



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Parbhjot Singh

v

Metroline West

Heard at: Watford

On: 25 June to 2 July 2018,
In Chambers: 17 August 2018

Before: Employment Judge Henry
Mr A Scott
Mrs I Sood

Appearances

For the Claimant: Mr Rajat Kumar, Lay Representative
For the Respondent: Mr Gareth Graham, Counsel

JUDGMENT

The unanimous decision of the tribunal is that:

1. The claimant has not been discriminated against on grounds of the protected characteristic of religion or belief.
2. The claimant has not been victimised
3. There has not been a repudiatory breach of the employment contract, so as to entitle the claimant to treat the employment relationship as at an end. The claimant has not been constructively dismissed
4. The claimant has suffered an unlawful deduction from his wage in not being paid company sick pay between 25 January 2017 and 15 March 2017.
5. The issue of remedy on an unlawful deduction of wages will be determined at hearing on remedy.
6. The claimant's claims for Discrimination, Victimisation and constructive dismissal are dismissed.

REASONS

1. The claimant by a claim form presented to the tribunal on 13 May 2017, presents complaints for constructive unfair dismissal, discrimination on the protected characteristic of religion and belief and a claim for an unlawful deduction from wages.
2. The claimant commenced employment with the respondent on 16 April 2007. The effective date of termination was 15 March 2017, the claimant then having been employed for nine complete years.

The issues

3. The issues for the tribunal's determination were agreed at the outset of the hearing, being those as were agreed at preliminary hearings and sent to the parties on 18 August 2017 and 16 December 2017, as follows:
 - 3.1 The claimant resigned his employment on 15 March 2017. This is therefore an allegation of unfair constructive dismissal.
 - 3.2 The claimant has indicated that he alleges that the respondent was in breach of the following terms of his contract of employment which he alleges applied:
 - 3.2.1 The implied term of mutual trust and confidence;
 - 3.2.2 The contractual term entitling employees to sick pay;
 - 3.2.3 A duty of care to ensure an employee's health, safety and welfare.
 - 3.3 The acts that the claimant seeks to rely upon as amounting, either individually or cumulatively, to repudiatory breaches of the claimant's conduct of employment are as follows:
 - 3.3.1 Non-payment of company sick pay;
 - 3.3.2 Unfairly subjecting the claimant to the disciplinary process, including giving the claimant a written warning on 13 December 2016, and the rejection of his grievance on 13 March 2017.
 - 3.4 Further factual allegations in support of the claimant's claims are as follows:
 - 3.4.1 Mr J Parry's conduct in dealing with an incident that had taken place between the claimant and Mr Mota between February and June 2016. It is recorded that it is the claimant's case that these events were linked and events that took place following a road traffic accident involving the claimant on 13 November 2016;

- 3.4.2 Mr J Parry humiliating the claimant by speaking about the disciplinary process in front of other drivers and Mr Rashid on 24 January 2017;
 - 3.4.3 Mr J Parry requiring the claimant to attend a disciplinary hearing, challenging the veracity of the claimant's statement and making a misleading witness statement to the garage manager undertaking the grievance hearing. Issuing the letter for the rescheduled appointment on Mr Parry's own volition;
 - 3.4.4 Mr J Parry displaying aggressive body language on 24 January 2017, namely throwing his hands in the air, pointing his fingers at the claimant's face and standing with his arms folded;
 - 3.4.5 Mr Parry ignoring health and safety concerns by sending the claimant to drive a PCV bus for eight hours in circumstances where the claimant was complaining that he was stressed, on 24 January 2017;
 - 3.4.6 Mr J Parry giving specific instructions to Mr Rashid, garage administration supervisor, not to accept any plea of sickness from the claimant. It is alleged that instruction was pre-emptive and pre-meditated.
 - 3.4.7 Inviting the claimant to a formal meeting on 27 January 2017, in circumstances where the claimant was on certified sick leave (certified by his GP).
- 3.5 Were any breaches of contract sufficiently serious to constitute a repudiatory breach?
 - 3.6 Did the claimant resign because of any such breach?
 - 3.7 Did the claimant act within a reasonable time of such breach?
 - 3.8 Was the dismissal fair?
 - 3.9 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct?
 - 3.10 The respondent does not accept the factual matrix alleged by the claimant within the factual issues recited above.

Discrimination because of religion or belief and/or harassment relating to religion or belief

- 4. Did Mr Tarling give the claimant a written warning lasting for 12 months (rather than a lesser penalty) because the claimant was a Sikh (in this regard the claimant's comparators are Mr Sean Hendrick and Mr Ian Spencer)?

5. Was Mr Parry in a position to investigate the alleged conduct of Mr Mota on 14-16 February 2016?
6. If so, was his investigation in any respect flawed (ie as to its promptness and/or thoroughness)?
7. If so, was that because the claimant is a Sikh and Mr Mota is not?

Victimisation

8. Was calling the claimant to a capability interview on 3 November 2016, victimisation within the meaning of s.27 of the Equality Act 2010, the protected act being the complaint of the claimant about the acts of Mr Mota of February 2016?

Arrears of Pay

9. The claimant went on sick leave on 25 January 2017. He resigned on 15 March 2017. Between those dates he was paid statutory sick pay. The claimant complains that he was not paid company sick pay and that he was entitled to this for that period. The respondent's position is that company sick pay was discretionary and not payable in the particular circumstance of this case.
10. It is noted for completeness that, the claimant having presented a complaint for disability discrimination, the claimant withdrew such complaint at the commencement of the hearing which was dismissed.

Evidence

11. The tribunal heard evidence from the claimant, and from the following witnesses on behalf of the respondent: Mr Jonathan Parry – operations manager; Mrs Alison Duberry – garage manager; Ms Jacqui Carter – garage manager; David Tarling – operations manager; Abdul Rashid – driver – former garage administration supervisor (Gas); and Mr Hashi Jama – deputy convener for Unite at Metroline West.
12. The witnesses' evidence in chief was given by written statements upon which they were then cross-examined. The tribunal also received a written statement of Mr Americo Mota – bus driver. He did not however give oral evidence to the tribunal.
13. The tribunal had before it bundles of documents, exhibit R1, R2, R3, R4, R5, R6 and R7.
14. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Material Facts

15. The respondent is a bus company, with several garages and routes around London and the Home Counties, formed following the purchase of five garages from First Centre West in June 2013. The respondent is a subsidiary of Comfort Del Gro which also owns Metroline Travel Ltd.
16. The claimant commenced employment as a bus driver with First Centre West on 16 April 2007, being transferred under the Transfer of Undertaking (Protection and Consolidation) Regulations 2016 to the respondent, working at their Greenford garage until he resigned from their employment on 15 March 2017.
17. It is not in dispute for the purposes of the tribunal's determination that, the claimant had a good employment record without disciplinary sanction until December 2016.
18. In February 2016, the claimant raised an Occurrence Report against a colleague employee, Mr Mota, in respect of an incident on 6 February 2016, when Mr Mota was seen to circle a roundabout three times before making a gesture to the claimant, (Mr Mota has not denied circling a roundabout three times whilst the bus was in service), and that on 14 February 2016, following an altercation with the claimant, Mr Mota racially verbally abused him.
19. In respect of these events, it has been presented to the tribunal that the claimant raised a complaint (being sent to the garage manager, Mrs Duberry), against an individual who, albeit not an employee; being the son of an ex-controller, who had learning disabilities and being friendly with drivers, would travel on buses, and would frequent the depot using the garages' recreational facilities, the claimant stated that should a driver refuse to take him in their bus he would threaten to make false complaints against them to TfL, the claimant's correspondence thereon stating: *"I already done that couple of times pretending to be a bus passenger. He plays pool inside depot."*
20. The tribunal has received significant evidence as to the expression "I already done that..." as referring to the claimant. The claimant states that that was a typo and should have referred to "he" not "I", referring to the individual he was then complaining about.
21. From a perusal of the correspondence then following, between the claimant and the garage manager, it is evident that reference was being made to the individual complained about and not a reference to the claimant.
22. On Ms Duberry asking for further particulars so as to be able to carry out an investigation, the claimant on 8 February 2016, advised that all staff to include himself, would entertain the individual, the claimant stating that: "He subsequently refused him and totally banned him because of his behaviour" and that he had "made his decision on grounds that the individual would not

be insured for insurance purposes should an accident occur whilst the bus was not in service but whilst the individual was then on the bus”, the claimant further advising that, he did not wish to have any employee get into trouble.

23. On 14 February 2016, a complaint was made to TfL by a Mrs S, sent by email on 13 February 2016 at 2:06 am, the email stating:

“I saw this bus driver done 3 times spin in this roundabout. He just driver in circle. That was looking so stupid .. I didn’t like that. Driver should be responsible. He was just playing while on his duty. I saw this bus was in service. I just noticed registration number of the bus .. And time. If u see CCTV u will see everything. Could u please check on him... And take strict action. That is something stupid I never seen so far...”

24. The tribunal pauses here, as following from the reference to “I” in the claimant’s letter to Mrs Duberry, in respect of the individual using the garage’s facilities, it has been presented to the tribunal that this complaint had been furnished by the claimant under a fictitious name, identifying that the expression “and take strict action” is similar to the expression used by the claimant as referred to infra, and that the timing of the email complaint was an unusual time for an average member of the public to be penning a complaint, and further that within the garage, it was at that time being rumoured that the claimant had been penning complaints anonymously to TfL.

25. The claimant vehemently denies that he was the author of this complaint.

26. On the evidence presented to the tribunal, on a balance of probabilities, the tribunal finds it highly probable that the claimant had penned the complaint.

27. The complaint was received by the respondent on 15 February 2016 and asked to be investigated by TfL.

28. As above stated, on 16 February 2016, the claimant presented an Occurrence Report, which is here set out in full, as it sets the basis upon which the claimant’s claim for discrimination on the grounds of religion and belief are based. The claimant’s Occurrence Report provided:

“Dear Sir/Madam

On 6 February time 23:31 at Cargo Centre roundabout I was approaching I seen 482 bus SN09-CEF (23:32) he went on this roundabout three times. Bus was in service to Heathrow Terminal 5, driver was “Mr: Mota 482 late”.

On 14 Feb I was inside depot having my break Mr: Mota came near me trying to make argument with me. I was shocked when he said to me I will F..k you up. I will pull your beard and hair from your head. Your turban will be on the floor.

I didn’t liked that. For a Sikh turban and my hair and beard is my pride. I am just so upset trying to contact staff manager but as I start late could not meet so for.

Could you please take appropriate action.

Yesterday at 16:19 he send me text message. It says

Hello my friend just to let you know what goes around comes around tks.

Yesterday I was at work, I have doubt that Mr Mota ordered restaurant food at my home address. On my full name and my full tell number and they new my home address where I live.

Because food was non veg, that never happened before. As one day before he threatened me if I ever complained about him that round bout incident and one anauthorised person stays in his bus from depot.”

29. On 17 February 2016, the operations manager (OM), Mr Parry, was seen by the claimant regarding his Occurrence Report, in which Mr Parry states that the claimant advised that, he had a private hire driver's licence, further advising of Mr Mota having gone around the roundabout three times and that following their argument on 14 February, he had wanted the matter fully investigation. Mr Singh was informed that Mr Parry would speak to Mr Mota and formulate an investigation into the matter, and that CCTV would be acquired for the incident on 2 February.
30. It is also here noted that the claimant gave Mr Parry a copy of his minicab licence.
31. It is the claimant's evidence that the licence was requested by Mr Parry, in order to gather dirt on him so as to thwart his complaint against Mr Mota.
32. The claimant has not been able to state how Mr Mota had proposed to use this information against him, it not being in dispute that bus drivers did retain private hire licences and for which the respondent would carry out audits through TfL, for which meetings would be had to emphasise the rules for combining private hire driving with bus driving. There is not an offence of holding a private hire licence. Mr Parry has identified the issue of concern being that, drivers were required not to exceed the limit of the number of hours driving according to the drivers' hours rule, and the Working Time Regulations, and further that were drivers also driving a taxi, they may inadvertently drive more than their permitted limit, further identifying that drivers had been known to go off sick from the respondent after driving their taxi, claiming sick pay whilst carrying out private hire work leading to dismissals for gross misconduct. There is no suggestion that the claimant had been doing so.
33. It is Mr Parry's evidence that, the claimant voluntarily furnished this information.
34. The tribunal is unable to determine exactly why the claimant's licence was checked. There is nothing to suggest that Mr Parry at this time, on 17 February 2016, would have requested the licence, as it was the claimant that had initiated the meeting on 17 February when the licence was furnished.

