



EMPLOYMENT TRIBUNALS

Claimant: Mr Vipul Modha

Respondent: Babcocks Airports Limited

Heard at: Reading **On: 8, 9, 10, 11, 12, 15 and 16 May 2017**

Before: Employment Judge Gumbiti-Zimuto
Members: Mr JF Cameron and Ms B Osborne

Appearances
For the Claimant: Mr A Korn (Counsel)
For the Respondent: Mr J Mitchell (Counsel)

RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

1. In a claim form presented on the 8 December 2015 the claimant made complaints about unfair dismissal, race discrimination and disability discrimination. The respondent defended the claims. The issues that the Tribunal was required to determine were set out in an agreed list of issues (p61). At the close of the claimant's case the claimant withdrew some of the complaints.¹
2. The claimant gave evidence in support of his own case and the respondent relied on the evidence of Karen Butler, Isabel Howson and Kevin Hopgood all these witnesses produced witness statements which were taken as their evidence in chief. The respondent also relied on witness statements from Shaun Kennedy, Mike Hard and Terrence Chamberlain who did not attend to give live evidence to the Tribunal. We were provided with a Trial Bundle consisting of 4 volumes containing more than 1119 pages of documents.

¹ The matters set out in the agreed list of issues in paragraph 4 at d, e, f, g, h, l m n, o, p and in paragraph 8 at e and f are withdrawn as complaint of discrimination. The matters set out in paragraph 4 at a, b, c and in paragraph 8 at a, b and g are relied on as background evidential material only.

From these sources, we made the following findings of fact which we considered necessary to decide the issues before us.

3. The claimant is of Indian origin and of the Hindu faith. He has a diploma in Electronics and Communication (1989), and a diploma in Computer Programming and its Application (1991). The claimant was in employment with Siemens as PLC² Engineer from 1 February 1998. In 2001 the claimant's employment TUPE transferred to the respondent. The claimant was promoted to the role of Team Leader Level 3 from the 12 October 2004.
4. The claimant suffers from chronic anxiety disorder, depression, stress and high blood pressure for which he is prescribed medication. For the purposes of this case the claimant relies on anxiety and high blood pressure as the mental and physical impairments which give rise to a disability within the meaning of section 6 of the Equality Act 2010. The claimant's disability is not accepted by the respondent.
5. The claimant first had an anxiety attack at work following an incident on the 17 January 2011. Following that incident, the claimant avoided confrontational situations and when he felt the initial symptoms of panic he would take steps to avoid this getting exacerbated. The claimant attended sessions of Cognitive Behaviour Therapy to help him learn how to cope with anxiety and deal with stressful situations. The claimant has also had counselling sessions with a psychiatrist. The claimant takes medication for his anxiety and for high blood pressure.
6. The claimant has difficulty sleeping at night. He struggles to get up in the morning suffering from a lack of energy. The claimant avoids socialising and requires a family member or friend to accompany him with normal day to day tasks. When he was still working the claimant would triple check that his work was correct even the simplest tasks. He lived in constant fear of making "*silly little mistakes*". The claimant found working at night stressful and it made him particularly anxious.
7. Since June 2015 the claimant has been signed off as unfit for work by his GP.
8. The claimant says that up until 2007 his employment history was unremarkable. He received positive feedback in appraisals. An example was the claimant's appraisal by Shane Taylor of 16 August 2004 (p160) in which he was described as having "*depth of knowledge of the plc's and maybe should be considered for any vacancies on system support in future*". However, by 7 March 2008 Shane Taylor would write in the claimant's appraisal that the claimant "*is not supervisor material*".

² Programme Logic Controller

9. The claimant was given the role of Senior Team Supervisor in August 2009. In 2009 the claimant applied for roles as PLC Engineer and Maintenance Team Manager but was unsuccessful.
10. In December 2009 Gareth Miles was moved into the claimant's team as Shift Supervisor. The claimant was the Senior Shift Supervisor. It was around this time that the claimant states he was told that Gareth Miles was *"taking over the shift"* and it was reported to him that Chris Mason had said that staff were not to take instructions from the claimant because he would *"soon be gone"*.
11. The claimant says that after December 2009 he was a supervisor on paper only. He was side lined, given tasks below his role description and was constantly undermined.
12. In about April 2010 the claimant complains that he was subjected to a disciplinary investigation arising from an incident where he is said to have failed to carry out a return to work interview. The claimant complained that while he had been side lined since Gareth Miles had moved into the team when things went wrong he was subjected to disciplinary investigation. The claimant wrote to Chris Mason saying that he felt frustrated and pleading that *"if management feels I am lacking in any area then provide me with necessary training and I am willing to work on my weak points and produce positive results, making me feel insecure putting me through unnecessary disciplinary process will only break my confidence and morale, making me feel insecure..."*
13. On 17 January 2011, the claimant was cornered in a confined office by Chris Mason and Gareth Miles. They started using abusive language and ridiculing the claimant to such an extent that he collapsed and required medical assistance from a paramedic. The claimant was signed off sick following this incident and did not return to work till 27 May 2011.
14. The claimant made a report of the 17 January incident (p206). The incident was investigated by David McLucas. David McLucas interviewed all the members of the shift covering the incident on the 17 January 2011 and wider matters. In his interview with David McLucas the claimant did not make any complaint about discrimination on the grounds of his race.
15. David McLucas concluded:
"I can find no corroborating evidence to support Vipul's claims that Chris and/or Gareth are undermining him, belittling him, victimising him or harassing him. Again there is no corroborating evidence that people regularly swear at Vipul; there is swearing amongst the team which Vipul hears and seems to find distressing but it is not directed at him. However it is clear that the relationship between these three individuals has broken down and is beyond repair at this time." (p313)

David McLucas decided to move the claimant, Gareth Miles and Chris Mason to different shifts; he asked Bob Godman to apologise to the claimant.

16. There subsequently took place mediation meetings during which Bob Godman and Gareth Miles made apologies to the claimant.
17. The claimant was placed on a three-month secondment to the health and safety team from the 4 July 2011.
18. The claimant was moved to T4 from 14 October 2011. Shaun Kennedy was Shift Maintenance Team Manager and Neil Ferguson was the Team Supervisor. The claimant was brought on to the team to work not as a supervisor but as a technician. Although the claimant retained the pay grade of a Supervisor Level 3 he was not working in that role.
19. In either November or December 2011, the claimant and Shaun Kennedy had a difference of view about the claimant's actions when he found a dead mouse. The claimant was subjected to verbal abuse by Shaun Kennedy on 23 December 2011 when he reported a dead mouse. Shaun Kennedy was angry and ridiculed the claimant in public for making a report about the dead mouse. The claimant says that Shaun Kennedy hated him. The claimant feels that this was because of his race. The claimant referred to how Shaun Kennedy made references to his salary and the anger he displayed to him in relation to the mouse incident.
20. The claimant recorded the exchange between himself and Shaun Kennedy about the dead mouse. The recording was made covertly without Shaun Kennedy's consent or knowledge. Shaun Kennedy's account in his witness statement is that he was frustrated by the claimant because he did not consider that the claimant should have reported the dead mouse on AIRSWEB³. The claimant could have dealt with it without escalating it. Shaun Kennedy accepts that he raised his voice and that he did so in the presence of other employees. Shaun Kennedy subsequently apologised to the claimant for raising his voice and speaking to him front of other members of the team.
21. In about December 2011 there was an occasion when Shaun Kennedy, to make a point to the claimant about how he could get other people to do something for him, gave as an example how he could get someone in his team to wash his car. This Shaun Kennedy said in his witness statement, was an attempt to *"explain to Vipul that a good manager should have respect of his team and be able to influence his team."*
22. In an appraisal meeting in December 2011 Shaun Kennedy made it clear that the claimant was not working as a supervisor. Shaun Kennedy's account of

³ AIRSWEB is an accident near miss/dangerous occurrence reporting tool used by the respondent.

the supervision meeting is set out in an email he sent to David McLucas (p331). In his original appraisal form Shaun Kennedy described the claimant's job title as S4 Technician (p334) he subsequently changed this to the correct title of "Supervisor" (p371B) following the claimant's objection.

23. In an email exchange that took place between David McLucas and Shaun Kennedy following on from the claimant's appraisal David McLucas uses the phrase "*slowly, slowly catch the monkey*" (p337B). The context in which the phrase is used by David McLucas does not suggest any disrespect of the claimant's religion. It is used in context to suggest that Shaun Kennedy should show patience, to "*play the long game*". The passage does not suggest that there is a lack of respect for people of different origins and their beliefs.
24. The claimant also states that Shaun Kennedy, Neil Ferguson and Mark Curphy would pick on him as a form of entertainment; that they would openly make fun of Hindu Monkey God and Elephant God; and that they would make sarcastic comments about how Hinduism considers the Cow as Holy. These observations by the claimant have not been placed in context. No specific instance has been referred to in the evidence when it was said that this occurred. The claimant has many hours of covert recordings of conversations with his work colleagues in formal and informal situations. These have been transcribed and transcripts produced for the Tribunal. We have not been directed to any recording where there is any comment which contains any racial abuse or contains any disparaging comment towards the claimant or his religion or more generally a disrespect for people of other origins and their beliefs.
25. On 17 January 2012, the claimant secretly recorded a conversation which took place in his presence. Also present was Neil Ferguson, Shaun Kennedy and Mark Curphy. The claimant says that in this conversation which was about a BAA security officer Mark Curphy was staring at the claimant while making derogatory and threatening comments (p372). In the recorded exchange reference is made to the "*Indian fellow*". It is said by Mark Curphy "*he is a funny fucker, want to grab him by the beard and drag him over the desk and beat the fuck out of him.*" There are other offensive and obscene comments about a female police offer. The claimant is shown in the transcript as laughing at one point and interjecting in the conversation with a question. There is no indication of the claimant objecting to the conversation from the transcript.
26. The claimant met with Karen Butler and Susie Waterman on the 24 January 2012. The claimant secretly recorded this meeting. The meeting came about because of the complaints that the claimant had made about Shaun Kennedy. Among the issue discussed were the dead mouse incident and the claimant's

appraisal. The claimant also raised the fact that he was no longer a supervisor.

