

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105788/16

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Held in Glasgow on 6, 7, and 17, 18, 19 and 20 July 2017

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**Employment Judge: Ms M Robison
Members: Mr R MacPherson
Mr W Muir**

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Mr Thomas Lang

**Claimant
Represented by:
Mr B McLaughlin -
Solicitor**

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Scottish Ambulance Service

**Respondent
Represented by:
Mr A Watson
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claim is dismissed.

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REASONS

Introduction

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1. The claimant lodged a claim with the Employment Tribunal that he had been subjected to a detriment to prevent or deter him from taking part in trade union activities, contrary to Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRA). He also claimed he had been subjected to a detriment for making a protected disclosure but he withdrew that claim before the final hearing.

E.T. Z4 (WR)

2. The respondent entered a response to the claim, claiming that the claim or part thereof was time barred; that no qualifying disclosure had been made, and nor had the claimant been subjected to a detriment with the sole or main purpose of preventing or deterring him for taking part in trade union activities. The respondent did not insist on the time bar point at the final hearing.
3. The claim under TULRA was therefore the only issue for determination by the Tribunal at the Final Hearing, specifically whether the claimant has been subjected to detriment by the respondent for the sole or main purpose of preventing or deterring him from taking part in trade union activities, or penalising him for doing so.
4. At the final hearing, the claimant was represented by Mr B McLaughlin, solicitor. The respondent was represented by Mr A Watson, solicitor. The Tribunal heard evidence from the claimant and from Mr William Campbell, a colleague. For the respondent, the Tribunal heard evidence from Mr Richard Reynolds, Head of Ambulance Services for Forth Valley who conducted the investigations, from Mrs Donna Higgins, Head of Ambulance Services for Ayrshire and Arran, who commissioned those investigations, from Ms Wendy Quinn, then Acting General Manager for Ayrshire and Arran, and Mr Edward Goodwin, Area Service Manager for South West. The Tribunal was referred by the parties to a number of productions from a joint file of productions (referred to by page number). The productions included a “*Scott Schedule*”, setting out the details of the detriments claimed (pages 33-51), prepared by the claimant.

Findings in Fact

5. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved:-

Introduction

- 5 6. The respondent provides ambulance services throughout Scotland, employing around 4700 staff. Services are delivered over five regional operational divisions, with Ayrshire and Arran a subdivision of West Central region.
- 10 7. The claimant commenced employment in June 2005 as a relief ambulance technician (page 53). Although his base station was Girvan, as is common for relief staff, initially he had no regular shift pattern, and shifts could change at 24 hours notice, and he could be allocated to any station within the south west area. This meant that it was impossible to plan holidays or social events, because outwith set annual leave, shifts were always subject to change or allocated at short notice.
- 15 8. In 2009, he became a “*board member*”, which meant that he had an advanced agreed shift pattern, which was set out on the “*board*”, working from the Girvan station, and which would not be subject to change. The claimant is now an ambulance paramedic.
- 20 9. At Girvan station there are 13 members of staff, 11 Accident and emergency staff and 2 in patient transport services, providing cover 24/7, 365 days each year in that geographical area. Kenny Nicol, paramedic team leader, is the claimant’s line manager and in charge of the Girvan Station.
- 25 The claimant applied for the paramedic team leader role at the same time as Kenny Nicol but was unsuccessful.

Relevant Respondent Policies

- 30 10. The respondent has a policy called “*Dealing with Employee Grievances*” (lodged at pages 185 to 193). The most relevant paragraphs of that policy which have a bearing on the issues raised in this claim are Section 5,

headed up “*procedure*”, which states at 5.1 headed “*Informal approach*” that:-

5 “5.1.1 *When an employee feels aggrieved about an issue it should be raised in the first instance with their immediate line manager. The line manager will meet with the employee as soon as possible within a reasonable timescale from the date when the grievance was notified....*5.1.2 *Where the grievance lies with the line manager, then the employee has the right to*
10 *raise the matter informally with the next level of management. 5.1.3 If no resolution is achieved from the informal meeting, the employee may choose to initiate the formal procedure....*”

11. Section 5.3, headed First Formal Stage, states that:-

15 “5.3.1 *In the event that the employee remains dissatisfied after informal consideration of the grievance, the matter will be referred to the First Formal Stage. The employee will normally lay out the details of their grievance in writing using the grievance notification form.....It should be sent to the individual’s line manager who will be responsible for hearing the grievance. On receiving the notification, the relevant manager will arrange a formal grievance hearing within 14 calendar days from the date of receipt of the notification of the*
20 *grievance....*”.

12. The respondent has a disciplinary policy called “*Management of Employee Conduct*” (pages 194 to 218) which sets out the approach to be taken to allegations of misconduct. That includes the following: -

30 “5.2.1 *Where the employee is a trade union/professional organisation representative, no disciplinary action should be*

taken without discussion with a full time official of the appropriate organisation”.

