate the complaints of discrimination which the Claimant had made. The Investigator was Laraine Moody.

Ms Moody's investigation commenced on 11 January 2018, two days later. She interviewed the Claimant and six days later on 17 January 2018 interviewed Mr Jefferson.

Her investigation was complete on 24 January 2018.

This was the informal process as a result of which Ms Moody confirmed that she had not found any evidence of discrimination.

At no stage was Mr Jefferson handling this grievance process.

On 29 January 2018 the Claimant asked to escalate matters to a formal grievance process and the following day Mr Jones, who was appointed as Grievance Manager, interviewed the Claimant.

Mr Jones carried out further investigation up to 23 February 2018, including interviewing five individuals. His investigation was complete by 23 February 2018 and on 28 February he invited the Claimant to a meeting on 8 March 2018 to discuss the outcome.

In the Claimant's evidence, his particular complaints about this process were threefold. First, that there was no joint meeting. Secondly, that he was not kept up to date and thirdly, that there was delay.

There is no obligation to hold a joint meeting as part of the grievance process under the Respondent's policy. The decision whether or not to hold one depends on the circumstances and is in the discretion of the Grievance Manager. In this case, Mr Jones did not consider that a joint meeting was necessary and there was no evidence whatsoever to suggest that the Claimant was in any way disadvantaged by this decision, nor that it was taken on any ground related to race, or as a result of any protected act.

The Claimant was kept up to date. He made one enquiry regarding progress of his grievance and received a reply the following day.

In any event, there was no delay. The informal process ran from 28 November 2017 until 13 December 2017 when the Claimant made his second complaint and then began a period of sick leave. The Claimant does not complain of delay prior to 9 January 2018 when Ms Sadler appointed Ms Moody as Investigator and her investigation lasted from 11 to 24 January 2018.

The formal process began on 29 January 2018 when the Claimant said he wished to escalate matters to a formal grievance and was completed by 3 February 2018. The Claimant would have received the outcome on 8 March 2018 had he not first resigned on notice and then been dismissed on 7 March 2018.

The Claimant's complaints in relation to this process fail on their facts. The Claimant's complaints of 28 November 2017 and its escalation on 29 January 2018 were investigated seriously, Mr Jefferson was at no stage in charge of the investigation against him and the matters proceeded fairly in accordance with the Respondent's Policy and without delay.

- 129.8 The eighth complaint brought by the Claimant – said to be an act of victimisation – was that Ms Moody had failed to deal with his complaints of discrimination in accordance with the Policy by not asking the Claimant for documents, failing to provide the Claimant with minutes and failing to provide the Claimant with an outcome.

Ms Moody carried out her investigation at the informal stage of the process because this is what the Claimant had asked for.

In his evidence he confirmed that he gave documents to Ms Moody on 23 January 2018. We have therefore found it difficult to understand the first limb of his complaint, namely that Ms Moody did not ask him for documents. She was given documents by the Claimant and could reasonably assume that the Claimant was handing over everything he had that was relevant and/or that he wished her to consider as part of her investigation. There is no obligation on an Investigator to request documents from the person bringing the complaint – they would have no way of knowing what it is that the Complainant has in his or her possession.

The Claimant has not satisfied us on the balance of probabilities that he did not receive the minutes of the meetings. If he did, we are satisfied that this was as a result of an innocent error within the Human Resources team. It was the Human Resources team who were responsible for the distribution of minutes.

We are surprised that if the Claimant did not receive the minutes of the meetings, he did not raise any contemporaneous complaint or



ask for the minutes. Had he done so, any error within the HR team would have been rectified.

Contrary to his complaint, the Claimant was provided with an outcome to his grievance which was set out in writing. The Claimant, in his evidence before us, adjusted his complaint to one of the outcome not being sufficiently detailed, but there is no obligation under the Respondent's policy to provide a detailed outcome and the Claimant did not raise any complaint about an alleged lack of detail at the time.

During the course of his evidence, the Claimant added a further complaint about this process when under cross examination. He said that he did not have an oral hearing when he was told the outcome of the investigation. This is not, however, a mandatory part of the Policy, it can be held but it is not a requirement that one is held.