27. Karen Butler informed the claimant that the respondent had reduced the overall number of supervisors and that the claimant no longer had a supervisor role but was in Neil Ferguson's team working as a technician. Karen Butler stated that she would speak to Shaun Kennedy about shouting at the claimant and that she would speak to his previous managers to seek feedback on his performance. Karen Butler stated that if the claimant was not happy she could look to moving him.
28. Following the meeting with the claimant Karen Butler met with Shaun Kennedy and discussed the issues raised by the claimant.
29. The claimant and Karen Butler met again with Susie Waterman present on the 9 February 2012. Karen Butler reported to the claimant that she had spoken to Shaun Kennedy. The claimant informed her that Shaun Kennedy had apologised to him. The feedback gathered from various managers the claimant had worked with was discussed. The feedback painted a picture that the claimant lacked supervisory skills and the ability to manage a team. Karen Butler had formed the same opinion of the claimant.
30. Karen Butler had identified a role for the claimant as Continuous Improvement (CI) Technician in the Central Support Team (CST). The role did not involve the claimant working nights or managing staff. The role involved monitoring and recording issues that were then passed on to technicians to resolve. It was envisaged that this would be a six-month secondment after which the claimant was to return to T4 as a technician not a supervisor but he would remain on the same terms and conditions. The claimant at the meeting seemed happy with the idea of the secondment. The claimant subsequently moved to the CI Technician role from the 25 February 2012.
31. The claimant states that he was subjected to name calling suffered comments about his lifestyle and culture and religious beliefs. In this period the claimant continued to record conversations of a formal and informal nature but has not produced any recording which supports his description of comments on his lifestyle and culture.
32. The claimant appeared to have been happy with the move to the CI Technician role. His appraisal of 2013 records the claimant's comments on 17 June 2013 that *"I am currently working in Continuous Improvement and feel very confident carrying out my current duties set in my Action Plan for next year. If opportunity arises I can take on more challenging responsibilities, and will be able to carry them out efficiently."* The appraising manager's comments were also of a positive nature.

33. In December 2013, the claimant's land line was taken from his desk. The claimant was informed by Phil Bolton that the line was removed because Mike Hard "*found it irritating when you used the phone to chat with 'your mates' in your mother tongue.*" The claimant did not make any complaint about this. Mike Hard in his witness statement accepts that he got fed up of taking messages from the claimant's phone which were often personal calls and not business calls so he moved the phone to the office next door. Mike Hard was unaware that the claimant had taken offence at his action as the claimant never raised the matter with him. He denies that he made the comment about the claimant's "*mother tongue*".
34. In February 2014, the claimant was required to relocate his office. This led to the claimant and Terry chamberlain having discussions about the move. The claimant complains that Terry Chamberlain did not like him sharing his office. Terry Chamberlain denies the claimant's version of events. In an email to Mike Heard sent in February 2014 Terry Chamberlain complains about the claimant refusing to move and giving unfounded reasons for doing so (p470).
35. By August 2014 the CI work that the claimant had been doing was winding down. The respondent required a dedicated person to work in the blue room monitoring the fire alarm of the transfer tunnel between T1 and T4. Karen Butler asked the claimant to work in the blue room. This required the claimant to work at nights. The claimant agreed to work in the blue room however after medical advice it was agreed that the claimant would not have to work nights. The claimant only worked nights in the blue room on a couple of occasions.
36. On 6 November 2014, a proposed restructure of the Baggage Operations and Maintenance was announced. This was to result in a reduction in the Technician headcount. The claimant was unaware that the respondent was winding down the CI role.
37. Originally, in November 2014 the claimant, Phil Bolton (CI Technician), Richard Coe and John King (both CST Support Technicians) were included in the pool of Technician roles at risk of redundancy. Then in December 2014 they were removed from the pool.
38. The claimant, Phil Bolton, Richard Coe and John King were then once more included in the Technicians pool from about January 2015. This was because of discussions with unions and employee representatives when it was agreed that all employees with the word 'Technician' in their job title would be included in the Technician pool.
39. The claimant was also in the Team Leader Pool. This was because the claimant was recorded on the respondent's HR system as a Team Leader.

40. The collective redundancy consultation in relation to Technician/Technical roles stopped when it became clear that there would be no need to make redundancies from this pool of employees. The redundancy consultation in respect of Team leader stopped on 26 January 2016. The redundancy consultation in respect of Technicians stopped on 25 February 2015. The claimant informed that he was not at risk.
41. From 10 February 2015, the claimant was asked to work at TI3B as a Permit Officer. The advice from occupational health in relation to the claimant was that he could not work nights because this would increase his anxiety levels and so an adjustment was made so that the claimant only worked days.
42. From the 1 April 2015, the claimant was stationed to work in stores and at check-in to resolve baggage issues as they arose.
43. On 1 April 2015, the claimant attended a meeting to consider his medical status and the type of work he would be able to carry out in the future. The claimant met with Karen Butler and Isabel Howson (HR Consultant). The claimant returning to perform his substantive Team Leader/Supervisor role was discussed. The claimant did not say he wanted to return to the Team Leader/Supervisor role. The claimant raised concerns about the way that he had been spoken to by Mike Hard. Karen Butler agreed to speak to Mike Hard.
44. The claimant secretly recorded the meeting on the 1 April 2015.
45. Following the meeting Karen Butler spoke to Mike Hard about the claimant's concerns.
46. On 18 April 2015, the claimant alleges that he was shouted at in a threatening manner by Terry Chamberlain to get out of the office. The claimant secretly recorded the encounter. The transcript of the encounter reveals that Terry Chamberlain begins by telling the claimant that he was not allowed in the CST Engineering Office. The claimant is told that he should use the Tech Base. During the encounter Terry Chamberlain says to the claimant "out you go"; "if you do go I'll report it", "I don't want you in here". The claimant is told to go and speak to Karen Butler. The transcript does not read as though Terry Chamberlain's manner was as described by the claimant in his witness statement. Bearing in mind that the claimant knew that he was recording the encounter and Terry Chamberlain was unaware that he was being recorded the impression we formed is that the claimant was attempting to provoke Terry Chamberlain during this encounter.
47. A follow up meeting took place on the 21 April 2015. Present at this meeting with the claimant were Isabel Howson and the Karen Butler.

48. During the meeting Karen Butler told the claimant about her conversation with Mike Hard. The claimant appeared happy with this. The claimant stated that he did not wish to perform Team Leader/Supervisor role unless it was days only. Karen Butler explained that she did not consider that the claimant could perform the Team Leader/Supervisor role even if the claimant could work nights. The claimant made allegations against Terry Chamberlain and Karen Butler agreed to discuss these with Justin Darcy.
49. The claimant secretly recorded this meeting.
50. Following the meeting Karen Butler spoke to Justin Darcey about the claimant's complaints.
51. In April 2015 when the respondent made the decision that it no longer required the CI Technician role. The claimant and Phil Bolton were informed that they were at risk of redundancy.
52. On 24 April 2015, the claimant applied for the role of CST Support Engineer but was unsuccessful. On 8 May 2015, the claimant applied for a CST Lead Engineer Role. The claimant was not successful.
53. On 14 May 2015, Karen Butler wrote to the claimant to inform him that he was at risk of redundancy and invited him to a meeting on 19 May 2015. Phil Bolton the other CI Technician was also written to in similar terms.
54. On the 19 May 2015, the claimant met with Karen Butler who was accompanied by Isabel Howson. The claimant was not accompanied. The claimant was informed that he was at risk of redundancy and that if the proposed redundancy went ahead he would be made redundant with effect from 30 June 2015. The claimant was informed that in the individual consultation period the respondent would continue to try to identify alternative roles for him. The claimant was given a list of current vacancies.
55. Following the meeting on the 19 May 2015 the claimant was written to by Karen Butler and informed that there would be consultation meetings on 26 May 2015, 16 and 23 June 2015.
56. At the first redundancy consultation meeting the claimant complains that he was being bullied into a demotion by taking a part-time job on a low scale. Karen Butler agrees that she suggested this to him but states that it was only a suggestion. The claimant made complaints about other colleagues who he claimed had shouted at him and belittled him. Following the meeting Karen Butler spoke to Justin Darcy about the matters raised.
57. On the 15 June 2015, the claimant emailed Isabel Howson and informed her that he would not be able to attend the second consultation meeting on the 16

June 2015 because he had a doctor's appointment. As the claimant, Karen Butler and Isabel Howson were all available in the office on that day it was agreed that the second consultation meeting would take place on the 15 June 2015.