35. The tribunal is here conscious that it has been presented to the tribunal that, the claimant had made it known to colleagues that Mr Mota had complained against him, and it may have been the case that the claimant had sought to pre-empt any complaint that Mr Mota may have made against him, by disclosing his minicab license.
36. The tribunal does not have evidence before it to make a determination hereon, however, there is nothing presented to the tribunal relevant to this period in time, that identifies Mr Parry to have had any issues against the claimant or otherwise of having shown any propensity towards issues of the claimant's religion and/or belief, so as to call into question any motive being had in Mr Parry requesting the private hire licence be produced, had he done so, save for the claimant's Occurrence Report of 16 February; Mr Parry at this time had not spoken with Mr Mota, and there is no evidence presented of Mr Mota and Mr Parry having any form of relationship for which Mr Parry would then want to shield Mr Mota from any complaint of the claimant, so as to find "dirt" on the claimant as the claimant alleges.
37. Following the meeting with the claimant, Mr Parry met with Mr Mota, notes of which meeting are at R1 page 54C (typed transcript at page 54E).
38. The information provided Mr Mota, whilst not aware of the particular complaint raised by the claimant, was that he and the claimant had had an on/off friendship for about seven years, Mr Mota advising as to what he understood to be the claimant's concern, namely being in respect of his bus circling the roundabout three times on 6 February 2016, which he identified as having arisen on the back of the claimant having made complaint against their mutual friend, (the individual with learning difficulties travelling on the buses) with whom Mr Mota stated that the claimant had fallen out of friendship with, on account of the individual stopping paying for foodstuff for the claimant, Mr Mota advising Mr Parry that he understood that the claimant had made an official complaint about the incident on 6 February 2016 to TfL, which on Mr Parry enquiring as to how he was aware of that, Mr Mota informed Mr Parry that he had been so informed by other drivers, advising that the claimant had advised them that he had reported him. Mr Mota then advised that the claimant was then panicking *"going around the garage showing them that I have made an allegation to him but I don't know what"*.
39. On Mr Parry making further enquiries as to whether Mr Mota was aware of the claimant's particular complaint, Mr Mota stated that he was not, but only that a report had been made against him, but that he did not know the contents of the report.
40. Mr Mota was then on leave until 22 February 2016, whereon his return, he furnished an Occurrence Report in respect of events on 13 February 2016, stating:

"On Friday 13/02/16 I was finished my duty, and I went on the canteen I so Mr P Singh and Mr Karimi talking about Paul. I just heard Mr P Singh say from now on I will report all drivers to TfL and Metroline WO [sic] take Paul on the bus. Mr Karimi tried

to persuade telling, Paul is your friend for so long and also help you many times to do rail jobs, but Mr P Singh said: I don't care, and I will report you to Mr Mota and I said don't get me involved. Please is nothing to do with me. In the last week some colleagues come to me regarding Mr P Singh make a report about me."

41. The claimant was then on annual leave between 27 February and 11 March 2016 and was then off sick from 22 March to 9 April 2016.

42. Mr Parry was on annual leave from 24 March to 4 April 2016.

43. On 23 April 2016, the claimant furnished a further Occurrence Report, the subject of the report stating:

"To ND reminder of take action against 482 driver (Mr: Motta) as he swore at me, wanted to pull my turban, sent home non-veg food."

44. The occurrence report further stated that the claimant was upset, in that no action had been taken against Mr Mota, having raised his complaint to his staff manager and being advised that he would investigate the matter, and that:

"It has been more than two months now. I am very upset. It is enough time to investigate. Looks like this is very unfavourable to me. Let me remind you once again please be fair and take strict action against him.

1. What he done to me was sent non-veg food at my home address. I was shocked as my family is pure veg.
2. Inside depot I was sitting on chair, he came to me start swearing, and also said to me "I will pull your turban on the floor, punch you on your face, and all your hair from your head, and pull your beard?? I am Sikh for me my turban is my pride, how can any driver can abuse and management didn't take any action.
3. He also spin his bus three time at Cargo Centre roundabout. I reported it to my staff manager.
4. Whenever he goes past me he smiles at me to show that he is protected by someone inside management.
5. Once again I am requesting you please take action as otherwise I have to write my complaint to HR department, Metroline head office.
6. He swore to me he used hatred word about my turban and hair, sent me non-veg food to my family if I did any of above mistake I would be sacked, why he is protected?"

45. In respect of the second Occurrence Report, Mr Parry met with the claimant on 24 April 2016, to outline why the process in respect of his first occurrence report had been delayed and to arrange a meeting in order to confirm the allegation he wished to have discussed. A meeting was arranged for after the upcoming Bank Holiday, being; 25 and 28 March, for 3 May 2016.

46. The claimant also on 24 April 2016, wrote to the garage manager, Ms Duberry, under the subject "Request to take action against 482 late driver Mr Mota American." The claimant set out that he had reported the matter to his manager, setting out the issues he raised by his Occurrence Report of 23 April, further advising:

"5. Let me tell you I am Sikh by religion and very proud to be. For me my turban is my pride. I don't cut my hair, I feel very insulted. Now I am very very angry. How can someone done so much to me. I have reported it to my staff manager in writing and 2 months now no action has been taken.

6. I notice recently whenever he goes past me he smiles and laughs at me to show that he is protected by someone inside management.

7. He is the one who does second job as plumber while doing driving full-time bus ...

8. He also sent me text message says "let me tell you my friend what goes round comes round" I still have that text message.

I am writing to you today as it has been 2 months no action has been taken so far. I had reported it to Staff Manager Mr John about Mr Mota American. Staff Manager advised me that he will investigate in to this and will take strict action but don't done anything.

Can I ask you if I done anyone of above mentioned mistake (not all mistakes he done) what action would you take?? So why he is protected? This is unfair. That is breach of terms and guidelines of our company.

I hope you will take strict action otherwise I will have no choice but to take my complaint to HR Department, Metroline Head Office, I will never hesitate to talk with Jaspal CEO Metroline as this is matter of my religion."

47. On the 25 April 2016, Ms Duberry requested from Mr Parry the outcome and a reply for the claimant, and account of the action taken, advising that the claimant did not feel that the matter was closed off, and further advised Mr Parry that further investigations of Mr Mota were required based on the claimant's allegations.

48. In respect hereof, Mr Parry met with the claimant on the 28 April 2016 confirming the allegations being raised by him, seeking a copy of the text message referred to, further agreeing to meet him on the 3 May. Mr Parry's evidence to the tribunal was that, "I explained that there had been a delay in the investigation because of his holidays and sickness, and the Easter break, and he seemed to accept this, and agreed that I should go on with the investigation".

49. On the 3 February, the claimant furnished Mr Parry with the text message dated 15 February and timed at 16:19,.

50. On the 6 May 2016, Mr Mota was requested to attend an investigation meeting for the 12 May, in respect of allegations of "harassment and inappropriate comments made towards a 482 route driver". The notes of the investigation meeting are at R1 page 61H(1) which are here set out in

some detail as it is material to the claimant's claim in respect of Mr Parry not investigating his complaint.

“JP Read out Mr P Singh report dated 16/02/16, and asked if AM agreed with the details of the report.

AM Course not

JP Read out informal notes/Mota report dated 22/20/16.

JP Why would Mr Singh allege these things

AM He can write whatever he wants

AM I said to him may be a couple of F words but not in the contents in what he said I did not use any racist words towards him.

JP What swear words did you use.

AM F Word

JP Did you send any take away food to his home address

AM I did not know where he lives, I do know (sic)

JP Did your mutual friend Paul French send the food

AM No I don't think so

JP Did you know his family were vegetarian

AM No idea.

JP Do you have his home or mobile telephone numbers

AM I do not have his home number but I do have his mobile number, but I blocked it because he kept sending pictures of naked men.

JP What was the number – 07447..... last message was sent October 2015.

JP In your own report you confirmed you went around the roundabout 3 times due to a funny sound.

JP Did you make any facial expressions towards P Singh when you completed your manoeuvre.

AM No I just go around.

JP Was Paul French your mutual friend on the bus at this time.

AM Yes

JP Did you at any time threaten to punch him in his face

- AM No
- JP Did you threaten to pull down his Turban
- AM No talking to the individual not about race or religion same as a I am talking to you
- JM Did you threaten to remove hair from his head or beard
- AM No nothing to do with me
- JP When you drive past Mr Singh do you acknowledge him in any way
- AM I try to ignore him he usually does that to me
- JP Plumbing, have you ever undertaken any work for any supervisors
- AM Nothing to do with me, no plumbing the supervisor called me to put a door up Khosa at home.
- JP Did you send a message to Mr Singh threatening what goes round comes round
- AM Nothing to send message, nothing on what's app
- JP What's is your mobile number
- JP Text message print showing message that was sent to Mr Singh from AM at 16.19pm on 15/02/16. AM alleged this is a song title he is a singer
- JP Do you have any problems with Mr Singh
- AM Not until this date, I was thing (sic) we were friends and he is creating to much., I never did anything to him at all.
- JP Has this mutual friend Paul French created a problem between you.
- AM No Mr Singh is upset as I told Paul not to buy food, Paul's father told me to keep an eye on his son.
- JP Do you allow Paul to travel on your bus
- AM He uses passes
- JP Do you allow him to come into the depot, he is not allowed to
- AM Parks his bicycle then is seen by Rashid
- JP Can you confirm that you will work normally until the investigation is completed remain professional and avoid any sort of confrontation with driver Singh
- AM Ok – if I stay in the Company I would like to move garage, I do not think it healthy for either me or him to come to work

Adjourned at 17:30pm

Reconvened at 16.25pm 13/05/16 only Mr Mota attended, no TU present

CCTV for incident on 06/2/16 viewed and confirmed that AM circle roundabout 3 times and on exiting round about is seen to look towards Mr Singh's bus and smile and laugh.

G Karimi Report dated 11/05/16 – in relation incident in rest room with PS and AM.

JP Advised AM that having considered the facts, I believed there was a case to answer and would be forwarding the matter to a disciplinary hearing.

Charges – Harassment and Inappropriate comments made towards a 482 route driver.

Hearing manager David Tarling OM

Hearing date 18th May 2016 at 13:48hrs

Advised AM that the charge is one that could constitute gross misconduct, therefore if found proven could result in summary dismissal.

Investigation meeting closed at

16:50pm”

51. A disciplinary hearing was duly held. Mr Mota faced charges of “harassment and inappropriate comments made towards a 482 route driver” on the 18 May 2016” which were found proved and for which he was issued a warning. Mr Mota was further advised that, “it was agreed ... that you would ensure that there is no further misconduct on your part. You were also informed that a repeat of similar misconduct under the company rules within 12 months is likely to lead to the next stage in the procedure ... or, if the conduct is of a more serious nature could lead to your dismissal.” A copy of the disciplinary outcome letter dated 19 May 2016 is at R1 page 64, and notes of the disciplinary hearing are at R1 page 64A to 64I.
52. On the 19 May 2016, the claimant submitted a third Occurrence Report, the subject of the report stating “third and final request to take action regarding my complain [sic] against Mr Mota 482 drive”. The Occurrence Report stated:

“My Staff Manager Mr: John told me that he is investigating the complaint I filed nearly 10 weeks ago. I am not happy the way this case is investigating by Staff Manager.

On 24-04-2006 I sent you an email to remind him to take action. My Staff Manager called me in the office and promised me within 2 weeks he will take appropriate action. That 2 weeks also finished on the 17.05.2016. But I seen driver Mota (482 late rota) today in my breat time. So that means no action has been taken.

I am not happy and clearly reminding you I am going to take this complaint to Head Office as well as (CEO Mr: Jaspal Singh). I did not write to Head Office yet, because I was feeling so proud of my management. Till today I was fully believed that Staff Manager and Depot Manager will investigate my case fairly and will definitely permanent transferred DR: Mota to another depot. But today I seen him in depot in working uniform, I can say this is discrimination. Someone trying to protect him.