For those reasons allegation number 8 fails on the facts. In any event, it was not put to Ms Moody, nor at any stage, that any failure on her part (we find there was none) was motivated either by race or by any protected act which had been carried out by the Claimant.

129.9 The ninth allegation was that the Claimant was subjected to unfounded Student complaints in February 2018. This is also said to be an act of victimisation.

This complaint evolved during the course of the Hearing before us. The first allegation was that he was subjected to the complaints. There is no doubt that the Claimant considered the complaints raised by Students to be unfounded in the sense that he considered them baseless. However, they were raised and it was right that he should have them brought to his attention.

His complaint before us, however, expanded beyond complaint that the Student issues were raised, or even that he was required – as he inevitably would be given that they had been raised – to answer them. Rather, he indicated that persons within the College (in particular, presumably, Mr Jefferson) had conspired with Students or had directed them to raise complaints. In his witness statement the Claimant referred to “*foul play*” and to “*smell [ing] a rat*”. He said the Students had in his view been “*directed*” to complain.

There was no shred of evidence in support of those allegations of conspiracy or direction. Student complaints had begun as early as 22 November 2017 (before any protected act) regarding the interruption of a lesson being conducted by Pat Tozer and the Claimant's treatment of the Lecturer. Further complaints were raised on 14 December 2017, 10 January 2018, then again on 6, 21 and 22 February 2018.

As well as being unable to identify any single fact from which we could conclude that these Student complaints were anything other than genuinely raised by the Students concerned, the Claimant could not establish any link between them being raised and his protected acts. It was entirely appropriate for the College to deal with complaints raised by Students and it was appropriate for Mr Jefferson to, in the first instance, discuss them with the Claimant to obtain his comments and observations. He did not give the Claimant physical copies of the complaints because when the first, anonymised, complaint was handed to the Claimant he had become defensive and demanded to know the identity of the Student who had raised the complaint which Mr Jefferson found to be inappropriate.

In any event, we fail to see how it is a detriment to obtain from a Lecturer their comments on complaints being raised against them. Indeed, had Mr Jefferson not sought the Claimant's comments but simply accepted the Student complaints without further enquiry, that would have been potentially detrimental to the Claimant. Obtaining his comments was not.

129.10

The tenth allegation, originally brought as a complaint of direct discrimination, but which we have considered as both that and / or a potential act of victimisation, was the decision not to pay the Claimant's relocation expenses.

We have found a series of facts which establish that the Claimant was simply not entitled to relocation expenses when taking up his post.

These facts are as follows:

- The post to which the Claimant applied was not advertised as attracting relocation expenses;
- Relocation expenses do not apply to all posts. They are only paid in exceptional circumstances where a post is difficult to recruit into and is at the discretion of the Principal and the approval of the Vice-Principal of Finance and Resources;
- The matter was not discussed at interview and was not mentioned in the job offer or contract which the Claimant received; and
- The Relocation Expenses Policy requires the Applicant to contact the Human Resources team before incurring an expense and to make a claim by submitting receipts and invoices.

The Claimant's post was not, on the evidence we have heard, difficult to recruit into and the post was not eligible for a relocation

allowance. None of the paperwork passing between the Claimant and the Respondent suggested that the Claimant would be entitled to relocation expenses.

Further, the Claimant did not ask about relocation expenses until 11 August 2017 after he had accepted the post and after he had signed his contract of employment. He was sent a copy of the relocation expenses policy, but until 6 November 2017 did nothing to progress his claim. He raised a query about claiming relocation costs on 7 November 2017 and on 22 November 2017 submitted paperwork in relation to relocation costs. That paperwork did not include receipts. The Claimant had not signed the undertaking which he was required to sign to confirm that any payment would be refunded to the College if the Claimant left voluntarily within three years. The Claimant then emailed Mr Jones about his claim and alleged that Mr Jones approved the claim verbally on 23 November 2017. We have accepted Mr Jones' evidence in this regard. He would not ever (he had only approved two relocation expense claims within the last five years) approve an expenses claim orally. He would always require a proper submission to be made in writing with supporting receipts.