58. The claimant complains that: *"I was forced to attend meeting in 1 hours' time without Union Representative. I was not at all well and was not thinking right"*. What appears from the documents is that after Isabel Howson suggested that the claimant should attend the second consultation that day, the 15 June 2015, the claimant replied stating that: he was unprepared, felt tired, did not have his reading glasses and wanted to read his file before the meeting. The reply from Isabel Howson read as follows:

"You have known about the meeting scheduled tomorrow since we wrote to you on 20th May, 2015 and it was only today that you said you couldn't attend so in the interests of moving forward, let's meet and see how you are in the meeting. With regards to your health issue, we were not aware and I have copied the response you gave to Karen's question about your health in the meeting of 19th May 2015:

KH- Asked how Vipul's health was and if he was feeling any calmer and asked how his blood pressure was VM- said that he was OK and that he is the result of the body God gave him

As you know, we have talked about a possible redundancy situation with effect from June 30th in each of our meetings and we will endeavour [to] conduct meetings face to face at all times and at a time that suits. The 3rd meeting however should be scheduled before June 30th and we hopefully will arrange a suitable method of conducting this meeting with you in our meeting today."

59. At the start of the second consultation meeting the claimant indicated that he was having problems because he did not have his reading glasses with him. The claimant did not say that he was unable to continue because he felt unwell or that he wished the meeting to cease because he wanted to be accompanied by a colleague or a union representative.
60. Karen Butler explained that she had spoken to Justin Darcy about the allegations that the claimant had made at the first consultation meeting in relation to the way that he had been treated by his colleagues. The claimant was told that Justin Darcy was unaware of the incident and would need details of dates, times and names of individuals to investigate the matters further. The claimant did not provide any further information.
61. The claimant was given a list of available vacancies and offered support if he needed help with applications. The available vacancies were considered.

The date for the third consultation meeting was discussed and it was agreed that the meeting would take place on the 29 June 2015.

62. The claimant alleges that Karen Butler at the end of the second consultation meeting said “goodbye, we won’t see you again”. Karen Butler did not recall this. The transcript of the secret record of the meeting helps. The relevant passage is recorded as follows:

“Yeah. Yeah. I respect that. OK I have not got anything else. Isabel? OK then in that case Vipul don’t get yourself stress. I am going to say goodbye to you now because if you are saying you are not coming in on Wednesday then likelihood is I might not see you again. So I will just make clear that if on Wednesday you are made redundant when we have our meeting and you don’t attend then I do wish you find something and I do hope you get something challenging for you and something else. It’s just the shame you can’t work for Babcock and I know all the monies not, no it does not compensate what you done for us, but I just wish you the best. That’s all I can say really.”

63. On the 22 June 2015, Isabel Howson received a letter from the claimant complaining that the consultation meeting had been moved forward by one day. Isabel Howson replied to the claimant suggesting that the matters raised by the claimant should be discussed at the next consultation meeting. The claimant responded asking that the third consultation meeting is postponed and the second consultation meeting be reconvened. Isabel Howson replied stating that the third consultation meeting should go ahead and suggesting that the claimant could attend in person. The claimant responded stating that the third consultation meeting should be moved because he was suffering from anxiety. Isabel Howson agreed that the meeting should be moved to the 20 July 2015.
64. On 26 June 2015, the claimant’s union representative wrote to the respondent contending that the claimant was covered by the Equality act 2010 and asking to arrange a time to meet to discuss the claimant’s reasonable adjustments. Isabel Howson enquired of occupational health whether the claimant was covered by the Equality Act 2010 and she was informed that the claimant was probably not a disabled person under the Equality Act 2010. Isabel Howson spoke to the claimant’s union representative on the 2 July 2015.
65. On the 7 July 2015, the respondent received a statement of fitness to work which signed the claimant off work until 28 July 2015. The third consultation meeting was re-scheduled to the 29 July 2015.

66. The claimant did not attend the third consultation meeting. The claimant complains that it was arranged on a date when he was on annual leave and sick leave. The respondent refused to change the date.
67. When the claimant was informed of the new date for the third consultation meeting the claimant was also informed that the meeting would take place in his absence if he did not attend. Karen Butler states that *"I was mindful that Vipul was off sick with what his doctor referred to as "stress at work" at this time. However, I was concerned that we could not continually delay the meetings and that doing so would not necessarily help Vipul. Bringing the situation to a conclusion seemed to be the sensible thing to do... I do not believe that rearranging the meeting again would have made any difference as presumably Vipul would again have sought to postpone it."*
68. The third consultation meeting took place without the claimant being present. Karen Butler went through the points with Susie Waterman who had replaced Isabel Howson in providing HR advice. Karen Butler decided that the claimant was redundant.
69. Karen Butler says that she felt that the claimant was burying his head in the sand and not "really engaging with the process". The claimant did not seem to be interested in finding an alternative role. The claimant seemed to expect the respondent to find him an alternative role which was at the same or higher level within Airports, working days only. The claimant did not seem interested in considering vacancies within the organisation.
70. Technical employees for the respondent at Heathrow are required more at night than they are during the day. The claimant however did not ask if he could do any of the roles on the vacancy list without working nights. He only applied for two roles (CST Support Engineer and CST Lead Engineer). The claimant would not consider lower level roles.
71. On 5 August 2015 Karen Butler wrote to the claimant to confirm that he was to be made redundant. The claimant appealed against this decision.

Claimants submissions

72. The claimant says that the Tribunal should not accept the evidence of Isabel Howson and Karen Butler who both say that there was no supervisory position. The claimant says that if that was the case why did they not just say that on 1st April or 21 April. It was simple reply to the claimant's case.
73. The claimant contends that if he was considered in the supervisor pool he would not have been made redundant.

74. If the claimant was not performing as a supervisor take him through the performance process. It was unfair that the respondent did not do so and from this we are invited to draw conclusions against the respondent.

Respondents submissions

75. The respondent provided detailed written submissions which we have considered.

Withdrawn complaints

76. The claimant has withdrawn several complaints. In respect of some of the complaints that have been withdrawn the claimant seeks to rely upon some as evidence in general support of his complaints of direct discrimination, harassment and victimisation.

Direct race discrimination

77. An employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment. An employer discriminates against an employee if because of his race he treats the employee less favourably than he treats or would treat others. Race includes colour, nationality, ethnic or national origins. Where the employee seeks to compare his treatment with that of another employee there must be no material difference between the circumstances relating to each case.
78. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer contravened the provision concerned the employment tribunal must hold that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision.
79. The claimant has withdrawn his complaint that he had been subjected to verbal abuse by Shaun Kennedy in January 2012 (agreed list of issues 4 (a)). The claimant relies upon this as evidence in support of his complaints
80. The claimant's transfer to work with Shaun Kennedy from October 2011 was not a success. The claimant raised complaints about Shaun Kennedy and this resulted in the claimant having meetings with Karen Butler in January 2012. Because of the things that the claimant said to Karen Butler she spoke to Shaun Kennedy and he apologised to the claimant. Shaun Kennedy's witness statement stated that having "reflected on the conversation I apologised to Vipul for raising my voice and of speaking to him in front of the team." The claimant accepted the apology from Shaun Kennedy.

81. The claimant and Karen Butler also discussed the claimant's role. Karen Butler gave the claimant feedback about how his most recent performance in a supervisor role had been viewed. Her own view and the views of others she consulted was that the claimant was not suited for a supervisory role. Karen Butler told the claimant this in one of her meetings with the claimant.
82. Karen Butler identified the CI role and put this to the claimant as an option. Karen Butler considered that the claimant suited for the role. The claimant was not obliged to accept the role he could have refused it. The claimant expressed an interest in the role and then later made the decision to accept the CI role.
83. The claimant was not moved to the CI role because he complained about Shaun Kennedy. The claimant was not demoted because he complained about Shaun Kennedy. Although the claimant had not been working in a supervisory role he retained the pay and benefits of a supervisor role. The claimant continued to be paid a shift allowance even though in the CI role the claimant was not required to work nights.
84. The Tribunal have not been able to conclude that there is evidence of discrimination of the claimant on the grounds of his race in respect of this matter which is withdrawn as a complaint but is relied on as evidence of discrimination.
85. The claimant relies on an incident which occurred in December 2013, when the claimant's land line was taken from his desk (agreed list of issues 4 (b)). The claimant has withdrawn this as a complaint. The claimant relies upon this incident as evidence in support of his complaints of discrimination. Mike Hard admitted making a comment of annoyance at the claimant using the phone but denied the comment attributed to him referring to the claimant's "mother tongue". The claimant did not hear this. The claimant did not raise the issue with the respondent or with Mike Hard at the time. We have not heard from Mike Hard. We are unable to draw any conclusions from this incident that assists us in deciding the matters before us.
86. In February 2014, the claimant was relocated to a different office and to T4 (agreed list of issues 4 (c)). The claimant has withdrawn this complaint. The claimant relies upon this as evidence in support of his complaints. The claimant was not the only person affected by this decision. Phil Bolton was similarly affected. The decision to reorganise office space arose from a need to accommodate a team that had previously been based in Denmark providing remote support for the respondent. The Tribunal have not been able to conclude that this matter gives rise to conclusions that

suggest that the claimant was treated less favourably on the grounds of his race.