1. Driver Mr: Mota sent non-veg food to my home address
 2. He also gave restaurant owner my name and home address and my mobile number, I want to know how he find out whenever I file any complain. I assume his wife Ana working inside Greenford Depot Office maybe if she passes confidential information. As soon as I put complain how he knew that
 3. ...”
53. The claimant then restates the incident of Mr Mota circling the roundabout and of the assault on him in respect of his turban and pulling his beard and of the text message sent.
54. The claimant then advised:
- “On 10-05-06 early morning I am he bringing outside person inside depot. I was so shocked both of them threatened me maybe they want to make trouble because this is the time when I finish my job. What they both doing inside depot. All I could do is report it to you. I done many times now I will have to take this complain to CEO ... and Metroline Head Office. As you didn’t permanent transfer him to another depot. He gave me and my family so much stress. If I done any one of above mistake I would be sacked by this time.
This is not fair to me.”
55. The claimant’s Occurrence Report was timed at 21:04 on the 19 May 2016.
56. On the 20 May 2016, the claimant was written to by Mr Parry, who after setting out the reasons giving rise to a delay in matters, advised the claimant that:
- “Following the meeting on the 3 May 2016, driver Mota was invited to attend an investigation meeting with a letter dated 6 May 2016, in relation to the allegations that you had submitted. The investigation was undertaken on the 12 May 2016 and concluded on the 13 May 2016. As a result of the outcome of that investigation the matter was progressed to a disciplinary hearing which was undertaken at the garage on the 18 May 2016 and subsequently concluded on the 19 May 2016.
- Any actions taken by the company remain confidential between employee and the investigating manager, due to data protection we are not able to detail any sanction information or the outcome, but rest assured that the matter has been fully investigated and the matter is closed.
- I would remind you that the allegations have been fully investigated, and your latest Occurrence Report dated the 19 May 2016 outlines that you are now making allegations about another employee within the business, namely Mr Mota’s wife. Whilst Metroline will investigate these allegations, I must remind you any unfounded or malicious allegations made against another employee is considered to be gross misconduct and therefore may result in, if proven, in summary dismissal from Metroline employment.
- I hope this clarifies points that have been raised in regards to your Occurrence/Grievance, and you are satisfied with the outcome, if you are not, you have the right of appeal ...”
57. On the 20 May 2016, the claimant again wrote to Ms Duberry under the subject heading “Final reminder to take action against driver Mota American (482 late rota)” stating:

“On 24 April I sent an email requesting you to take action against Mr Mota (...) He gave me and my family too much stress. I don’t want him here. Please permanent transfer him to any other garage. I don’t want more stress ... I also want to inform you that I am going to take my complain to Head Office tomorrow.”

58. The claimant later that day, further to Mr Parry’s letter, wrote to Ms Duberry appealing the decision of Mr Parry, stating:

“Because as long as he remain in same depot same late 482 rota I feel insulted, stressed, and most importantly I don’t want any future conflict or threat from him. He already gave me and my family so much stress.”

59. It is also noted that in respected of Mr Mota’s wife, the claimant stated that he was not making a complaint against her, stating:

“...I fully trust occurrence Report is confidential document. How he knew within hour that I made complain against him and then he came to me and starts swearing. Things getting worse and worse. This is just I assume, and it’s just common sense everyone know his wife is working inside the office so I still want to make it clear I am not making any false allegations against her. I only assume in my past complain I said I assume that, if she pass or someone that is matter of investigation. And also keeping Occurrence Reports safe and secure is depot office responsibility.

I also want to raise one thing with you and also want to make it clear I’m not making allegations against anyone.”

60. The claimant concluded his correspondence advising:

“I love this job and want to work with pride and confidence without any threat, verbal or fysical [sic] abuse, as long as he remains in this depot he will definitely trying] to threat me again as he done so many times in the past. Remove him crime 482 rote as he offended not me.”

61. The claimant on the 22 May 2016, furnished a further Occurrence Report under the subject heading “Appeal against this decision made on 19th May 2016”. The claimant there principally setting out the issues raised with Ms Duberry by his correspondence raising his appeal on the 20 May 2016.

62. By correspondence of the 27 May 2016, the claimant was invited to an appeal hearing against the outcome of his grievance.

63. The grievance appeal hearing was duly heard on the 2 June 2016. The claimant was accompanied by his workplace colleague Mr G Singh Bhachu, notes of which are at R1 page 72 by which, on Ms Duberry asking why the claimant was appealing, the following exchange is noted:

“PS I want Mota moved from Greenford. Shouldn’t be on 482. If we stay on the same route there could be future conflict and now he’s after me.

AD Has anything further happened since the incident you raised in your initial grievance?

PS No but I'm not happy I feel under threat.

AD But can I be clear nothing further has occurred?

PS No.”

64. And on Ms Duberry asking the claimant as to the outcome he had sought, it is noted:

“AD Can you confirm firstly did you state a desired outcome?

PS No I believe he will do it again and again if he's on the same route.

AD Normally in a grievance we would ask what or how you would like as an outcome or whether you want it dealt with formally or informally. If your expectation for example was to have Mr Mota spoken to or dismissed as another example, it is within the Hearing Manager's objectives to manage your expectation.

PS Mr Mota was in the garage the other day.

AD He is a driver here he is allowed to be.

PS I don't want him in the garage

AD Ok let's rewind a little here. The company investigated the allegations you made and action was taken towards Mr Mota which was deemed satisfactory based on the findings. I have reviewed this and am satisfied that the process was followed. The decision regarding whether Mr Mota is removed from the garage is a management one and is based on the seriousness of the incident.

PS The incident was serious – he insulted my religion and sent food to my home.

AD Whilst not wanting to go into all the details of the case again, as that is not what today is about, the allegations made were investigated. Not everything you alleged was found to be proven i.e. the delivery of the food. You have no proof of who sent this and we are unable to investigate this further. You have to be assured that the matter has been dealt with and steps put in place to prevent further incidents taking place.

PS I feel threatened.

AD Mr Mota has been advised that of now he needs to conduct himself in the future and should there be any further incidents you should bring them to our attention and they will be investigated. The appropriate action has been taken and we have to put trust in the process and allow Mr Mota the opportunity to prove that he will behave in a professional way. If he does not we have a process that will address this.

PS You haven't done anything he is still on the route.

AD Mr Shah (sic) details of conversations with other members of staff are confidential. I can assure you that appropriate action was taken but it was felt not appropriate to remove Mr Mota from the route. The management have made this decision and you don't have the right to overrule this decision. You have to put

your faith in the management team and the system that we have addressed the issue.

GB Alison is saying that Mota has been dealt with and should there be anything further action will be taken. You have to give him the opportunity to prove he has learned and if not, they will do something else.

PS Well, I'm not happy.

AD I'm sorry that you are not but the procedure has been followed and appropriate action taken which you have to accept as fact from myself. It wasn't appropriate to move Mr Mota from the garage so we now have to find a way of resolving this so that you can both work together without future repercussion. Would you consider meeting with Mr Mota with me and Mr Bhachu present?

PS No I don't want to do that."

65. Further issues were then addressed, and for which it was agreed that Mr Mota would be approached to offer an apology to the claimant, for which the following was then noted:

"AD I think we need to move this forward and try to find a positive resolution. As stated, I will contact Mr Mota and come back to you following this but it may take some time for me to see him.

GB That's fine, we understand.

AD Ok thank you both for your time and I will be back in touch as soon as I can."

66. On the 5 June 2016, 3 days following the grievance appeal meeting, the claimant wrote to Ms Duberry stating that having discussed all issues and facts, he was not satisfied with the outcome of their meeting, stating:

"I thought he was transferred to another garage, but in this meeting as you've said he might come back in same 428 late rota as I feel let down.

...

Because this happened inside Greenford Bus Depot where I was having my break, driver Motta came near me, threatened me and said to me that "I will pull your beard, remove all your hair, pull your turban down if you ever make any complaint against me." His threatening words towards my hairs and my head, beards and turban still coming in my ears again and again.

...

I feel let down, therefore I'm taking this complaint to Head Office today as I never had stress in my life. Like all other drivers I also have right to work here freely without any harassment, threat, and stress."

67. Ms Duberry subsequently interviewed Mr Mota on the 9 June, notes of which are at R1 page 76A. Mr Mota advised that he was happy not working with the claimant having temporarily been assigned to another garage, stating that he was considering making the transfer permanent, and on Ms Duberry seeking an apology for the claimant, Mr Mota stated that, he was

not prepared to apologise as he felt he had paid for the incident with the disciplinary action. He did not accept all the allegations and felt the claimant had contributed, and felt that it would be the best all round if he could transfer to O.N. which gave both him and the claimant a fresh start.

68. By correspondence of the 13 June 2016, Ms Duberry furnished the claimant with the outcome to his appeal, which after setting out the facts of the meeting and what had been agreed, expressed her surprise and disappointment in receiving the claimant's correspondence of the 5 June in light of her having advised that there would be a delay in her pursuing the matter with Mr Mota, owing to his being on loan to Alperton Garage, further stating:

“I feel I must impress upon you my frustration that you had not allowed me the courtesy to complete the grievance appeal process before sending this email.”

69. Ms Duberry thereon advised the claimant that Mr Mota did not agree to furnishing an apology, and that that was not something they could insist upon in light of the company already having pursued the matter with him through the internal disciplinary process, advising that she had now completed her investigation and believed the matter satisfactorily resolved by the local management team, and for which the matter was then being considered as closed. Ms Duberry concluded her letter, advising the claimant that:

“I would like to take this opportunity to advise you, in the strictest confidence but with Mr Mota's consent, that Mr Mota has personally requested to transfer to another garage on a permanent basis. I feel this will give you both the opportunity to make a fresh start and to put these matters behind you. I urge you to make contact with our Employee Assistance Programme ... if you feel it would facilitate this.”

70. The tribunal pauses here, as the claimant raises issue in respect of an ill adjusted wing mirror of a bus on 26 September 2016, which has given to him to drive (the wing mirror to the nearside of the bus being positioned to the side of the front pillar of the bus, instead of in front of the front pillar, so that the view was then of the full length of the nearside of the bus, instead of from the front door of the bus backwards), the claimant stating that he had reported the bus being brought to him by a controller, without having checked the bus, or filling in a vehicle defect report, a copy of which report is at R1 page 79A to 79G. The claimant raised complaint that; he could have been involved in an accident, or put on report, and that there was no feedback to his report of the condition of the bus.
71. It was Mr Parry's evidence to the tribunal that, on the claimant having raised the issue, he had received it as a matter for his information but was not an issue for which action needed to be taken, albeit, having had it raised with him he may have addressed the issue with the individual concerned, an iBus supervisor, who was not a driver, so that in future he knew not to adjust the mirrors in such a way.

72. Having examined the issue with the claimant as to the issue arising by the ill positioned wing mirror, there was no suggestion that the individual concerned had sought to present the bus to the claimant in the condition alleged as an act of discrimination, and indeed, irrespective of how the bus was presented, the tribunal finds that as a professional driver, before setting out in a bus, it would be incumbent on a driver to make sure all mirrors were appropriately adjusted for them to have a full view of the bus relevant to use, such that the situation that the claimant alleges could have arisen, would only then have arisen had the claimant been negligent in his duties as a professional bus driver failing to carry out appropriate vehicle checks, the adjustment of mirrors being a basic adjustment on taking charge of a vehicle.
73. It is however evident from the nature of this complaint being raised by the claimant, that it displays a readiness of the claimant to take issue with the most trivial of matters and blowing them out of all proportion.
74. In April 2016, Mr Tarling, operation manager, on reviewing sick returns, noticed that the claimant was showing on the respondent's "Oracle" system (a system recording sickness absence) as having been absent on four occasions in a rolling six month period, which by the respondent's sickness absence procedure was a trigger point for action under the sickness absence procedures.
75. The respondent's sickness absence procedures are at bundle R3 which provides under the section "Managing Sickness":

"Almost all employees will experience some periods of sickness absence throughout the course of their employment. Most will only require a return to work interview to maintain their high level of attendance. Some employees will require more focus to ensure they regularly attend work.

If an employee's level of sickness absence is such that it is affecting their ability to regularly carry out their duties, then their absence could lead to disciplinary action under the heading capability. This is not suggesting that their sickness is not genuine, but that their absence record is not acceptable.

To manage an employee's sickness absence fairly and consistently, trigger points must be in place. Trigger points may be either a number of periods of absence within a timeframe, a single absence lasting more than a defined period of days, or both.

First Group Holdings have adopted the following trigger point:

- Three or more occurrences in a rolling twelve month...
- ...

If an absence trigger point is reached, or if a pattern of absence emerges (eg same day of week absences, or avoiding a particular shift/rota) this must be dealt with through the company's local disciplinary procedure or through the MFA process in TOCs. Employees must therefore be invited to a meeting in writing and given the opportunity of being represented at the meeting. Following the meeting any outcomes and future expectations should be put in writing and, if formal disciplinary action was taken, the right of appeal explained..."