The claimant's subsequent discussions with Ms Boswell on 29 November 2017 corroborate the fact that Mr Jones had not approved the Claimant's claim. When Ms Boswell asked the Claimant why he believed he was entitled to relocation expenses and who had authorised them, the Claimant said that the questions were offensive. He did not at any stage suggest that he had already had approval for them from Mr Jones.

At no stage in this process, which began before the Claimant was ever appointed to, or even interviewed for, a post within the Respondent was the Claimant entitled to any relocation expenses. Even if he were, he did not at any stage complete the process of applying for such expenses correctly. At no stage did he sign the undertaking (a pre-requisite of submitting a claim) and at no time did he produce original receipts for any expenses.

The reason why the Claimant was not paid relocation expenses was because he was not entitled to them. This was not an act of discrimination on the ground of race, nor was it an act of victimisation.

129.11

The eleventh complaint brought by the Claimant – said to be an act of direct discrimination and / or victimisation – was that he was invited to a Probationary Review meeting.

It is the Claimant's case that the very fact of being invited to a Probationary Review meeting was an act of discrimination or victimisation.

He was invited to a Probationary Review meeting in accordance with the terms of his contract which contained a twelve month probationary period, during which his performance would be assessed and he would be invited to meetings.

At the time the Claimant was invited to the meeting, the issue had been passed to Mr Adamson, then Curriculum Director, to determine whether or not the Claimant's employment should be terminated. In circumstances where the College was considering terminating a probationary employee's contract, it was a requirement of the Policy that a formal Probationary Review meeting would be held.

In the letter of 7 March 2018, which we have found as a fact that the Claimant received (contrary to his evidence before us), the College's concerns about the Claimant's performance and behaviour were set out.

The Respondent, at all times, followed the Probation Review process. There had been an earlier informal review and in any event, a formal review was required in circumstances where termination of employment was being considered.

We have found as a fact, on the balance of the evidence before us, that Mr Andrews was not aware of the Claimant's previous complaints of discrimination and thus his calling the Claimant to a meeting cannot have been an act of victimisation. Indeed, the Claimant did not suggest to Mr Andrews at the time that it was a discriminatory act to call him to the Probationary Review meeting.

The Claimant has not established any fact from which we can conclude that a white (or non-black) employee in the same position, with the same number of complaints and criticisms raised against him, would have been treated any differently.

This complaint fails on its merits. The Respondent was obliged to call the Claimant to a Probationary Review meeting when it was considering terminating his contract of employment and it is the fact of the invitation to the meeting about which the Claimant complains.

129.12

The twelfth and final complaint is of the Claimant's dismissal itself. The Claimant alleged that he was constructively dismissed, but he was in fact dismissed by the Respondent.

The Claimant was to attend his Probationary Review meeting on 7 March 2018. That morning he submitted a letter of resignation giving three months' notice of termination of his employment. Under his Contract of Employment, during his probationary period, the period of notice which he was required to give (and which he was entitled to receive in the event of termination) was one month.

Having resigned on a lengthy period of notice, the Claimant's employment continued. He attended the Probationary Review meeting after handing in his letter of notice which indicates that he also considered his employment to be continuing for a period.

The Claimant was dismissed at the conclusion of that meeting because he had not met standards of performance in management and teaching and because of a safeguarding breach. Those are not only the stated reasons for the termination of the Claimant's employment, but, we have found as a fact, the actual reasons. There is no evidence before us upon which we could conclude that Mr Andrews (who was not aware of the Claimant's previous complaints) was motivated by race in any way, nor that he was motivated by the Claimant's previous protected acts. Mr Andrews dismissed the Claimant because, and only because, of the reasons set out in the dismissal letter and which were explained to the Claimant on the day.

130. Accordingly, each of the Claimant's complaints fail on their merits. The claim is dismissed.

15 December 2020

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Employment Judge Ord

Sent to the parties on: 18/12/2020

Jon Marlowe  
For the Tribunal Office