87. The claimant alleged that in August 2014 he was told to work night shifts (agreed list of issues 4 (d)). This complaint has been withdrawn.
88. The claimant complained that in January 2015 he was added to the pool of those who were to be made redundant (agreed list of issues 4 (e)). The claimant has withdrawn this complaint.
89. The claimant complained that the respondent did not explain how they determined the pool (agreed list of issues 4 (f)). The claimant has withdrawn this complaint.
90. The claimant complained that the respondent did not apply a scoring criteria to the pool (agreed list of issues 4 (g)). The claimant has withdrawn this complaint.
91. The claimant complained that the respondent did not apply a fair procedure when they placed the claimant in a pool of one (agreed list of issues 4 (h)). The claimant has withdrawn this complaint.
92. The claimant complains that the respondent did not follow a fair redundancy process in that the claimant's colleagues (Richard Coe and Joh King) were provided with the train and the claimant was not (agreed list of issues 4 (i)).
93. This allegation has no timing. Richard Coe and John King were CST Support Technicians. They must have had some training before 2015 to enable them to perform as CST Support technicians. There is no evidence of any training provided in 2015.
94. Karen Butler's unchallenged evidence was that the Claimant's allegation that they, Richard Coe and John King, were given training to assist them in getting new roles (the CST Support Engineer roles) is not accurate.
95. The "official in-house training" provided to Richard Coe and John was not specified. However, it is important to note that the claimant was not doing the same work as Richard Coe and John King. The claimant accepted this when questioned. Whilst the claimant contended that he had the same skill set Richard Coe and John King, because he had training in this area (PLC) in 1998, the claimant had not worked in PLC role since 1998.
96. The claimant alleged Phil Bolton had been offered PLC training that he had not. The claimant's complaint was not brought on this basis. The

claimant's evidence was challenged by the respondent who denied that Phil Bolton was offered any training that the claimant was not.

97. The claimant's evidence on this issue amounts to several assertions that were unsupported by other evidence. In his closing submissions, the claimant did not refer to any matters that specifically address this issue other than to submit that the claimant had had no significant training since 2010.
98. In respect of this issue the Tribunal could not conclude that the claimant was treated less favourably. The claimant did a different job to Richard Coe and John King. While there is no evidence of the training provided to them the training would have been provided with a view to them performing their roles. There is no evidence that they were advantaged or the claimant disadvantaged in the training provided. In so far as the claimant may seek to gain support from the contention that Phil Bolton was provided with training that he was not, this in our view has not been established. The height of the claimant's case on this is that he was told by Phil Bolton that Phil Bolton had been offered PLC training that he refused because he "wanted to retire".
99. The Tribunal has not been able to conclude that there was any less favourable treatment in respect of the matters alleged at paragraph 4 (i) of the list of issues.
100. The claimant complains that he was shouted out of the office by Terry Chamberlain (agreed list of issues 4 (j)).
101. On 18 April 2015, the claimant secretly recorded the encounter referred to in this issue. The transcript does not read as though Terry Chamberlain's manner was as described by the claimant. Bearing in mind that the claimant knew that he was recording the encounter and Terry Chamberlain was unaware that he was being recorded the impression we formed is that the claimant was attempting to provoke Terry Chamberlain during this encounter.
102. The Tribunal have been unable to accept the claimant's evidence in respect of this incident, part of the claimant's evidence about the incident is contradicted by the transcript. The claimant stated that he had gone to the office looking for a missing laptop but the transcript reveals that he claimed to be at the office to read emails, something that the claimant accepted he had the facility to do elsewhere. The Tribunal are unable to conclude that the claimant was treated less favourably in respect of this issue.

103. The claimant alleges that he reported Terry chamberlain's action to HR but no action was taken (agreed list of issues 4 (k)).
104. The respondent contends that this complaint is misconceived because: The Claimant did not complain that Terry Chamberlain shouted; the matter was reported to Karen Butler at the meeting on 21 April 2015 she then did take the action she said she would; the Claimant did not complain about Karen Butler's proposed action. These points cannot be gainsaid by the claimant. It is further said that the at no point did the Claimant say the incident was racially motivated.
105. We consider that the respondent's points on this issue are well made. The claimant secretly recorded his meeting with Karen Butler and Isabel Howson. It is of note that when Karen Butler told the claimant what she was going to do: "go back to Justin and say ... I do not appreciate the way that Vipul is being spoken to by members of your staff. I let him deal with that" (p624). The claimant did not object his response was: "But again, thing is, but if job comes along in the same team then what are my chances; of me getting into it."
106. The Tribunal has not been able to conclude that there was less favourable treatment of the claimant in relation to this issue.
107. The claimant's complaint that in May 2015 the respondent would not rearrange the second consultation meeting so that the claimant could be represented (agreed list of issues 4 (l)) has been withdrawn.
108. The claimant's complaint that in June 2015 at the end of the second consultation meeting the claimant was told "goodbye, we won't see you again" (agreed list of issues 4 (m)) has been withdrawn.
109. The claimant's complaint that the respondent would not rearrange the third consultation meeting so that the claimant could attend (agreed list of issues 4 (n)) has been withdrawn.
110. The claimant's complaint that he applied for role on the "vacancy List" but was not offered any of those roles (agreed list of issues 4 (o)) has been withdrawn.
111. The claimant's complaint that he was advised to apply for a part-time weekend technician job even though this entailed a pay cut and was demotion (agreed list of issues 4 (p)) has been withdrawn.
112. The claimant was told that even if he could work nights shifts that he would not be offered a Team Supervisor Role as set out in his contract (agreed list of issues 4 (q)).

113. The respondent contends that this allegation is misconceived as there was no Team Supervisor Role available; it wrongly seeks to construe all the discussions occurring between the Claimant, Karen Butler with Isobel Howson into this single statement which is wrong; it was not put to Karen Butler or Isabel Howson that this was said because of the Claimant's race. In answer to the point made by the Claimant that the Respondent did not say there was no supervisory role, the respondent states that it was always responding to the Claimant's questions and suitability for potential roles. The Claimant accepted the team supervisor role required night working in cross examination.
114. In submissions, the claimant stated that if there was no supervisory position this should have been stated by Karen Butler and Isabel Howson in their meetings with the claimant. The grounds of resistance do not mention that there was no supervisory role (see paragraph 58 (p311)). The claimant is throughout recognised as a 'team leader level three' and paid as such. The claimant was never taken through a performance management process to address the alleged perceived issues of underperformance in a supervisor role. The claimant pointed out that there had been no significant training since 2010 and none that was directed at the claimant's supervisory role.
115. The evidence establishes that Karen Butler discussed with the claimant at various time the claimant's role that he was from time to time performing and roles that he could perform in the future some of which the claimant went on to perform. During these discussions, which took place on various occasions including around January/February 2012, the claimant working in a supervisory role was mentioned. There were historic issues about the claimant's performance in supervisor role. Karen Black gathered feedback from various managers about the claimant performance as a supervisor. This was discussed with the claimant. The feedback painted a picture that the claimant lacked supervisory skills and the ability to manage a team. Karen Butler had formed the same opinion of the claimant. Karen Butler told the claimant this. From about 2012 the claimant had not worked in a role as a supervisor. The claimant could not work nights. Any role for the claimant to work as supervisor would have required him working nights. The various roles that the claimant performed from about 2012 were deliberately assigned because they did not require the claimant to work nights (except the blue room role in August 2014).
116. Our conclusions are that the claimant was told that even if he could work night shifts he would not be offered a team Supervisor Role. However, we are not able to conclude that this was less favourable treatment of the claimant. Karen Butler formed a view of the claimant and that was that he was not suited to supervisory role. She had taken soundings from other

managers he had worked with which had confirmed the view that she herself had. We are not satisfied that Karen Butler would have acted differently in any other case involving someone who was not of the claimant's race. There is no evidential basis put forward allowing us to conclude that Karen Butler did anything other than act in accordance with her genuine view of the claimant's abilities.