76. As a consequence of the claimant's absences as shown on the Oracle system, Mr Tarling wrote to the claimant on 21 October 2016, by way of a standard template letter, inviting the claimant to attend a capability hearing for 3 November 2016 to be chaired by Mr Parry, operations manager. The correspondence advised:

“... Recently, your attendance appears to have fallen short of Metroline's reasonable expectations. A hearing is therefore being held to consider your unsatisfactory attendance at work between 22 March 2016 and 13 September 2016, four occasions in total. This is a capability hearing, which will assess your capability to perform your role (in this case, by meeting reasonable attendance targets, to a satisfactory standard).

Please find enclosed relevant documents that will be referred to at the hearing, namely:

Oracle absence report and a copy of Metroline West's sickness absence policy.

You will have a full opportunity to put forward representations at the hearing, ...”

77. The claimant was then advised as the potential outcome from the meeting, and advised of his need to adduce such medical evidence relevant to his absence and of his right to representation.
78. By the Oracle report, it showed that the claimant had gone sick on duty on 22 March, which was the first instance, that he had been off sick with “fever and headache” between 22 and 28 March, then off sick for 11 days for the same issue between 31 March and 10 April and had then been absent while sick overseas for 39 days between 6 August and 13 September.
79. The meeting with Mr Parry took place on the 9 November, where Mr Parry observed that in respect of the absences, there had in fact only been two instances of absence, and that the first three absences above referred were a single period of absence which was notified to the claimant and for which the formal meeting did not then take place. Mr Parry nevertheless took the opportunity to apprise the claimant of his need to maintain a reasonable attendance. Mr Parry further advised the claimant thereof in writing of the same date, sending a standard “attendance standards improvement required” letter.
80. On 13 November 2016, the claimant was involved in a road traffic accident for which he completed a Vehicle Incident Report stating that, the accident had occurred by his releasing his handbrake and then the bus suddenly moved causing the accident occasioning damage to both the bus and the vehicle the bus collided with.
81. On viewing CCTV footage on the bus, the claimant was seen to be driving with documents on his steering wheel and then reaching down picking up a large drinks carton, unscrewing it and drinking from it, and as he replaced it to his left hand side, whilst looking away from the road in front of his vehicle, he then rolled forward and collided with the vehicle in front.

82. Following a disciplinary hearing, chaired by Mr Tarling, the case against the claimant was proven, finding that the claimant's negligence was to blame for the collision. In respect of this incident, it was Mr Tarling's evidence to the tribunal that, the conduct was "unacceptable negligence and could have been described as driving without due care and attention..."
83. The claimant was issued with a written warning to remain on his file for a period of 12 months, Mr Tarling in imposing the sanction giving account for the claimant having a previous good record and having no live sanctions on file.
84. In respect of this matter, the tribunal is particularly here conscious of the evidence of the claimant's union representative, Mr Jama, that the sanction was extremely lenient, in that the consequences of the claimant's actions could have been significantly worse, in that the vicinity where the incident occurred was frequented by foreign nationals not familiar with traffic driving on the left hand side of the road, and would often step into the road looking for oncoming traffic from the opposite direction, such that road users had to be particularly vigilant of such pedestrians, a fact particularly known to bus drivers driving along the stretch of road in question, such that the claimant's actions could have resulted in a fatality.
85. The tribunal pauses here, as the claimant here alleges that he has been treated less favourably than his colleagues, Mr Hendricks and Mr Spencer, in respect of accidents they had had, because of his religion and belief.
86. With respect Mr Hendricks, he was a very new driver who had started in service in September 2015, passed his one month probation with a commendation, having three small collisions: the first being on 4 September when his bus collided with a bus stop sign; the second on 11 December involving a collision with a car; and the third on 13 December involving a collision with a lorry, damage in each case being minimal.
87. On the issue being addressed by Mr Parry, Mr Hendricks was sent back for corrective training, being advised that he would be dealt with under his probation were there any further collisions, this being a procedure normally followed for drivers in probation, where should they fail they are dismissed. Mr Hendricks subsequently passed his six month review suffering one further accident when a van reversed across a footpath into the side of Mr Hendricks' bus as he was pulling into a bus stop.
88. With regards Mr Spencer, having commenced employment in November 2015, in July 2016 he had two minor collisions in quick succession, for which Mr Tarling referred him for corrective training and issued him a formal oral warning. The first incident occurred when Mr Spencer hit another bus whilst turning. In the second incident, Mr Spencer collided with a flagpole damaging his nearside mirror. It was Mr Tarling's evidence that both these incidents were errors of judgment from a relatively new driver and did not amount to negligence, or otherwise arise from him doing something that he knew or should have known he was forbidden from doing, as was the case

as regards the claimant, namely drinking from a carton while driving and taking his eyes off the road.

89. The next issue of relevant is in relation to performance reports in respect of the claimant in that from 14 December to 14 January 2017 the claimant was reported for incidents of either running late or running early, the relevance hereof is that bus drivers are required to run to schedule so as to meet the bus service's passenger timetable.
90. The tribunal finds the circumstance of the accidents involving Mr Hendricks and Mr Spencer, to have been materially different to that of the claimant's
91. Where issues of performance arise in respect of bus drivers on the road, it is the duty of iBus controllers and/or GAS officials (garage administration supervisors), to report such issues. In respect of reports being raised against the claimant by iBus controllers and/or GAS officials, the claimant had a practice of presenting occurrence reports in respect thereof, challenging the reports against him, copies of which are at R1 page 82K to 82N and 87A4 to 87A23.
92. On the claimant raising an occurrence report on his not agreeing with a report being made against him on 15 January 2017, he wrote to Mr Parry raising complaint that the iBus controller was falsely booking him, copy of which is at R1 page 87A15 to 87A17, asking for Mr Parry's intervention, the claimant stating he was being victimised by the iBus controller.
93. In respect hereof, it is Mr Parry's evidence to the tribunal that, he spoke to the claimant concerning the issues raised, and that on discussing the matter with the claimant, the claimant had stated that he had "just wanted it noted and did not want any trouble", for which Mr Parry has taken no further action. The claimant has not challenged Mr Parry in respect of this evidence.
94. On the reports as raised against the claimant being presented to Mr Parry, Mr Parry was compelled by procedure to investigate, which is not challenged by the claimant, and in respect of which, on 20 January 2017 he wrote to the claimant inviting him to a disciplinary hearing for 25 January 2017, the hearing being identified to, consider allegations of:
 - “1. Failure to comply with duty card by early running on 14th December 2016
 2. Failure to notify of delay to the service following toilet break on 14th January 2017
 - 3 Late departure 10 minutes on 13th January 2017.”
95. The correspondence then advised:

“Depending on the facts established at the hearing, if the hearing manager decides that your conduct amounts to gross misconduct or if you are subject to a live final written warning, one of the outcomes could be your dismissal (with or without notice), but a

decision on this will not be made until you have had a full opportunity to put forward your version of events and any mitigation.”

96. The claimant was thereon advised of his right to representation, further being advised that where he is unable to attend the hearing he was to explain why and provide an alternative date and time to be no later than five working days after the proposed date, copy of which is at R1 page 87A(24).
97. With regards the allegations, the tribunal heard evidence that the offences were of minor matters which would not have resulted in the claimant's employment being in jeopardy, and indeed, it was Mr Jama's evidence to the tribunal, being the claimant's union representative that, on having spoken to the claimant in respect of the allegations against him he had identified that of the three allegations, two could be defended, albeit the third, in respect of the claimant leaving 10 minutes late was not the case, but noting that, for such an offence his employment would not be in jeopardy.
98. It was also the evidence of Mr Tarling that, "they were of a very minor nature and I was pretty sure the outcome would be a low grade warning at worst, rather than anything more serious. For instance, I could not see any way in which his dismissal would result from the allegations against him, even if they were all proved, and nobody had yet discussed with him the explanation/mitigation that he appeared to want to put forward"
99. With respect union representation, on 21 January 2017, just before midnight, the claimant sent a text to his union representative, Mr Jama, informing him of the disciplinary hearing seeking his attendance, which on a response not having been received by the claimant, at 10.49am on 22 January, the claimant sent a further text seeking Mr Jama's attendance, for which Mr Jama responded to, advising that he could not attend because he had a previous event for that day, but that there was another representative that could attend to assist him.
100. On the claimant not being happy with that representative, he later that day went to see Mr Jama presenting his paperwork, which they then went through, for which Mr Jama advised as to the minor nature of the offences as above referred, and of his employment not being in jeopardy, and that were he not happy with any outcome of the meeting, they could then appeal.
101. It is further Mr Jama's evidence that on speaking with the claimant, the claimant seemed adamant that he did not want to attend the disciplinary meeting at any cost, despite his advising the claimant that his employment was not in jeopardy.
102. On 23 January 2017, the claimant wrote to Mr Parry seeking the disciplinary hearing be rescheduled, advising that Mr Jama was not available for the scheduled time, stating:

“...Could you please reschedule this meeting please? Meeting that suits Mr Jama as well as mine.

... if you need more information? Please do contact Mr Jama regarding his availability.”

103. On Mr Parry speaking to Mr Jama as suggested by the claimant, Mr Jama informed Mr Parry that whilst he would not be available, another representative from Unite would be available to accompany the claimant at the hearing, so that the hearing could proceed.
104. On 24 January, on Mr Jama unexpectedly becoming available for the scheduled time for the hearing, he sought to contact the claimant by phone and by text to advise him accordingly, and that he would therefore be able to represent him at the scheduled meeting. The claimant did not return Mr Jama's calls or texts. Mr Jama further advised Mr Parry of his availability and that he was then able to attend the meeting as the claimant's representative.
105. The tribunal here notes that, in respect of the claimant seeking to reschedule the meeting, further to his correspondence of 23 January, there was no correspondence from the respondent advising of the meeting being rescheduled.
106. On 23 January 2017, the claimant agreed a mutual exchange of duty with a colleague, from 24 January to 25 January; a duty rostered to start at 17:15 hours.
107. It is here noted for clarity that, mutual exchanges between staff were not unusual, and was a practice frequently carried out between colleagues.
108. It is Mr Parry's evidence that, whilst a mutual exchange was not uncommon, in the circumstances where the claimant had been scheduled for a disciplinary hearing which had not been rescheduled, and of which the exchange then impacted, he would have expected the claimant to have checked with him before agreeing to a mutual exchange. The claimant challenges this, in that he maintains that, although the shift duty was changed, he would nevertheless have been available for the disciplinary hearing on 25 January at 15:00 hours. In this respect, the tribunal heard evidence that the disciplinary hearing being scheduled during an individual's shift duty, arrangements were made for the individual's duty to be covered by a colleague for the duration of the disciplinary hearing, and that with the claimant not being rostered for duty at the appointed time, the disciplinary hearing would not have been expected to be held at such time when the claimant was not then rostered for duty.
109. With regards Mr Parry being advised as to union representation being availability, he sought to advise the claimant thereof, and of the meeting proceeding for 25 January at the then appointed time of 15:00 hours, and advised the counter official to notify him of the claimant's attendance to sign on for duty, for him to then speak with the claimant as to the disciplinary meeting going ahead as scheduled.

110. On the claimant arriving and signing on for his duty, and on Mr Parry being apprised thereof, Mr Parry sought to speak with the claimant, asking the claimant to accompany him behind the counter so that he could explain to him the arrangements for the disciplinary hearing, now that Mr Jama was available. The claimant refused to do so without union presence.
111. With regards the ensuing events, the claimant challenges the account of Mr Parry, the claimant submitting that he was thereon aggressively addressed and embarrassed by Mr Parry in the public arena at the counter where staff signed on.
112. With respect the events at the material time, the tribunal is aided by the evidence of Mr Rashid, garage administration supervisor (GAS), who witnessed the event and had prepared a report of the events, which the tribunal accepts as a true account of events at that time, Mr Rashid's witness statement providing:

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"I clearly overheard Mr Singh and Jon state the following:

Jon asked me is Mr Singh sign on I said yes he is going towards the rest room, Jon went out and asked Mr Singh come this way as Jon and Mr Singh approach the front counter.

Jon "Mr Singh can you come this way I need to have brief chat."

Mr Singh "I can't come in without a union rep"

Jon "As you are aware that you have disciplinary interview on Wednesday but you have Mx your duty, so I see you at 3pm"

Mr Singh "I am not coming in at 3pm. I'll be here around 17:10 my sign on time and I need a union rep"

Jon "Jama is not going to be around at that time. He has meeting on Wednesday"

Mr Singh "If there is no union rep I can't come"

Jon "Let's ring Jama and ask if he can come in on Wednesday"

Jon asked me to call Jama, I dialled the number and handed the phone to Jon, Jon spoke with Jama and then hand the phone to Mr Singh. Mr Singh requested to have the call on speaker. I told Mr Singh the phone does not have the hands-free facility. When he spoke to Jama the call was ended. I didn't hear what was discussed on the telephone.