117. In August 2015, the claimant was told that he was redundant with effect from 29 July 2015 (agreed list of issues 4 (r)).
118. The respondent argues that during the evidence, it was not put to Karen Butler or Isabel Howson that their decision to inform the claimant of his redundancy was because of his race. Karen Butler was specifically told that the claimant's selection for redundancy was not being pursued based on the claimant's race. The respondent's case is that the claimant was dismissed because of his redundancy, in that the respondent's need for CI technicians had reduced. The Claimant was treated precisely the same as Phil Bolton, the only other CI Technician: both were made redundant.
119. The claimant states that the decision to select the claimant for redundancy was infected by discrimination. The claimant relies on the alleged discriminatory treatment of the claimant by colleagues; the allegation that over time the claimant was eased out of his role as a supervisor and in effected demoted by the respondent; the fact that there was no attempt to place him in a supervisory role; the respondent's failure to make adjustments which might have meant that the claimant could work in a supervisory role.
120. The evidence in our view is overwhelmingly in favour of the conclusion that the reason for the claimant's selection for redundancy was because he was working as CI technician and the respondent no longer required CI Technicians. Both the CI Technicians were made redundant. There were no supervisor roles. The claimant was not deprived of the option of moving into supervisory role. There is no evidence that the claimant was treated less favourably than any other CI Technician in being selected for redundancy.
121. The Tribunal has concluded that the claimant's complaints of direct race discrimination are not well founded. We have taken into account the way that some of the claimant's complaints including the back-ground claimants relied on for evidential purposes have been framed. There are allegations of offensive behaviour towards the claimant. This has not been borne out by the evidence. We note that the claimant has produced secret recordings made of his encounters in the work place with his managers and colleagues and apart from one recording which contains colourful and at times offensive language directed at authority figures (a police woman

in one instance and an Indian security officer in the other) the recordings do not support the claimant's case. The one recording referred to is instructive in that it reveals that the claimant joined in the 'banter' recorded and from the transcript was clearly not intended as the object of ridicule or offence. It also appears to us that the recording does not suggest that the claimant took any offence to the exchange.

Harassment on the grounds of race

122. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
123. In deciding whether conduct has the effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B, each of the following must be taken into account: the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.
124. If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. This does not apply if A shows that A did not contravene the provision.
125. The claimant claims that in late December 2013, the claimant's landline phone was removed from his desk by Mike Hard (agreed list of issues 8 (a)). This complaint is withdrawn and is relied on as evidential matter only. Mike Hard admitted making a comment of annoyance at the claimant using the phone but denied the comment attributed to him referring to the claimant's "mother tongue". The claimant did not hear this. The claimant did not raise the issue with the respondent or with Mike Hard at the time. We have not heard from Mike Hard. We are unable to draw any conclusions from this incident that assists us in deciding the matters before us.
126. In February 2014, the claimant was relocated to a different office and to T4 (agreed list of issues 8 (b)). The claimant has withdrawn this complaint. The claimant relies upon this as evidence in support of his complaints. The claimant was not the only person affected by this decision. Phil Bolton was similarly affected. The decision to reorganise office space arose from a need to accommodate a team that had previously been based in Denmark providing remote support for the respondent. The Tribunal have not been able to conclude that this matter gives rise to conclusions that suggest that the claimant was treated this way for a reason related to his race.
127. The claimant complains that in April 2015 he was shouted out of the office by Terry Chamberlain (agreed list of issues 8 (c)).

128. On 18 April 2015, the claimant secretly recorded the encounter referred to in this issue. The transcript does not read as though Terry Chamberlain's manner was as described by the claimant. Bearing in mind that the claimant knew that he was recording the encounter and Terry Chamberlain was unaware that he was being recorded the impression we formed is that the claimant was attempting to provoke Terry Chamberlain during this encounter.
129. The Tribunal have been unable to accept the claimant's evidence in respect of this incident, part of the claimant's evidence about the incident is contradicted by the transcript. The claimant stated that he had gone to the office looking for a missing laptop but the transcript reveals that he claimed to be at the office to read emails, something that the claimant accepted he had the facility to do elsewhere.
130. The Tribunal has not been able to conclude that claimant's alleged unwanted conduct occurred as the claimant alleges. Further when we consider what did occur we do not consider that the conduct had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading or offensive environment for the claimant. In arriving at that conclusion, we have regard to the perception of the claimant, the other circumstances of the case, and whether it is reasonable for the conduct to have the effect referred to in section 27(1)(b).
131. The claimant alleges that he reported Terry chamberlain's action to HR but no action was taken (agreed list of issues 8 (d)).
132. The respondent contends that this complaint is misconceived because: The Claimant did not complain that Terry Chamberlain shouted; the matter was reported to Karen Butler at the meeting on 21 April 2015 who said she would and did take the action she said she would; the Claimant did not complain about Karen Butler's proposed action. These points cannot be gainsaid by the claimant. It is further said that the at no point did the Claimant say the incident was racially motivated.
133. The claimant secretly recorded his meeting with Karen Butler and Isabel Howson. It is of note that when Karen Butler told the claimant what she was going to do: "go back to Justin and say ... I do not appreciate the way that Vipul is being spoken to by members of your staff. I let him deal with that" (p624). The claimant did not object his response was: "But again, thing is, but if job comes along in the same team then what are my chances; of me getting into it."
134. The Tribunal has not been able to conclude that the alleged unwanted conduct related to race as the claimant alleges. When we have regard to

the perception of the claimant, the other circumstances of the case, and whether it is reasonable for the conduct to have the effect referred to in section 27(1)(b). We do not consider that the conduct emerging from the matters set out in our findings of fact had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading or offensive environment for the claimant.

135. The claimant's complaint that in June 2015, at the end of the second consultation meeting, the claimant was told "goodbye, we won't see you again" (agreed list of issues 8 (e)) has been withdrawn
136. The claimant's complaint that the claimant was advised to apply for part-time weekend Technician job even though this entailed a pay cut and was a demotion (agreed list of issues 8 (f)) has been withdrawn.
137. The claimant's complaint that he was told that even if he could work night shifts he would not be offered a Team Supervisor Role as set out in his contract (agreed list of issues 8 (g)) has been withdrawn. The claimant relies on this issue for evidential material only.
138. The respondent contends that this allegation is misconceived as there was no Team Supervisor Role available; it wrongly seeks to construe all the discussions occurring between the Claimant, Karen Butler with Isobel Howson into this single statement which is wrong; it was not put to Karen Butler or Isabel Howson that this was said because of the Claimant's race. In answer to the point made by the Claimant that the Respondent did not say there was no supervisory role, the respondent states that it was always responding to the Claimant's questions and suitability for potential roles. The Claimant accepted the team supervisor role required night working in cross examination.
139. In submissions, the claimant stated that if there was no supervisory position this should have been stated by Karen Butler and Isabel Howson in their meetings with the claimant. The grounds of resistance do not mention that there was no supervisory role (see paragraph 58 (p311)). The claimant's throughout was recognised as a 'team leader level three' and paid as such. The claimant was never taken through a performance management process to address the alleged perceived issues of underperformance in a supervisor role. The claimant pointed out that there had been no significant training since 2010 and none that was directed at the claimant's supervisory role.
140. The evidence establishes that Karen Butler discussed with the claimant at various time the claimant's role that he was from time to time performing and roles that he could perform in the future some of which the claimant went on to perform. During these discussions, which took place on

various occasions including around January/February 2012, the claimant working in a supervisory role was mentioned. There were historic issues about the claimant's performance in supervisor role. Karen Black gathered feedback from various managers about the claimant performance as a supervisor. This was discussed with the claimant. The feedback painted a picture that the claimant lacked supervisory skills and the ability to manage a team. Karen Butler had formed the same opinion of the claimant. Karen Butler told the claimant this. From about 2012 the claimant had not worked in a role as a supervisor. The claimant could not work nights. Any role for the claimant to work as supervisor would have required him working nights. The various roles that the claimant performed from about 2012 were deliberately assigned because they did not require the claimant to work nights (except the blue room role in August 2014).

141. Our conclusions are that the claimant was told that even if he could work night shifts he would not be offered a team Supervisor Role. Karen Butler formed a view of the claimant and that was that he was not suited to supervisory role. She had taken soundings from other managers he had worked with which had confirmed the view that she herself had. We are not satisfied that Karen Butler would have acted differently in any other case involving someone who was not of the claimant's race. There is no evidential basis put forward allowing us to conclude that Karen Butler did anything other than act in accordance with her genuine view of the claimant's abilities.
142. The Tribunal has not been able to conclude that the alleged unwanted conduct related to race as the claimant alleges. When we have regard to the perception of the claimant, the other circumstances of the case, and whether it is reasonable for the conduct to have the effect referred to in section 27(1)(b). We do not consider that the conduct emerging from the matters set out in our findings of fact had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading or offensive environment for the claimant.

Victimisation

143. Section 27 of the Equality Act 2010 provides that: "A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act." A protected act is bringing proceedings under the Equality Act 2010; giving evidence or information in connection with proceedings under the Equality Act 2010; doing any other thing for the purposes of or in connection with the Equality Act 2010; and making an allegation (whether or not express) that A or another person has contravened the Equality Act 2010.
144. The claimant relies on his grievance made in January 2011 as a protected act. The claimant does not say that there was any other form of protected act. The grievance raised following the incident on the 17 January 2011 did

not allege that another person has contravened the Equality Act. The incident on the 17 January 2011 was, the claimant now says, an instance of discrimination against him on the grounds of his race.

145. However, at the time the claimant took care not to complain of discrimination. In the written complaint, the claimant refers to *“shouting and verbally abusing ... aggressive body language ... overwhelmed by sudden attack and felt victimised and vulnerable.”* In the meeting with David McLucas to discuss the grievance the claimant did not mention discrimination as an issue.
146. In his witness statement the claimant says that he “felt discriminated against”. The claimant says that it would have prevented his advancement if he made such a complaint and it would have led to his losing his job. A basis for this has not been set out by the claimant in his evidence other than as assertion made explaining why he did not raise any complaint in 2011 and in relation to earlier events in 2009.
147. The claimant has not shown that he did a protected act within the meaning of section 27 of the Equality Act 2010.
148. The claimant complains that he was subjected to a detriment by (a) demoted by being moved to a technician’s role in January 2014, (b) place in a pool of four in January 2015, (c) subsequently place in a pool of one, and (d) selected for redundancy and dismissed (agreed list of issues 14).
149. In respect of the alleged detriment that the claimant was demoted by being moved to a technician’s role in January 2014. The respondent contends that this allegation is out of time. In response to cross examination on whether the move was because of race, the Claimant replied that it was a consequence of “finding a quick solution” to a problem, or a quick fix’. The Claimant asserted he had not been working as a supervisor since 2009, so there was no move to a technician’s role in 2014. The Claimant was working as a CI Technician since 2012. The Claimant had accepted working in this role and had continued to work as such until his redundancy, save for those periods when he was asked to cover other functions because of the decreasing CI Technician work. To complain 3 years later and to try and link this to his alleged protected act in 2011, is absurd.
150. The claimant’s submissions as noted by the Tribunal did not directly address the victimisation claims.
151. The detriment complained of by the claimant was not related to his alleged protected act. There is a significant delay between the 2011 incident and 2014. In fact, nothing happened in 2014 the claimant was not demoted at that time. There was no detriment as alleged.
152. In respect of the alleged detriment that the claimant was placed in pool of four in January 2015. The respondent says that this allegation is out of time. It was put to the Claimant that he, John King, Phil Bolton, and Richard Coe were all in a pool because they had the word “technician” in their role title. The Claimant agreed and said the decision was taken by HR and that is why they were in the pool. The Claimant’s Counsel specifically stated to Karen Butler in cross examination that the Claimant was not selected for redundancy because of his race. It was not put that the Claimant was

selected because of his grievance. In fact, Karen Butler stated she did not manage the Claimant in 2011 and it was not put that she was aware of his "statement of events" in January.

153. The conclusion of the Tribunal is that the decision to place the claimant, John King, Phil Bolton, and Richard Coe in a pool was made after a decision was taken to put in the pool all those with the word technician in their role title. There was no link or connection with the alleged protected act.
154. In respect of the complaint that the claimant was subsequently placed in a pool of one the respondent stated that this allegation is also out of time. The claimant accepted in cross examination that he came to know of decision not to continue having CI technicians on 1 April, but that their work had been reducing previously. It was not put to Karen Butler or Isabel Howson that the pool was reduced *because* of the statement of events in January 2011. In fact, Karen Butler stated she did not manage the Claimant in 2011. The Claimant accepted in cross-examination that he was not alone, but that he and Phil Bolton each had individual meetings and he was in fact in a pool of two. The Claimant asserted that Phil Bolton didn't mind being made redundant, however the Respondent remains clear that PB was also made compulsory redundant.
155. The conclusion of the Tribunal is that the claimant's complaint fails. The claimant was never in a pool of one. There was no link between the alleged protected act and the decision to place the claimant and Phil Bolton into a pool for redundancy.
156. In respect of the complaint that the claimant was selected for redundancy and dismissed. The respondent contends that the claimant was dismissed on the grounds of redundancy. The number of moves organised and arranged by Karen Butler are diametrically opposite to any assertion that Karen Butler sought to remove the Claimant because of a statement of events he made in 2011. Karen Butler's attempts through the redundancy process to engage the Claimant in either searching beyond Heathrow for a role, or to accept the part-time technician role with overtime, remove any doubt that this process was designed to remove the Claimant from the Respondent for any nefarious reason.
157. The evidence in respect of the reason for the dismissal is all pointing to the reason for dismissal being because of redundancy. There is nothing in the evidence presented that leads us to conclude that the alleged protected act was the reason for dismissal.

Disability:

158. The claimant suffers with anxiety and high blood pressure. The claimant first noticed anxiety issues after the incident on 17 January 2011. Since that incident the claimant states he has had many panic attacks when in confrontational and threatening situations in work.
159. The claimant has received Cognitive Behaviour Therapy to learn how to cope with anxiety. The claimant has been prescribed Citalopram for his

anxiety and panic attacks and takes other medication for his blood pressure. The claimant is likely to be on medication for blood pressure for the rest of his life.

160. The claimant struggles to get to sleep at night and has a struggle to get out of bed in the morning. The claimant has lost confidence and does not feel comfortable doing things on his own. He avoids socialising and going to public places. His wife and son accompany him when he travels. The claimant has been signed off as not fit for work since June 2015. When he was still at work, the claimant found he would check and double check even the simplest of task. The claimant could not work night shifts.
161. In answer to questions from his counsel the claimant stated that: *"I have anxiety attacks and am not in control of my emotions. I have high blood pressure. I keep to myself. I always feel insecure. I feel that something is going to attack me. I have felt this way for 5-6 years. I always have my family with me to give me assurance... I am so tired, no solution for my problems. The doctor prescribes me sleeping tablets which I take regularly. No one ever believed me at work. I did everything to justify myself at work it was a dead-end road."*
162. The claimant has produced a letter from his GP practise which was sent to solicitors acting for him at the time. The letter was expressing an "opinion as to whether his medical conditions constitute a disability under the Equality Act 2010". The GP letter states that: "I would not consider high blood pressure a form of disability given that in general Mr Modha is asymptomatic from this and it does not have any effect on his daily ability to function." In relation to anxiety the GP letter states: "I do not believe that high blood pressure or work related stress with consequent low mood and anxiety symptoms would mean that he could not function normally on a day to day basis."
163. Under the Equality Act 2010 a 'disabled person' is a person who has a 'disability'. The Claimant has a disability if he has "a physical or mental impairment" which has a "substantial and long-term adverse effect on his ability to carry out normal day-to-day activities"). The burden of proof is on the claimant to establish that he satisfies the definition.
164. The respondent contends that the Claimant's high blood pressure has not been shown to result in any impairment on the Claimant's ability to carry out normal day-to-day activities.
165. The respondent does not accept that the Claimant's anxiety had any impairment on his ability to carry out normal day to day activities.
166. The respondent points out that in the opinion of the Claimant's GP surgery the Claimant was not disabled. The GP does not believe that the Claimant's *"high blood pressure or work related stress with consequent*

low mood and anxiety symptoms would mean that he could not function normally on a day-to-day basis” (p147).

167. In addition, the GP noted that in August 2014 the Claimant became anxious when asked to do night shifts for work, which was disrupting his sleep pattern. This was a consequence of the claimant’s work pattern which ceased thereafter.
168. The respondent points out that the GPs records which show the problems at work in January 2011 only lasted until May 2011 then cease with no record of any problems, other than stress at home on 20 December 2011. Anxiety is only then recorded, as noted by the GP, in August 2014 and does not recur. Whilst there is reference to stress at work (8 June 2015—28 July 2015), this ceases and as a matter of fact the Claimant stops work thereafter and by 4 August 2015 his mood is recorded as “*stable*”.
169. From November 2015 when the Claimant is made redundant, the GP states stress is the main issue rather than an anxiety disorder.
170. The respondent says that the claimant is not a disabled person within the meaning of the Equality Act 2010.
171. The claimant relies on the physical impairment of high blood pressure and the mental impairment of anxiety.
172. In respect of high blood pressure the claimant has not established that his disabled within the meaning of the Equality Act 2010.
173. The claimant says how his anxiety affects his sleeps, prevents him socialising and prevents him from being able to travel unaccompanied or to do things his own. The claimant’s evidence has provided no examples or detail against which to assess whether there is a substantial adverse effect on his ability to carry out normal day-to-day activities.
174. The claimant’s GP states that anxiety symptoms do not prevent the claimant from functioning normally on a day-to-day basis.
175. A substantial effect is one that is more than merely minor or trivial. However, on the evidence presented by the claimant we are unable to conclude that the claimant has shown that *a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities*. The claimant has not shown that he is disabled within the meaning of the Equality 2010 by reason of anxiety.

Direct Discrimination on the grounds of disability

176. The claimant claims that he was subjected to less favourable treatment in that he was (a) not offered an alternative role from the vacancy list and (b) he was told that even if he could do night shifts he would still not have been offered a Team Supervisor Role (agreed list of issues 22).