Jon "So I'll see you on Wednesday at 5pm with Jama"

Mr Singh "I need it in writing"

Jon "I have already given you a letter and the only thing is changing is the time and I'll get you a new letter when you sign off"

Mr Singh "I still need it in writing and I need 48 hours notice"

Jon "You have been given 48 hours notice. The only thing is changing is the time"

Mr Singh kept going on about 48 hour notice and Jon intervene and told Mr Singh to go and take over otherwise you will be late for your take over.

Mr Singh "You have made me late now I don't want to be booked for taking over late?"

Mr P Singh left depot around 17:24, he was due to take over his bus at 17:54.

Jon asked me to call iBus (Alperton) that Mr Singh may be late for take over. I spoke with iBus and informed them that duty 219 may be late to take over his bus, he said there is a delay of 20 minutes on the route at present..."

113. With regards Mr Parry being aggressive or otherwise making aggressive gestures towards the claimant, Mr Rashid was clear to the tribunal that, he had not witnessed such behaviour from Mr Parry. The tribunal accepts Mr Rashid's evidence in this respect.
114. It is further here noted that details of the allegations against the claimant, or of the disciplinary report submitted against him, were not discussed with the claimant at this time and that the only matter discussed was the availability of Mr Jama, and of the meeting taking place at the originally scheduled time.
115. On Mr Jama speaking to the claimant on the telephone, it is Mr Jama's evidence, which is not challenged, that he advised the claimant that he was available to accompany him to the disciplinary meeting for the following day, 25 January.
116. Further in respect of this call, on the telephone being given to Mr Parry, it is not in dispute that Mr Parry then stated to Mr Jama that, he and Mr Jama would deal with the claimant's case the following day at 17:15pm. The claimant here states that as a consequence, he felt "very intimidated, humiliated and stressed" and by which the claimant maintains that Mr Parry and Mr Jama were in cohorts.
117. It was Mr Parry's evidence to the tribunal that there was nothing intended by the statement, which was a mere statement of the factual position that the claimant's case would be addressed at the disciplinary hearing at 17:15 on 25 January.
118. In respect of the changed hearing time, the claimant was issued with a letter advising of the same, which the claimant then refused to sign for. The claimant was advised that the allegations remained the same as those that had been set out in the previous invite letter, and the evidence on which the respondent relied remained the same, further being advised that should he fail to attend the rescheduled hearing without good reason it could result in the hearing being held in his absence and a decision made.
119. Following the altercation at the counter on the claimant signing on for duty, on the claimant leaving to commence his duties, Mr Parry was of the

opinion, following the events in respect of rescheduling the disciplinary hearing, that the claimant would go off sick to avoid having to attend. As a consequence, Mr Parry advised Mr Rashid (GAS) that should the claimant call in sick, his plea for sickness should not be accepted and that he would be treated as having refused the duty.

120. Subsequent thereto, the claimant advised the iBus controller that he was too stressed to drive, iBus informing Mr Rashid at 18:40 thereof and that the claimant had been instructed to leave the bus, and to return to the depot in a service bus.
121. The claimant returned to the depot at 19:35, at which time he was asked to sign the letter for the rescheduled disciplinary hearing for the following day, 25 January. As above stated, the claimant refused to sign, stating that he needed 48 hours notice.
122. In respect of the events above referred, the claimant presented an occurrence report timed at 21:16, a copy of which is at 87C-D, the claimant stating, *"Staff manager stressed me so much I couldn't drive as my body still shaking. Feeling pain in my head. I never been treated like that. How would I drive when just after sign on, staff manager bullied you so much in depot."*
123. The claimant thereon gave an account as to the events on the day and events leading thereto, and then stated:

"I don't want to lose my job. My today driving score is 4 (greenest) but it looks like this management dealing with me unfairly because I have got high pay rate.

This staff manager also failed to take any action against driver Mr: Mota nine months ago as that driver was keep threatening me for two occasion. Then I went to depot manager she didn't took any action also. Then I had to contact head office, now it looks like this manager trying to take revenge or trying to put my clean record into bad record...

In my almost 10 year service in never had any accident, due to very much stress given by management I had my 1st minor accident. I been given one year written warning why?

Why everybody not treated differently. Who is responsible for this?"

124. The claimant did not attend the disciplinary hearing scheduled for 25 January 2017.
125. The claimant has subsequently been on sick leave having furnished a sick certificate dated 27 January 2017, signing him off from 25th January 2017. The claimant has remained on certificated sick leave until he resigned his employment.
126. On the claimant not attending work, on 27 January 2017 he was written to, being advised:

"I refer to your non-attendance at work, which commenced on 24th January 2017, this was following a conversation at the counter with myself regarding your scheduled

disciplinary hearing that was due to be undertaken on the 25th January 2017 at 15:00hrs.

You had been invited to the disciplinary hearing on the 20th January 2017 in order to discuss allegations about your conduct with regards to your road performance on 14th December 2016, and 13th and 14th January 2017. In line with the procedure you signed the receipt notification on the 20th January 2017, and requested for your union representative Hashi Jama to represent you on this day.

Unfortunately your representative was required to undertake other duties within the business on the date of your hearing, but he had confirmed with me that he had contacted you and explained the process to you in relation to union cover. For this reason there was no need to reschedule the hearing that was arranged for Wednesday 25th January 2017 as your representative had explained to you that even though he would not be able to attend a suitable representative would be available for your case.

On Tuesday 24th January 2017 Hashi Jama also tried to contact you to confirm that he would now be available to represent you, however you did not return his calls or communicate with him. You then without authority decided to change your duty by Mx, to a start time of 17:15 hrs and demanded that I rescheduled the hearing. After speaking with Hashi Jama on the phone at the counter in front of you and after you had spoken with him, he agreed to undertake the hearing at the new time of 17:15hrs. A reschedule letter was then written for which you also then refused to sign.

I am unable to accept your plea of sickness which was made yesterday by you to the counter official. The counter supervisor on Tuesday evening was very clear with you when he advised you we would not accept any plea of sickness, as a result of your unwillingness to attend a formal meeting that had been prearranged, in that you told the supervisor that you are suffering with stress it is paramount that we resolve this matter as quickly as possible in order to elevate your stress. Whilst you remain absent from work you will not be paid any company sick pay.

I would urge you now to seek advice from your union representative, and ensure you attend the formal meeting that I have arranged in order to resolve your current issues. The meeting has been arranged at Greenford Garage on Monday 30th January 2017 at 15:45hrs.

You are entitled to be accompanied by a work place colleague or Official Trade Union Representative. Should you wish to be accompanied it is your responsibility to ensure their attendance.

I would also draw your attention to section 4.4 of the Metroline West Disciplinary Procedure which states the following

Where an employee fails to carry out a reasonable and lawful instruction, or fails to start or continue working having been given an instruction, the employee can be suspended from duty by individuals in a supervisory role, and this will normally be with rostered pay except in the circumstances when an individual refuses to work normally or where the employee is deemed to have reported sick as a hindrance to either the disciplinary process or as a result of being advised by an official of an impending report to their line manager (e.g. refusal of or going sick on duty without reasonable grounds) when it will be without pay. A local manager will clarify the circumstances when suspension is without pay.”

127. It is the claimant's evidence that he received Mr Parry's correspondence on 30 January, and in respect of which he raised a grievance, furnishing correspondence to the HR department on the same day, under the heading "Harassed, and unfair treated by staff managers".
128. The claimant therein raised issue as to: his having been issued with a written warning, stating that, he had never had a blameworthy accident in the previous ten years and then had his first minor accident, complaining of other drivers receiving lesser sanctions for blameworthy accidents; of incidences where he has been reported by iBus controllers in respect of running late and otherwise running early; of the incident of 24 January 2017 at the counter with Mr Parry, stating that he had repeatedly asked Mr Parry not to *"give any stress as I am just about to go out on road"* and that Mr Parry had said that although his union rep was away he was still required to attend the disciplinary hearing and that he was *"kind of bullying me that made me so much stress, I was crying while taking my passengers at first stop. He caused me so much stress... I was stressed and crying inside."*
129. The claimant thereon identified that he enjoyed his job, and of his having attended his GP on 27 January, and been advised not to drive a bus for the following two weeks. The claimant then advised that, having handed his sick certificate in, he had then received correspondence that he would not be receiving sick pay, stating that this was by the manager, Mr Parry, who had taken no action against Mr Mota, who nine months ago had threatened him on several occasions. The claimant thereon stated: *"It looks like now I am paying the prize [sic] as I reported to head office,"* and asked that in respect of the accident, that the sanction should be reduced to that of a verbal warning for six months and that the allegations extant against him should be removed, stating that he was *"getting too much stress"*. Further stating: *"I am just trying to work and keep my record clean as possible. I hope you will help me in this, so I can get back to work stress free and safely."*
130. On 2 February 2017, the claimant wrote to the CEO, Mr Jaspal Singh, requesting a meeting, under the heading, "REDRESS OFGRIEVANCE: RACIAL DISCRIMINATION, DISCRIMINATION, HARASSMENT,BULLYING and UNFAIR TREATMENT" The claimant thereon set out his complaints under the subheading headings of; **racial discrimination**, being in respect of the incidents with Mr Mota and that no action had been taken against him because of his wife working in the same garage as a GSA that Mr Mota knew of his home address and had threatened him and that because of his action resulting in Mr Mota being transferred to another garage this had not been *"taken lightly by the office staff and my line managers and they all awaited their time"*; **Unfair treatment**, the claimant referencing his accident, identifying that he had been dealt with unduly harshly and that his colleagues were treated differently where either no warnings were issued or otherwise a six month verbal warning had been issued for blameworthy accidents.
131. The claimant then under a further subheading of discrimination, identified that he was being targeted by a number of managers being; iBus

controllers, Mr Tarling, Mr Parry, and Ms Duberry, to make him leave the company in *“sheer desperation/alternatively to dismiss me, so that I can only presume, the husband of Anna, GSA (reference Mr Mota’s wife) at Greenford garage can have her husband back. I am being harassed and put to undue stress to an extent that my GP has forbidden me to drive a public vehicle for two weeks.”* The claimant then identified under the subheading **harassment**, the incidents of his being booked for running early and/or running late, and then under the subheading **bullying**, he made reference to the incident of 24 January 2017 and of his receiving correspondence from Mr Parry rearranging the disciplinary hearing for 30 January, stating: *“This unprofessional behaviour is the cause of my sickness”*.

132. The claimant thereon set out that there was a conspiracy against him and challenged the decision of Mr Parry that, whilst he remained absent from work he would not be paid company sick pay, submitting that by Mr Parry referring to his being absent as opposed to sick, he was thereby alleging that he, the claimant, was not sick but malingering in spite of his GP’s sick certificate. The claimant thereon advanced that being on certified sick absence, any meeting to be had was to review his sickness and for the company to identify how they could help with his recovery, but not for a formal hearing; the claimant raising the question as to whether he was “on suspension without pay?” and if so who had suspended him.
133. The claimant concluded his correspondence stating that he wished to have a meeting with Mr Singh, and that management refrain from making him a target because of the transfer of Mr Mota, further stating that he wished to be left alone so that he could carry on his duties in peace.
134. With regards the grievance presented to HR, Ms Carter, garage manager, invited the claimant to a grievance hearing for 8 February 2017, by correspondence of 3 February 2017.
135. Equally on 3 February, Mr Tarling, operations manager, wrote to the claimant in respect of his non-attendance at work due to stress, from 24 January, and his not attending he disciplinary meetings of 25 and 30 January, with Mr Parry stating:

“In order to help resolve your workplace stress I have now arranged for you to attend an investigation meeting to discuss the reports that were originally passed to you when Jon Parry, operations manager, issued you with an invite to a disciplinary hearing by letter. I feel that by discussing the issues it will in turn resolved your workplace stress.”
136. Mr Tarling thereon arranged that an investigation meeting take place 9 February 2017
137. Mr Tarling under separate cover, further wrote to the claimant by letter dated 3 February, requesting his attendance at the investigation meeting on the 9 February into allegations of misconduct, being the allegations for which Mr Parry had sought to meet with him about of the 25 January. The

invite was made on the respondent's standard letter, a copy of which is at R1 page 91A(3).

138. Mr Tarling also referred the claimant to the respondent's occupational health service arranging a meeting with the company doctor for 10 February 2017.
139. By correspondence of 6 February 2017, the CEO, Mr Singh, acknowledged the claimant's correspondence to him, advising that despite his request to meet with him, the respondent having a strict grievance procedure in place, it was not appropriate for the company to bypass that process, advising that he was forwarding his (the claimant's) correspondence to the head of HR to address.
140. This correspondence was not however furnished to the claimant until significantly later. However, it is noted that there is no challenge to the authenticity of this correspondence although the tribunal notes that the claimant does question the delay in the correspondence being furnished to him.
141. By correspondence of 6 February 2017 received by the respondent on 8 February, the claimant advised that he was too sick, suffering with stress, and that he could not attend any meetings, advising that he would inform Ms Carter once fully recovered. The claimant enclosed therewith a copy of her correspondence of 3 February and that of Mr Tarling's of the same date.
142. By a statement of fitness for work certificate, dated 8 February 2017, the claimant was signed not fit for work because of "anxiety, low mood" and signed off work for four weeks, having been assessed on 8 February.
143. On 8 February, Ms Carter acknowledged the claimant's correspondence of 6 February confirming that he had been referred to the company's occupational health service, and advised him of his responsibilities, being an employee absent from work during the sickness period, to attend interviews with his managers to monitor his absence and of his obligation to attend the company's doctors for assessment of his condition. Ms Carter further advised that:

"As you have reported that your current period of absence is due to workplace stress, this issue cannot be investigated and resolved unless you are present to provide clarity on the submissions that you have made. It is therefore in your best interest to comply with the company procedures and attend any meetings or medical reviews arranged by your line manager."
144. Ms Carter concluded her correspondence advising that, she would be in touch with the claimant in due course regarding his grievance.
145. A sickness review meeting was subsequently held with the claimant by Mr Tarling on 13 February 2017, notes of which are at R1 page 91A(13)-(15). The claimant here advised of his poor sleep pattern, for which it was established that his sleep pattern was in sync with the shift pattern that he normally worked. The meeting further discussed the cause for his stress, which in turn was causing his absence from work, being that of the formal

disciplinary hearing, and that in addressing that situation, it was a potential resolve to his stress. On it being raised by the claimant that he was not receiving company sick pay but only statutory sick pay, the claimant was advised that as he was not allowing the company to address his concerns, a decision had been taken not to pay him full company sick pay, albeit he was in receipt of statutory sick pay. This was confirmed to the claimant in writing by correspondence of the same date, providing:

“We discussed the catalyst for your stress being a formal process that you were due to attend. I advised you that once we dealt with this process on your return to work, then you could move on from this and you may see an improvement in your low mood. It is paramount that we resolve this matter as quickly as possible in order to elevate your stress. Whilst you remain absent from work you will not be paid any company sick pay.

I would also draw your attention to section 4.4 of the Metroline West disciplinary procedure which states the following:

“Where an employee fails to carry out a reasonable and lawful instruction, or fails to start or continue working having been given an instruction, the employee can be suspended from duty by individuals in a supervisor role, and this will normally be with rostered pay except in the circumstances when an individual refused to work normally or where the employee is deemed to have reported sick as a hindrance to either the disciplinary process, or as a result of being advised by an official of an impending report to their line manager (eg refusal of or going sick on duty without reasonable grounds) when it will be without pay. A local manager will clarify the circumstances when suspension is without pay.”

146. A further sickness review meeting was arranged for 21 February 2017.
147. With regard to this correspondence, the respondent states that the reference to the term “elevate your stress” was a typographical error which should have read “alleviate your stress”. The claimant does not accept this, and submits that the text correctly reflects the intent to elevate his stress. From a reading of the relevant phrase in context, it is clear that there is a typographical error and that the text should read “alleviate your stress” and that the reading advanced by the claimant is clearly without merit.
148. On 18 February 2017, the claimant in similar terms to that sent to the CEO, Mr Singh, sent correspondence to Ms Duberry and HR, for which Ms Smith, HR advisor, replied to the claimant on 21 February acknowledging receipt of the correspondence and reminded him that Ms Carter had been appointed to hear his grievance.
149. On 21 February 2017, the claimant attended the further sickness review meeting with Mr Tarling, notes of which are at R1 page 94-95. The claimant here stated that due to a lack of finance, his stress levels were increasing which, when questioned as to his symptoms, the claimant stated that he merely felt stressed, which on further prompting stated that he felt emotional and had a headache. The claimant further advised that, having followed the company’s procedure he required full payment of company sick pay. The claimant was thereon advised that a decision had been taken not to pay

company sick pay owing to the incident on 24 January, which issue he had not allowed the respondent to address, and which issue was giving rise to the stress complained of.

150. For completeness, it is here noted that the claimant sought surreptitiously to record the meeting.
151. It is further here noted that at this meeting, Mr Tarling furnished the claimant with the correspondence from the CEO, Mr Singh, dated 6 February, above referred.
152. With regards this meeting, the content of the discussion was confirmed by correspondence of 24 February which, after setting out the format of the meeting and nature of discussions had, it is then recorded:

“You told me that you felt emotional and that you were suffering from headaches and that your low mood was caused by the constant worry for your family. During the majority of our meeting you stated that the company’s decision to withhold company sick pay was causing your more stress.

... You continually brought up the incident with Mr Jon Parry, operations manager at Greenford garage on 24 January 2017 for which you have subsequently raised a grievance. I advised you that this would be dealt with by the appointed grievance hearing manager.

I understand from the letters you have copied to me that you have brought this matter to the attention of the human resources department and you have also written to Mr Jaspal Singh, chief executive officer for Metroline. So far you have failed to attend the grievance hearing meeting to enable the company to investigate the grievance. It is for this reason that company sick pay has been withdrawn.”

153. A further sickness review meeting was then scheduled for 10 March on the expiration of the then current sick certificate.
154. On 24 February, the claimant again wrote to the CEO, Mr Singh, advising of his having received his (Mr Singh’s) letter of 6 February advising that he was “exceptionally good” at his work and that he was in his position because he had had the misfortune to observe Mr Mota’s bus on route and reported it, who turned out to have a wife working in the same office at Greenford garage, stating that, he believed that was against company rules because of a conflict of interest. He further stated that, although Mr Mota had then been transferred he was nevertheless being treated like a pariah. The claimant then addressed the incident with Mr Parry on 24 January 2017, stating:

“On route the stress level was so severe that I had to stop the bus and report in SOD. I felt that if I continued my duty then I would be PUTTING MY OWN PASSENGERS AND OTHER ROAD USER AT RISK. I went SOD only because I could not carry on my duty because the tirade of the staff manager was buzzing in my ears and I felt deeply insulted and demeaned.”

155. On the claimant detailing his having then been certified sick, he stated that the management at Greenford garage had decided that his SOD and

continued sick leave was unlawful and for which he was being punished by not being paid company sick pay, stating that the company had a duty of care to help a driver who was off sick return to work as soon as possible, advising that for that reason he had attended the sick review meeting with Mr Tarling.

156. The claimant thereon stated:

“All I required was an apology from the staff manager and dealt fairly and not seen to be taking revenge because they feel that it was due to me that the husband and wife team was separated: I am instead subjected to further stress by the punitive measures against me... With the amount of SSP I received and receiving whilst I continued to be sick is putting me in a serious financial trouble. I cannot pay my bills and the money is not even sufficient to buy food. We are being forced into starvation. I am going into deeper depression and feeling helpless...”

157. The claimant concluded his correspondence stating that, were Mr Singh to direct that he returned to work he would do so, but only for financial reasons, and that any consequential danger to company passengers and other road users whilst in his state of depression would be down to the company, stating as an alternative that, he could apply to the employment tribunals for redress.

158. On 27 February 2017, Ms Carter responded to the claimant in respect of his further grievances and of the correspondence to the CEO of 24 February, advising that his various grievances had been assigned to her to address in accordance with the grievance procedures. Ms Carter further advised that despite her efforts to meet with him for her to gain a full understanding of the issues, this had not happened, and that without his affording her the opportunity of a meeting he was nevertheless continuing to raise grievances which were all related, which were then being presented outside of the grievance procedure, for which Ms Carter set out the relevant procedure.

159. Ms Carter thereon set out the importance of having a meeting with the claimant to address the issues raised and giving rise to his absence due to workplace stress, asking that the claimant comply with the company's grievance procedure and arranged a grievance hearing for 3 March 2017.

160. On 2 March, the claimant attended the office of Ms Carter advising her that he had a sickness review meeting on 3 March and requested that the grievance investigation be re-arranged. It was agreed that the grievance investigation would then be held on 6 March, and on it being noted that union representation may not be available for that date, the claimant advised that he wished the meeting proceed on 6 March, because he wanted to get his company sick pay.

161. It is here noted as above referred that, the sickness review meeting was not scheduled for 3 March but 10 March.

162. On 6 March, a grievance investigation meeting was duly held. The claimant attended accompanied by the trade union chairman, Mr Farah, notes of which are at R1 page 100-112.

163. Ms Carter addressed the issues raised by the claimant in turn, following which the tribunal notes the following:

- “JC: How do you believe that your work stress can be resolved?
- PS: From the date I am sick pay me my full company sick pay is why I am here today I can't see my family suffering and I am worrying about my father as well.
- JC: So will sick pay enable you to return to work?
- PS: Sick pay will enable me to look after my family and will be the 1st step to reduce the stress that I am suffering.
- JC: What else do you believe will reduce your stress?
- PS: Review of the one year WW and give me fair and appropriate punishment not harsh punishment.
- JC: Do you know that you cannot now appeal that WW as there is a seven day appeal restriction?
- PS: Due to stress I missed the seven day time limit.
- JC: That would have been made clear to you in the outcome letter.
- PS: I didn't not know that I would be treated like this. One day I got CSP one day after that only SSP. I have complied with all the letters, went to the company doctor, did everything that was required of me.
- JC: What is your understanding of entitlement to company sick pay?
- PS: I never got in writing since the new company took over from First what the policy is but I know that I am here, have followed all the procedures, it is due to a staff manager that I am sick and I am not trying to avoid anything.
- JC: Is driver Mouta still working at Greenford
- PS: No, when I contacted head office they transferred him.
- JC: What are you hoping to achieve as an outcome of having submitted this grievance?
- PS: As I said, I am here to get my money CSP, I have an appointment with my GP on 8 March and I am willing to come out of stress. I want to perform as I used to be but until today, I didn't see any single step from my local management to reduce my stress.
- JC: As you have raised several issues I will need to speak to a number of staff members at Greenford and obtain some clarification around the issues that have caused you to be off from work. I will aim to speak to Jon Parry if he is available either today or tomorrow and if CCTV is available for the day I will also wish to view it. I may be able to contact you with a decision regarding the sick pay by Wednesday, however, my full conclusion and outcome will be

confirmed in writing to you by Monday 13 March in a letter. I need you to understand that not all your requests or my conclusions may be what you desire however, my aim is to get you back to work which will benefit you as well as the company, and it is important that you know that you have been treated fairly.”

164. On 8 March 2017, Ms Carter furnished the claimant with an update as to her progress, advising that she was not in a position to make a decision regarding his entitlement to company sick pay, and of her intention to give her full conclusion to his grievance on 13 March.
165. The claimant confirmed receipt of this correspondence on 9 March, advising that he awaited her conclusion and requested a copy of the employee handbook.
166. On 10 March 2017, the further witness review meeting was held with the claimant, notes of which are at R1 page 115N to 115P. The claimant identified that he had had no improvement in his sleep pattern and that his low mood was worse, advising that having attended his grievance hearing he was awaiting its outcome, and that each day that passed he was falling deeper into stress because of financial burdens, for which he stated his low mood was having a direct impact on all his family members. The claimant further questioned whether his sickness was considered genuine, seeking an answer why he was not paid company sick pay. Mr Tarling advised that he was not medically qualified to answer the question whether his sickness was genuine or not, but acknowledged that his sickness was certificated and that in respect of sick pay this would be determined by senior management. Mr Tarling further here advised the claimant that, having gone sick at the point of a formal process it had been for that reason that the company withdraw company sick pay, noting that the claimant was however receiving statutory sick pay.
167. On 13 March 2017, as promised, Ms Carter confirmed the outcome of her investigation, a copy of which is at R1 page 116-121.
168. Ms Carter addressed the claimant's issues for which he alleged racial discrimination, harassment, bullying and unfair treatment, and set out her findings, concluding that:

“I find that there is no basis for your grievance. There is no evidence that suggests you are being treated less favourably than other employees. There is no discrimination of any kind being aimed at you so far as I can see, and I cannot find any circumstance in which you have been treated differently to any other members of staff, being bullied or harassed as you have claimed. In fact I have found evidence that your line manager made every effort to obtain union representation on your behalf, and was disappointed with your refusal to comply with reasonable requests which were all in line with company procedures.