177. In respect of the claimant's complaint that he was not offered an alternative role from the vacancy list. The Claimant does not appear to have withdrawn this as a complaint about direct discrimination on the grounds of disability even though the direct discrimination claim has been withdrawn (see paragraph 110 above).
178. The claimant stated during his evidence that he applied for 2 roles one was withdrawn the other role he accepted he was not suitably qualified to perform. He said that he had been de-skilled. The claimant said that his anxiety issues meant that he could not work at nights. The claimant accepted that after August 2014 he had not worked nights at all. The claimant accepted that he restricted himself to jobs at Heathrow Airport and that he never saw any jobs at any other airport. The claimant had said in the consultation that he would take on a supervisor role and that he could have done this if adjustments were made. He suggested that the adjustments that could be made would be to allow him to work late and early shifts but not nights. While the claimant insisted that there were supervisor roles available however he failed to identify any when asked, closet he got was to say that there was vacancy for a Supervisor in one of the teams but it was not offered to him. The claimant did not identify any relevant role on the vacancy list that he was not offered.
179. There is nothing in the claimant's evidence that points to disability being reason for not offering him a role. The claimant accepted that Karen Butler suggested roles for him and discussed the claimant taking on a Part-time role which would have accommodated his limitation on working at nights but the claimant failed to pursue the matter further with her.
180. The claimant's complaint on this issue is not well founded.
181. In respect of the complaint that the claimant was told that even if he could work nights shifts that he would not be offered a Team Supervisor Role as set out in his contract. The respondent contends that this allegation is misconceived as there was no Team Supervisor Role available; it wrongly seeks to construe all the discussions occurring between the Claimant, Karen Butler with Isobel Howson into this single statement which is wrong; it was not put to Karen Butler or Isabel Howson that this was said because of the Claimant's race. In answer to the point made by the Claimant that the Respondent did not say there was no supervisory role, the respondent states that it was always responding to the Claimant's questions and suitability for potential roles. The Claimant accepted the team supervisor role required night working in cross examination.
182. In submissions, the claimant stated that if there was no supervisory position this should have been stated by Karen Butler and Isabel Howson in their meetings with the claimant. The grounds of resistance do not

mention that there was no supervisory role (see paragraph 58 (p311)). The claimant's throughout was recognised as a 'team leader level three' and paid as such. The claimant was never taken through a performance management process to address the alleged perceived issues of underperformance in a supervisor role. The claimant pointed out that there had been no significant training since 2010 and none that was directed at the claimant's supervisory role.

183. The evidence establishes that Karen Butler discussed with the claimant at various time the claimant's role that he was from time to time performing and roles that he could perform in the future some of which the claimant went on to perform. During these discussions, which took place on various occasions including around January/February 2012, the claimant working in a supervisory role was mentioned. There were historic issues about the claimant's performance in supervisor role. Karen Black gathered feedback from various managers about the claimant performance as a supervisor. This was discussed with the claimant. The feedback painted a picture that the claimant lacked supervisory skills and the ability to manage a team. Karen Butler had formed the same opinion of the claimant. Karen Butler told the claimant this. From about 2012 the claimant had not worked in a role as a supervisor. The claimant could not work nights. Any role for the claimant to work as supervisor would have required him working nights. The various roles that the claimant performed from about 2012 were deliberately assigned because they did not require the claimant to work nights (except the blue room role in August 2014).
184. Our conclusions are that the claimant was told that even if he could work night shifts he would not be offered a team Supervisor Role. However, we are not able to conclude that this was less favourable treatment of the claimant. Karen Butler formed a view of the claimant and that was that he was not suited to supervisory role. She had taken soundings from other managers he had worked with which had confirmed the view that she herself had. We are not satisfied that Karen Butler would have acted differently in any other case involving someone who was not of the claimant's race. There is no evidential basis put forward allowing us to conclude that Karen Butler did anything other than act in accordance with her genuine view of the claimant's abilities.
185. In so far as the claimant's complaint here is about disability discrimination the Tribunal notes that Karen Butler acted upon the claimant's medical advice in a positive way by seeking to find roles for the claimant which allowed him to work within the limitations which prevented him from working night shifts. In our view this shows directly that the question of the claimant's disability did not operate in a way that suggested that she would treat him less favourably because of disability.

Reasonable adjustments

186. The duty to make reasonable adjustments comprises three requirements.
187. The first requirement is a requirement, where a provision, criterion or practice of an employer's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
188. The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
189. The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
190. In this case, we are concerned only with the first requirement. The provision criterion or practice (PCPs) relied on are: requiring the claimant to work night shifts in his role as team leader/supervisor; requiring the claimant to attend the second and third consultation meetings at the time they indicated; and requiring the claimant to work night shifts in some of the roles he applied or from the vacancy list (agreed list of issues 27).
191. The respondent contends that the claimant was not required to work night shifts as he did not have a role as team leader/supervisor. The Claimant was not required to attend the second and third consultation meetings at the times, both times were moved to accommodate the Claimant. The second consultation from 16 July to 15 July, when the Claimant attended. The third consultation was changed five times, four times for the Claimant. There is therefore no requirement. The Claimant was not required to work night shifts for the roles he applied for, as he was not selected for any role, but he was informed that the Respondent would accommodate his day work-for example for the part-time position, but the Claimant did not apply. The Claimant had not worked the night shift because of adjustments made by the Respondent.
192. Did the respondent apply a provision criterion or practice? The conclusion of the Tribunal is that the respondent did apply a provision criterion or practice in relation to supervisor roles. In that it required supervisors to work night shifts. There are difficulties with the way that the provision criterion or practice relied on by the claimant have been framed. Since 2012 the claimant has in fact not worked in supervisor role. Prior to that the claimant was required to work night shift. The consultation meetings

were moved to accommodate the claimant and to accommodate Karen Butler. The claimant was not selected for any role he applied for (he applied for two) and in respect of the vacancy list the claimant did not identify any roles that he wished to be considered for, there was therefore no requirement for the claimant to work night shifts. In respect of the roles that the claimant performed from 2012 the claimant was not required to work night shifts because of the adjustments made by the respondent. Our conclusion on this issue is that in respect of the issues engaged by the parties in these proceedings the claimant has not shown that the respondent applied a provision criterion or practice.

193. The claimant claims that he was placed at a substantial disadvantage because: he could not work nights; he was required to attend the second consultation meeting without representation; he could not attend the third consultation meeting; he could not work nights shifts and so was not offered an alternative role from the vacancy list where the roles specified night shifts required; he could not work night shifts and so was not given a role as a team leader/supervisor during the consultation process.
194. The respondent contends that there is no substantial disadvantage.
195. If there was a role that the claimant could have performed that he was unable to because of his inability to work nights then there would have been shown by the claimant to be a substantial disadvantage. There was no supervisory role at the consultation stage. There was no other role identified by the claimant.
196. Did the Respondent take such steps as it is reasonable to have to take to avoid the disadvantage?
197. The respondent says that there was no substantial disadvantage and the Respondent took such steps as were reasonable in the circumstances. The Respondent contends that there were several reasonable adjustments discussed at meetings on the 21 April 2015, 19 May 2015, 26 May 2015, and 15 June 2015. The respondent says that given the claimant's treatment, it is absurd to suggest it would not seek to provide reasonable adjustments to a role, once one was identified and the Claimant applied for that role.
198. The conclusion of the Tribunal is that the claimant did not identify any role or apply for any role in respect of which there could have been a discussion about taking adjustments for the claimant to perform the role. In so far as working nights is concerned the respondent did not require the claimant to work nights when the claimant identified it as causing him difficulties. The Tribunal is satisfied that had such a role been identified it is likely that Karen Butler would have considered with the claimant what adjustments could be made to the role to enable the claimant to fulfil the role.

Discrimination arising from disability

199. An employer discriminates against a disabled person employed by him if the employer treats the employed person unfavourably because of something arising in consequence of employed person's disability, and the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim. This does not apply if the employer shows that the employer did not know, and could not reasonably have been expected to know, that the employee had the disability.
200. The claimant complains that he was prevented during the consultation process from returning to his substantive role as team Leader/Supervisor and or not moved to another vacant post (agreed list of issues 36).
201. The claimant could not work nights because of his anxiety. The claimant states that because of not being able to work nights he was prevented from being able to take up any of the supervisor roles which all required the claimant to work nights. The claimant argues that while both Isabel Howson and Kevin Hopgood say in their evidence that there was no supervisory position for the claimant during the consultation process. The claimant says that if this was correct, why was it not raised at the meeting on 1 April 2015 or the meeting on 21 April 2015. It is, the claimant states, a simple reply to the claimant's case. The claimant also points out that in paragraph 58 of the grounds of response there is no reference made to there being no supervisor position. Why go through all that if the basic position is that there is no job available? The claimant further states that throughout the claimant was employed on a contract which was for a supervisor role, the claimant's contract was not varied. The claimant contends that if he had been in the supervisor pool he would not have been made redundant. Finally, the claimant states that it is significant that he was not given any significant training since 2010 and the training he has received was not supervisor training.
202. The respondent states that there was no supervisor role. The evidence of the claimant shows that he could not work night shifts in any event and that this was an essential feature of the supervisor role. In her evidence Karen Butler confirmed that supervisors were not made redundant however she also explained that they retained jobs in various places not all in supervisory roles. Karen Butler also gave evidence to the effect that she did not consider that the claimant was not suited to the supervisor role regardless of his inability to work night shifts.
203. The conclusion of the Tribunal is that problems had arisen in the claimant's performance when he worked in a supervisor role prior to about 2011. When the claimant returned to work for Shaun Kennedy the claimant did not work in supervisor role and following problems which arose he agreed to a move to CI. Karen Butler informed the claimant that she did not consider him suited to the role of supervisor. The claimant could not be placed on a shift rota for supervisors from 2012 because the claimant could not work night shifts. The supervisor roles involved night shift.
204. By the time the consultation period started in about 2015 the claimant had not worked as a supervisor for several years (at least since 2012 the claimant in his evidence said he had not worked as supervisor since

2009). There were no supervisor roles available at that time. The claimant has not identified another role that he could have been moved to but was not moved to by the respondent.