I also found that some of your evidence at the hearing was misleading as you had omitted to provide certain vital details which I subsequently found in occurrence reports you submitted. You led me to believe that you were vegetarian, although admitting in a report that you had ate a chicken roll during a meal break. You further

stated that you were involved in a minor collision, but failed to provide me with the specific details and cause of the collision which was due clearly to your negligence. I have found it confusing that you were upset by Jon Parry's conversation with you at the counter in full earshot of your colleagues as you stated, yet you requested a telephone call to your trade union representative be placed on speaker phone for all to hear...

...In relation to driver Mota, an investigation took place and subsequently Mr Mota transferred to another location. I am concerned that you have continued to make allegations against your managers of victimisation due to you having submitted a grievance in that matter which was dealt with, the outcome of which is confidential between the member of staff and the manager concerned... It is clear that although this matter was addressed appropriately and within company guidelines, you have continued to make allegations which were already investigated and dealt with.

Your request for company sick pay is declined and the decision of your line manager not to accept your plea of sickness will remain in place. As such you will be entitled to statutory sick pay provided a valid medical certificate has been submitted. I find that by your actions you have deliberately taken steps to avoid attending the disciplinary hearing, having been given adequate notice and in full knowledge that your union representative would be available. You have also delayed this process which would have given the company an opportunity to resolve the issues you had raised."

169. Ms Carter then addressed the claimant's written warning, advising that the claimant having failed to appeal within the appropriate timeframe, there were no mitigating circumstances by which those procedures should be relaxed.
170. The correspondence then concluded advising the claimant that were he not satisfied with her decision he had the right of appeal, which was to be submitted within seven calendar days to the deputy operations director at Alperton garage.
171. It is the claimant's evidence that he received this correspondence on the morning of 15 March 2017, stating that: "I was so disheartened that I did a constructive dismissal. I did not appeal against this decision as I felt that everyone was ganged up on me and I would not get fair play and natural justice". The claimant's letter of resignation is at R1 page 123-125.
172. The claimant therein set out that his "woes" started on his making his complaint against Mr Mota on 6 February 2016, stating that he had felt isolated without protection from his superior on being threatened by Mr Mota and that on Mr Mota having been transferred to another garage he had had action taken against him by management "*bordering on vendetta*". He then addressed the issue of his having been issued a written warning having not previously having a blameworthy accident on his record in contrast to other drivers and that having been off sick with "stress at work" since 25 January, he had been deprived company sick pay, and that "*suffering from "stress at work. The onus to alleviate my stress was on the employers. The letter dated 13 March 2017 has destroyed all hope of getting a fair trial and hearing. The employer showed no "duty of care"*". The claimant thereon advised that he could not await an appeal which would mean further

suffering for his family further stating: *“I am now, after this letter of termination without notice will free me from the fetters of my current employer and their mental torture”*.

173. The claimant subsequently engaged with ACAS under early conciliation and presented his complaint to the tribunal on 13 May 2017.

The law

174. On a claim of unlawful direct discrimination, it needs to be established that, there was less favourable treatment and that the reason or an effective reason was one of the protected characteristics. Sometimes a claimant is able to point to someone else in the respondent's employment who has been treated differently in the same circumstances. Indeed, it is a requirement that a comparison must be on the basis of someone else who is in the same or not materially different circumstances.
175. Where there is no person who actually fulfils the requirement of the statutory comparator, it is necessary to construct an imaginary or hypothetical comparator, a non-existent person who, had they existed and had the same circumstances as the claimant, would have been treated more favourably.
176. It then becomes incumbent on the claimant to show that such comparator, whether actual or imaginary, would have been treated less favourably. At this point the test of comparison starts to merge with the test of motivation. The answer to the question *“what is there to show that the actual/hypothetical comparator would have been treated differently?”* becomes almost the same as the answer to the question *“what was the reason for the treatment?”* Indeed, it is sometimes easier to go straight to the question of what was the motivation for the treatment rather than take it in the logical order, because if the answer to the question of motivation is answered in favour of the claimant, it becomes relatively easy to find that there has been different treatment.
177. Proving unlawful discrimination is a difficult task for a claimant. No employer will admit to it and indeed discrimination is often operating at an unconscious level. S.136 of the Equality Act 2010, assists the claimant in this regard. Where the tribunal finds facts from which the tribunal could decide in the absence of any other explanation that a respondent had unlawfully discriminated, the tribunal must hold that the contravention of the Act occurred, unless the respondent shows that it did not contravene the Act. In this regard, it is for the claimant to show facts from which the tribunal might infer unlawful discrimination. Those facts may emerge either from the claimant's own evidence or from the evidence of the respondent, and is for the tribunal to infer from a consideration of all the facts in the case. If this is not established, the claim fails at that point. If there are such facts, the onus is on the respondent to show that the protected characteristic was not part of their motivation.
178. The claimant may not be able to point to a comparator whose circumstances are not materially different from his own, the statutory

comparator, but may point to cases where there are similarities, and if he shows differential treatment it may help him move the burden onto the respondent.

179. Normally speaking, the fact that the respondent has acted unreasonably in a particular regard, does not in itself amount to facts that would raise the inference of unlawful discrimination. It is necessary to remark further that it is simply not enough to show that the claimant was treated in a particular way, and that he is of a particular protected characteristic. There are two stages to the test, not only must there be shown less favourable treatment, but it must be shown that the treatment was because of that protected characteristic, or that it can be so implied and upon which the burden, as above stated, shifts to the respondent.
180. As regards victimisation, it is for this tribunal to determine whether the claimant has done a protected act, intends to do so or is suspected of having done so.
181. A protected act occurs where the claimant has brought proceedings under the Equality Act 2010, given evidence or information in connection with proceedings under the Equality Act, or done any other thing for the purposes of, or in connection with the Equality Act, or made an allegation (whether or not express) that there has been a contravention of the Equality act.
182. If this is established, it is then for the claimant to establish that he has been treated less favourably than the respondent treats or would treat a person who has not done a protected act.
183. Where the claimant establishes such a difference, it is for this tribunal to determine whether the claimant has proved facts from which the tribunal could conclude in the absence of an adequate explanation from the respondent that, the treatment was consciously or unconsciously done by reason of the protected act. On this being the case, it will be for the respondent to then prove that it did not treat the claimant less favourably by reason of that protected act.
184. The law relevant to constructive dismissal was set out by Lord Denning, MR in the case Western Excavating (ECC) Limited v Sharp 1978 ICR page 221, as follows:

“If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed.”

185. On the contention that there was a fundamental breach of the contract of employment, by breach of the implied term of mutual trust and confidence,

this breach has been considered in the case of Post Office v Roberts [1980] IRLR, page 347 at paragraph 45 per Talbot J, referring to Kilner Brown J. in Robinson v Compton Parkinson Ltd [1978] IRLR 61, that:

45.“It seems to us although there is no direct authority to which we have been referred, that the law is perfectly plain and needs to be restated so that there shall be no opportunity for confusion in the future. In a contract of employment, and in conditions of employment, there has to be mutual trust and confidence between master and servant. Although most of the reported cases deal with the master seeking remedy against a servant or former servant for acting in breach of confidence or in breach of trust, that action can only be upon the basis that trust and confidence is mutual. Consequently, where a man says to his employer “I claim that you have broken your contract because you have clearly shown you have no confidence in me, and you have behaved in a way which is contrary to that mutual trust which ought to exist between master and servant” he is entitled in those circumstances; it seems to us, to say that there is conduct which amounted to a repudiation of the contract.”

46. In stating that principle, in our view Kilner Brown J does not set out any requirement that there should be deliberation, or intent, or bad faith.

47. Finally, there are very important words in a part of the judgment in Palmanor Ltd v Cedron [1978] IRLR 303, the words appearing in the judgment of Slynn J at page 305. It is a short quotation and reads as follows:

“It seems to us that in a case of this kind the tribunal is required to ask itself the question of whether the conduct was so unreasonable that it really went beyond the limits of the contract. We observe that in the course of the argument on behalf of the employee, it was submitted that the treatment that he was accorded was a repudiation of the contract.”

48.....We would agree that there may be conduct so intolerable that it amounts to a repudiation of contract. There are threads then running through the authorities whether it is the implied obligation of mutual trust and confidence, whether it is that intolerable conduct may terminate a contract, or whether it is that the conduct is so unreasonable that it goes beyond the limits of the contract. But in each case, in our view, you have to look at the conduct of the party whose behaviour is challenged and determine whether it is such that its effect, judged reasonably and sensibly, is to disable the other party from properly carrying out his or her obligations. If it is so found that that is the result, then it may be that a Tribunal could find a repudiation of contract.

Submissions

186. The parties presented oral submissions to the tribunal. The submissions have been duly considered.

Conclusions

Breach of express terms and/or the implied term of mutual trust and confidence

Mr J Parry's conduct in dealing with an incident that had taken place between the claimant and Mr Mota between February and June 2016.

187. The tribunal has found no evidence to support the claimant's contention that Mr Parry's conduct was anything other than reasonable in dealing with the incident between him and Mr Mota between February and June 2016. On the claimant having raised his occurrence report as against Mr Mota, Mr Parry had taken reasonable steps to investigate the allegations of the claimant concluding that Mr Mota be referred for disciplinary action. The tribunal has found nothing thereby that questions Mr Parry's conduct being anything other than reasonable in the circumstances.

Mr J Parry humiliating Mr P Singh by speaking about the disciplinary process in front of other drivers and Mr Rashid on 24 January 2017.

188. On the facts presented to the tribunal, the tribunal finds that contrary to the claimant's contention of being humiliated by Mr Parry, Mr Parry had sought to avoid any embarrassment to the claimant by asking that he speak to him behind the counter, the claimant refusing. On Mr Parry seeking to advise the claimant of the investigation meeting proceeding on 25 January, and on the claimant then not being prepared to speak with Mr Parry behind the counter and thereby outside of the public view, on Mr Parry then advising the claimant that the meeting was to proceed, where details of the allegations against the claimant, or of the disciplinary report submitted against him, were not discussed, the discussion that then ensued was the consequence of the claimant challenging Mr Parry as to his representatives' availability.

189. On Mr Parry then contacting Mr Jama, the claimant's representative, it is material that whilst in the public arena, the claimant then sought to have the telephone conversation held on loud speaker for which all then in the public area would have heard the discussion, on Mr Parry giving the phone to the claimant to speak with Mr Jama, the tribunal can find nothing thereby that would have humiliated the claimant.

190. The tribunal does not find evidence to support the claimant's contention of his being humiliated by Mr Parry or of there being circumstances from which it could reasonably be inferred that the claimant would have been humiliated by the circumstance.

Mr J Parry requiring the claimant to attend a disciplinary hearing, challenging the veracity of the claimant's statement and making a

misleading witness statement to the garage manager undertaking the grievance hearing. Issuing the letter of the rescheduled appointment on Mr Parry's own volition.

191. With regard the claimant's allegation of Mr Parry making a misleading statement, when addressed in cross-examination as to the statement of which the claimant alleged was misleading by Mr Parry, the claimant stated he did not know.
192. In these circumstances the tribunal finds no substance to the claimant's allegation in this respect.
193. With regards Mr J Parry requiring the claimant to attend a disciplinary hearing, on it not being in dispute that Mr Parry, on receiving reports on the claimant from ibus controllers, was obliged to call the claimant to a disciplinary meeting by procedure to address those issues, the tribunal finds no basis on which to support the claimant's contention.
194. With regards the claimant's complaint of Mr Parry "issuing the letter for the rescheduled appointment on Mr Parry's own volition" the tribunal has been unable to understand the issue being raised here by the claimant.
195. On the claimant having changed his shift for 24 January with his colleague, and therefore not then scheduled to be working at the originally scheduled time for the disciplinary meeting, on Mr Parry then rescheduling the meeting for that day at a time when the claimant would then be rota'd to work in light of his changing his rota'd time with his colleague, the tribunal has been unable to identify any conduct for which Mr Parry can be criticised; the hearing to be held on the scheduled day but then at a later time, to accommodate the claimant's amended rota.

Mr J Parry displaying aggressive body language on 24 January 2017, namely throwing his hands in the air, pointing his fingers at the claimant's face and standing with his arms folded.

196. On the evidence presented to the tribunal, in particular that of Mr Rashid, against whom the claimant does not make any complaint, by which Mr Rashid is clear that there was no aggression displayed by Mr Parry during his discussions with the claimant on 24 January 2017. The tribunal accordingly finds no substance to the claimant's allegation.