205. It is the case that the claimant was unable to work the night shift because of his anxiety, the medical advice provided to the respondent supported this. The respondent recognised this and accommodated the claimant accordingly from 2012 onwards except for a brief period in August 2014 when the claimant agreed to attempt the blue room role. Had we concluded that the claimant's anxiety was a disability within the meaning of section 6 of the Equality Act 2010 we would have concluded that the claimant suffered unfavourable treatment due to something arising disability namely not being able to work nights.
206. The agreed evidence was that the respondent required all the supervisors to work night shifts. The claimant stated that he could have worked late shifts and early shifts. It was not explored by the parties whether this was a feasible option in any supervisor role. The conclusion of the Tribunal on the information before us on this issue would have been that the general requirement for the supervisors to work a shift based system that included working night shift was a proportionate means of achieving a legitimate aim.

Unfair dismissal

207. What was the reason for the claimant's dismissal? (agreed list of issues 41)
208. The claimant contends in the claim form that the requirements of the respondent's business for employees to carry out work of a particular kind had not ceased or diminished and or that any such circumstances were not the principle reason for dismissal. The claimant's case is that he was not offered an alternative role because of his race and disability and not because of his skills or experience.
209. The respondent submits: "It is genuinely absurd to suggest it was anything other than redundancy".
210. The evidence presented to the Tribunal has established that the claimant worked as a CI Technician from February 2012. The claimant was in the role of CI Technician when the redundancy process began. In the period from February 2015 to 31 March 2015 the claimant worked as permits officer. By the beginning of 2015 the work of the CI technician was winding down the claimant and Phil Bolton who did the work were identified as at risk of redundancy. The respondent determined that the CI Technician role carried out by the claimant and Phil Bolton was no longer required and they were identified as redundant and in due course dismissed on the grounds of redundancy.

211. The Tribunal finds that the reason for the claimant's dismissal was redundancy.
212. The Tribunal has considered whether there is evidence from which we could conclude that the reason for dismissal was the claimant's race. The Tribunal have concluded that there is not. Those in respect of whom the claimant has made complaints about race discrimination were not involved in the claimant's redundancy process. There are no facts that we have found from which we could conclude that the claimant's race was a reason for his selection for redundancy or not being found an alternative role in the redundancy process.
213. The Tribunal have also considered whether the claimant's alleged disability was a reason for his dismissal. The Tribunal have found that it is not. The claimant was dismissed because his role having been identified as redundant he was not found another role in the redundancy process. In this the claimant could have applied for role but limited himself to two applications and also in this period the claimant limited the scope of his search for roles to Heathrow Airport. The claimant could not work nights which was a consequence of his alleged disability from anxiety. There is no evidence that the claimant was not considered for any specific role because of this restriction. We have not been able to find that the claimant's alleged disability was the reason for his dismissal.
214. Redundancy is potentially fair reason for the claimant's dismissal.
215. The Tribunal is satisfied that the respondent has shown that the role of CI Technician was no longer required by the respondent. It was established that the requirements of the respondent's business to carry out work of a particular kind had ceased or diminished.
216. We must consider whether the decision to dismiss the claimant was fair and reasonable in all the circumstances and whether the respondent followed a fair procedure (agreed list of issues 44 and 45).
217. The claimant relies on the following matters:
 - 217.1 The respondent failed to warn the claimant properly:

We do not agree. The respondent announced the proposed restructure/redundancy in the baggage operations and maintenance in early November 2014. This was closely followed by collective consultation with workers' representatives and trade unions. The claimant was kept informed of the developments in respect of the proposed restructure until the redundancy process commenced in January 2015.
 - 217.2 The respondent failed to consult the claimant properly; the consultation was not genuine:

The claimant was consulted about the redundancy process. The claimant had several individual consultation meetings and following the collective consultation. The consultation was in the view of the Tribunal genuine and not just a matter of going through the motions as the claimant suggested.

217.3 The respondent failed to choose a reasonable pool for selection:

The respondent considered the pools for selection at various times. The final pool for selection involved the CI Technician role. Both the CI Technicians were placed in the pool at risk of redundancy the respondent was in our view entitled to take this decision in circumstances where the role was no longer required.

217.4 The claimant contends that John King and Richard Coe should have remained in the pool:

The work carried out by John King and Richard Coe was not the same as the claimant. The respondent was entitled to remove them from the pool for selection.

217.5 The claimant contends that the respondent did not put in place selection criteria which was fair and objective or did not put in place any selection criteria at all; the respondent failed to give the claimant a reasonable opportunity to challenge the selection criteria; the respondent failed to inform the claimant how he scored against the criteria; the respondent was not able to participate properly in the redundancy selection and criteria as he was not informed of his score:

There were only two roles and both were to be made redundant. There was no need to create any selection criteria.

217.6 The claimant contends that he was not fairly selected for redundancy:

The respondent decided that the role of CI Technician was no longer required and all the CI Technicians (two of them) were dismissed on the grounds of redundancy.

217.7 The claimant contends that the respondent failed to discuss performance issues with the claimant which may not have led to selection for redundancy:

Historic issues about the claimant's performance in the role of supervisor role were not relevant to the claimant's selection for redundancy.

217.8 The claimant contends that the respondent failed to give the claimant fair hearing:

The Claimant had five meetings. 1 April 2015 the meeting was to "explore with you, your current role and changes to this going forwards"; 21 April 2015 was to explore the claimant's role and look for alternative vacancies; 19 May 2015 at risk meeting, at this meeting the claimant was provided with the vacancy list; 26 May 2015 the claimant attended his First Consultation Meeting; 15 June 2015, the second consultation meeting; the Claimant did not attend the third consultation meeting this was arranged for 23 June 2015 and subsequently rearranged four times. There was also an appeal hearing at which the claimant was represented for part of the meeting by his Union representative, by choice, the claimant continued the meeting in the representative absence.

In the light of the above and having considered the evidence from Karen Butler at what transpired during the meetings that the claimant had with her we are not satisfied that it has been shown that the claimant was not given fair hearing.

217.9 The respondent failed to offer the claimant alternative employment:

The claimant was provided with a vacancy list. The claimant did not identify any roles that he was interested in to Karen Butler at her various meetings with him. Karen Butler engaged with the claimant about roles that he could perform including suggesting that the claimant take on part-time role as a way of continued in employment with the respondent. This was a suggestion made not with a view to demoting the claimant as complained of but with a view to allowing the claimant to remain employed and therefore able to continue to search for other roles from inside the company.

217.10 The claimant contends that there were suitable alternative roles offered to the claimant such as CST Support Engineer and Lead CST Engineer:

The claimant applied for CST Support Engineer and Lead CST Engineer roles. In relation to the CST Support Engineer role the claimant was not successful. During his evidence, relating to the CST Engineer role, the claimant accepted that he did not have the qualifications for the role before adding that he had been de-skilled and had not been provided with training. The claimant accepted

that the Lead CST Engineer role was withdrawn and nobody was recruited to the position. The claimant has not identified any other role other than a return to a supervisor role, however, at the time of the redundancy process there were no supervisor roles.

218. We must consider whether the respondent acted 'reasonably' in dismissing the claimant on the grounds of redundancy, in all the circumstances of the case. We are not to substitute our view as to what the respondent should or could have done. Was the process followed by the Respondent was 'in all the circumstances' fair.
219. In this case the respondent decided that both employees occupying the roles of CI Technicians should be redundant. The respondent considered whether there were other roles in the organization for the claimant. The question of selection criteria was otiose as both the CI Technicians (the entire cohort) were dismissed. The Respondent consulted extensively with the Claimant. The respondent informed employees as soon as possible of their impending redundancies. The claimant was given the opportunity to look for alternative employment. The Claimant failed to follow all the guidance and support offered by the respondent.
220. We consider that the comments made by the respondent in closing submission accurately sum up the position in this case: "Any reading of the many meetings attended by a genuine and sincere attempt by Karen Butler, supported by Isabel Howson, to seek to persuade the Claimant to accept either part-time work (33 hours a week) which would have attracted overtime, or to properly consider other opportunities to work within Babcock, but perhaps away from Heathrow. The Claimant was unwilling and in reality, not prepared to properly engage in the redundancy process. His refusal to consider a technician role, bearing in mind he had performed such a role since 2012, showed his ability to ignore the advice of Karen Butler, ignore her attempts to support him and prevent his redundancy."
221. The claimant was not unfairly dismissed.

Time limits

222. We are not required to determine the question whether the complaints which have been made outside the time limit for the presentation of complaints. For completeness, we will briefly set out our view on the out of time claims. The claims do not form part of a continuing act. The complaints however are all part of coherent narrative the claimant is required to make in setting out his claims. The respondent has not suffered some disadvantage in dealing with the claimant's allegations due to the passage of time memories have faded in respect of alleged events. However, notwithstanding that the respondent has been able to present a full response in respect of all the claimant allegations they have been able to marshal evidence and witnesses in respect of all aspects of the case against them. In the circumstances, we are satisfied that the in view of the

act that the entirety of the matters alleged form part of the necessary narrative to understand the claimants case it is just and equitable to allow the claims to be heard by the Tribunal.

Conclusions

223. The claimant's complaints are not well founded and are dismissed.

Employment Judge Gumbiti-Zimuto

Date: ...19 June 2017.....

Sent to the parties on: ...

.....
For the Tribunals Office