Mr Parry ignoring health and safety concerns by sending the claimant to drive a PCV bus for eight hours in circumstances where the claimant was complaining that he was stressed on 24 January 2017.

197. The claimant in cross-examination accepted that on the 24th January, after the discussion with Mr Parry, he then left to commence his duties and at which time he had not made it known to anybody that he felt unwell. In these circumstances, the tribunal can find no evidence upon which to support the claimant's contention that Mr Parry had ignored health and safety concerns by sending the claimant to drive a PCV bus for eight hours

on the claimant leaving to carry out his shift. It was only once the claimant had commenced his shift that he states he felt unwell, and for which he then informed the controller and subsequently went off ill from work.

198. The tribunal can find no substance to the claimant's allegation.

Mr J Parry giving specific instructions to Mr Rashid, garage administration supervisor, not to accept any plea of sickness from the claimant. It is alleged that this instruction was pre-emptive and pre-meditated.

199. On the evidence presented to the tribunal that, on the claimant seeking to avoid the disciplinary meeting for the 25th and suspecting, as was not uncommon, that staff would then sign off sick, a circumstance specifically catered for within the respondent's "first transforming travel" drivers handbook as to false pleas of sickness, the tribunal in the circumstances, accepts Mr Parry's evidence that in those circumstances there was every indication that the claimant would then absentee himself on grounds of sickness to avoid attending the disciplinary hearing, which the claimant had appeared to be intent on avoiding at all costs.
200. The tribunal finds that there was circumstance before Mr Parry, to warrant his instructions to Mr Rashid, of the suspected motive of the claimant, for which he was then entitled to give the instruction. The tribunal does not find Mr Parry's instruction to have been pre-emptive and pre-meditated, but was reactionary to circumstance.

Inviting the claimant to a formal meeting on 27 January in circumstances where the claimant was on certified sick leave (certified by his GP).

201. The evidence before the tribunal being that the claimant attending his GP on 27 January and was issued with a sick certificate to cover him from 25 January for two weeks, when equally on 27 January Mr Parry wrote to the claimant inviting him to a disciplinary hearing for 30 January, on the claimant's claim being that this letter was written at a time when he was on certified sick leave, the tribunal has not received evidence of exactly when the letter of Mr Parry was penned or the time when Mr Parry received the claimant's sick certificate on 27 January, Mr Parry's evidence being that he could not recall the exact time the claimant furnished his certificate.
202. As best the tribunal is able, giving regard to all the evidence before it, the tribunal finds on the balance of probabilities that, had Mr Parry received the claimant's sick certificate prior to his writing his letter to the claimant, there would have been some reference in the letter to either the claimant having furnished a sick certificate or otherwise of the claimant having attended the depot and having been seen by Mr Parry, this however is not recorded in the correspondence, which suggests that the letter of 27th was penned before the claimant had furnished his sick certificate.
203. On this finding, the tribunal finds that the facts do not support the claimant's contention that he was "invited" to a formal meeting on 27 January in circumstances where the claimant was on certified sick. That state of affairs was not then known to Mr Parry at the material time.

Breach of the contractual term entitling employees to sick pay in that the claimant was not paid company sick pay following his absence on 25 January 2017.

204. It is not in dispute that the claimant's terms and conditions of employment following his transfer under the Transfer of Undertaking Protection of Employment Regulation, from First to the respondent, Metroline West, are those of First, which are set out at R3.
205. By the provisions of First's terms and conditions in respect of company sick pay, it provides: *"In cases where a thorough investigation has revealed that the absence was not genuine the company will reserve the right to stop company sick pay payments, if payments have already been made the company will reclaim these in line with contractual entitlements..."*
206. It is there evident that company sick pay is only to be stopped in circumstances where following a thorough investigation it is established that the absence is not genuine.
207. The tribunal is also conscious of the provisions of First's Drivers' Handbook, section 7(i) as relied on by the respondent, which provides that *"Sick pay is only paid on days where the employee was rostered to work and is paid at the company's discretion. Company sick pay may be withheld, for example, if an employee fails to provide a fit note within three days of being required to do so, fails to attend medical review meetings, fails to attend occupational health appointments or submits a false plea of sickness"*. It would appear to be the case that this refers to the claimant having failed to furnish relevant documents or in respect of a false plea of sickness, which would appear to follow the earlier provisions, where there has been an investigation determining the same.
208. It is evident that by these terms and conditions, there are no specific provisions for the respondent to withhold company sick pay, save for the above stated reasons. The claimant's failure to attend an appointed disciplinary hearing is not such a stated reason.
209. With respect the failure to attend a disciplinary hearing and the use of sick absence as a way to avoiding the same, the tribunal notes that by Metroline West's disciplinary policy and procedure, and that on which Mr Parry based his decision to withhold the claimant's pay, this provision is relevant to suspension, it there providing at paragraph 4.4, that: *"Where an employee fails to carry out a reasonable and lawful instruction, or fails to start or continue working having been given an instruction, the employee can be suspended from duty by individuals in a supervisory role, and this will normally be with pay except in the circumstances when an individual refused to work normally or where the employee is deemed to have reported sick as a hindrance to either the disciplinary process, or as a result of being advised by an official of an impending report to their line manager (eg refusal of or going sick on duty without reasonable grounds) when it will be without pay. A local manager will clarify the circumstance when*

suspension is without pay." It has not been suggested that the claimant was suspended at any time, this despite the terms being those of Metroline West.

210. In these circumstances, the tribunal finds that there was a breach of the claimant's terms of employment when he was refused company sick pay from 25 January 2017.
211. Having found there to have been a breach, the tribunal has considered to what extent is the nature of this breach? On an examination of the circumstance giving rise to this breach, where there was evidence of the claimant going off on sick leave to avoid attending the disciplinary hearing scheduled for the 25 January, and where the claimant's subsequent actions of raising grievances and complaint to the CEO, seeking to bring about the dismissal of the disciplinary action against him, and where it was made clear to the claimant that, company sick pay was being withheld pending the disciplinary hearing, the tribunal finds that the respondent had thereby, contrary to displaying an intention no longer to be bound by the employment relationship, were specifically encouraging the continuance of the relationship by having the claimant engage in the disciplinary process, integral to the employment relationship.
212. In these qualified circumstances, the tribunal finds that the breach was not of a fundamental nature going to the root of the employment relationship, so as to amount to a repudiatory breach.
213. On the claimant being entitled to company sick pay, and on the claimant only receiving statutory sick pay from the 25 January 2017, the claimant has thereby suffered an unlawful deduction from his wage in not being paid company sick pay between 25 January 2017 and his resignation on 15 March 2017.

Unfairly subjecting the claimant to the disciplinary process, including giving the claimant a written warning on 13 December 2016 and the rejection of his grievance on 13 March 2017.

214. On the evidence before the tribunal, the tribunal has found no evidence to support the claimant's contention that there has been a repudiatory breach or otherwise any breach in respect to subjecting him to the disciplinary process.
215. The tribunal finds that the claimant, having had a blameworthy accident in circumstances where the effect could have had much greater consequence, on the claimant driving without due care and attention, having removed his gaze from the road occasioning an accident whilst doing so, it was appropriate that the claimant be subject to disciplinary action.
216. With regards the sanction imposed, the tribunal having heard evidence of the seriousness of the claimant's action in removing his gaze from the road occasioning an accident, particularly with regards the evidence of Mr Jama as to the particular stretch of road where the accident occurred, being an

area for high vigilance being populated by foreign nationals who often were not familiar with traffic travelling on the left, focusing on the left hand side of the road, such that they often looked in the wrong direction for traffic as they left the pavement to cross the road, necessitating a high level of vigilance from drivers, a known fact to bus drivers, that the issuance of a written warning in the circumstances of the claimant's accident, was then not unreasonable, and indeed as Mr Jama explained to the tribunal, was particularly lenient.

217. With regards the rejection of the claimant's grievance on 13 March 2017, the tribunal is satisfied that the evidence before Ms Carter was such as to support her findings and for which this tribunal cannot say that her findings were unreasonable, or otherwise in breach of procedure.
218. Of the claimant being subject to disciplinary action in January 2017, on the claimant being the subject of reports as to performance in accordance with the respondent's procedures, the claimant was then invited to a disciplinary hearing in accordance with procedure, for which this tribunal does not find such action untoward for the complaints raised against the claimant, and for which the claimant was then appropriately the subject to the disciplinary process.
219. For the reasons above stated, the tribunal does not find there to have been a repudiatory breach or otherwise a breach of any terms, whether express or implied, of the claimant's employment.

Discrimination because of religion and/or belief and/or harassment on grounds of religion and/or belief.

Did Mr Tarling give the claimant a written warning lasting for 12 months (rather than a lesser penalty) because the claimant was a Sikh (in this regard the claimant's comparators are Mr Sean Hendrick and Mr Ian Spencer)?

220. The tribunal finds that the offences of Mr Hendrick and that of Mr Spencer were offences which were not of such gravity as that of the claimant's. The claimant's offence, namely driving without due care and attention as opposed to issues of poor judgment in driving, the disparity in sanctions imposed were clearly attributable to the gravity of the offences. The tribunal can find no basis upon which to support the claimant's claim for differential treatment being premised on considerations of the claimant's religion and/or belief. Indeed, as evidenced by Mr Jama, the trade union representative for the claimant, the sanction of a written warning lasting for 12 months, in the circumstances of the offence being a lenient sanction, the tribunal finds that the claimant has not been unfavourably treated in any respect as regards the action taken against him, but treated positively favourably, on his occasioning an accident in circumstances where he was not paying attention to the road whilst his vehicle was moving.

221. The tribunal finds no substance to the claimant's claims in this respect.

Was Mr Parry in a position to investigate the alleged conduct of Mr Mota on 14/16 February 2016?

222. It is the claimant's contention here that Mr Parry, holding the position of operations support manager, was not then qualified to undertake the investigation into his complaint against Mr Mota, in that the provisions provide for the operations manager to undertake this task.
223. The tribunal deals with this matter briefly, in that the position of operations support manager, being the same position as that of operations manager; the titles having been changed, but for which there was no change in authority or function, the tribunal finds no substance to the claimant's contention.

Was Mr Parry's investigation in any respect flawed (ie as to its promptness and/or thoroughness)?

224. Despite the tribunal's finding as above stated as to Mr Parry being of appropriate authority to undertake the investigation, the tribunal finds that of the investigation undertaken Mr Parry, he had carried out a full and reasonable investigation pursuing lines of enquiry with such individuals who could reasonably have had relevant information to furnish, and that following his findings, referred the matter for disciplinary hearing against Mr Mota, the tribunal can find no basis on which to criticise Mr Parry's investigation, and finds the claimant's contention in this respect to be without merit.
225. For the reasons above stated, the tribunal does not find the characteristics of the claimant's religion and/or belief to have been factors in decisions taken by Mr Parry, Mr Tarling or Ms Carter respectively.

Victimisation

Was calling the claimant to a capability interview on 3 November 2016 victimisation within the meaning of s.27 of the Equality Act 2010, the protected act being the complaint of the claimant about the acts of Mr Mota of February 2016.

226. It is not in dispute that the claimant's complaint about Mr Mota could amount to a protected act. The tribunal nevertheless finds that the calling of the claimant to a capability interview on 3 November 2016, was the product of the respondent's Oracle report as to absence, where the Oracle system evidenced the claimant's absences on four occasions; that of 22 March, 23-28 March with fever and headache and 31 March to 10 April being sick overseas and a further absence from 6 August to 13 September, from which it was not readily identifiable that the first three absences as recorded, related to a single period of absence, so as to indicate that the trigger point for a capability interview had not then been triggered. There is no evidence from which this tribunal can find that the claimant then being called for a capability interview, reliance being had on the Oracle report, was in any way predicated on the protected act; being the allegations against Mr Mota. The

tribunal finds no evidence to support the claimant's contention in this respect.

- 227. The tribunal does not find the claimant to have been discriminated against because of his religion or belief, or otherwise victimised. Neither has there been circumstance for which the claimant was entitled to terminate the employment relationship when he did, and accordingly find that the claimant was not constructively dismissed when he tendered his resignation on 15 March 2017.
- 228. The claimants Claims for discrimination on the protected characteristic of religion or belief, victimisation and constructive dismissal are accordingly dismissed.
- 229. The claimant's claim for unlawful deduction from wages succeeds.

Employment Judge Henry

Date: ...24.10.18.....

Sent to the parties on:

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For the Tribunal Office