- 5 13. Reference is made at 5.2.2 to suspension, and Annex A deals with the procedure for suspension. The respondent has a “*risk assessment*” template which must be completed and forwarded to HR for approval of suspension (page 241).
- 10 14. The respondent has a “*Promoting Dignity at Work*” policy (pages 219 - 240), which sets out at Section 7 options for a complainant to raise a complaint of bullying and harassment, which include informal procedures and mediation. The formal procedure is set out at paragraph 7.3, which states that formal complaints should be made in writing to the complainant’s line manager or supervisor, HR, or with the line manager of the alleged
15 bully/harasser, detailing the basis on which the complaint is made. It states that it is important that complaints are raised as soon as possible after the incident has occurred in order that matters can be dealt with as quickly as possible. The line manager should decide on the most appropriate course of action, although there is no assumption that all letters of complaint will
20 necessarily result in the use of the formal procedure. One of the options is that a formal investigation is carried out.
- 25 15. Although the respondent has no written policy regarding accessing lockers, the standard practice is that staff will have a key and a second key will be retained at the station in the event that a member of staff forgets their key or it gets lost. Only in exceptional circumstances will a locker be opened without the consent of the member of staff, in relation for example to a police investigation or following a bereavement.

30 **The claimant’s grievance: “the locker issue”**

16. At a regular quarterly station meeting which took place on 11 April 2016, at which Eddie Goodwin, the Area Service Manager, and Ren Santosh, HR

representative, were present, the claimant raised a complaint that Kenny Nicol, paramedic team leader, had "*illegally accessed staff lockers on multiple occasions*". He was asked to raise this issue by a colleague, Bobby Crombie, who was unable to attend that meeting. Bobby Crombie asked him to hand in a letter which he had written dated 8 April 2016, which the claimant did not open (page 55).

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17. The letter raised a concern about an incident which took place in late 2013, when Bobby Crombie was told that Kenny Nicol (who, in accordance with the standard practice, held a spare key to his locker) had gone through staff lockers looking for a key. Bobby Crombie said that he had reason to believe that his locker had been opened again towards the end of 2015, because he was aware that items had moved. He asked for the management stance on staff accessing lockers and for a reassurance that his privacy would be respected. Eddie Goodwin arranged a meeting with Bobby Crombie, who was represented by his GMB rep Gordon Cree. At the meeting, Bobby Crombie said nothing was actually stolen and it was agreed that there was not enough evidence to have an investigation launched. However, in order to reassure him, Eddie Goodwin gave him back his second, spare key.

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18. Eddie Goodwin also e-mailed all other staff at the Girvan station (page 56) to advise that they could continue with the current arrangement regarding second keys for lockers, which were held in the manager's office, or invited staff to take ownership of their second keys. Not all members took up the offer for keys to be returned to them at the time.

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19. Some staff at Girvan Station, including William Campbell, were however concerned about a failed or perceived failure to investigate this matter, and they therefore asked the claimant if he would become a shop steward and take the matter forward on their behalf.

20. Following the meeting of 11 April and before 31 May 2016, the claimant undertook the relevant procedures and was appointed a shop steward for the GMB union.

5 21. By e-mail dated 31 May 2016, the claimant forwarded a document which he called a “collective grievance” to Donna Higgins by e-mail (page 60). That document was headed up “Girvan Station. Collective Grievance. To whom it may concern”, and stated as follows (page 57):-

10 *“It is with regret that we have to bring to your attention a serious breach of service policy. That Kenny Nicol PTL has illegally accessed staff lockers on multiple occasions. History. On the 11th April there was a station meeting at 1300 hrs within Girvan station. Eddie Goodwin ASM and Ren Santosh HR were present. Bobby Crombie*
15 *PTS had asked myself Thomas Lang to raise the above allegation. There was a further meeting held some days later by Eddie Goodwin and attended by Bobby Crombie and his GMB shop steward Gordon Cree. Eddie Goodwin explained that as there was insufficient*
20 *evidence he would not investigate the matter but if any staff wished to come forward he would listen to what they had to say. This lack of appetite to fully investigate any matter brought to managements attention regarding Kenny Nicol has left staff frightened and reluctant to come forward, a sad and disturbing reality for a service which is supposed to be open and honest. After Bobby relayed Eddie*
25 *Goodwin’s decision, I was asked by staff side to become a shop steward and conduct my own investigation. I asked staff a broad and open question “do you have any knowledge of Kenny Nicol accessing staff lockers?”. Two staff on separate occasions were present when Kenny Nicol accessed staff lockers and there is also*
30 *two staff with items missing from their lockers. Both witnesses have a real fear of victimisation in coming forward. I have one witness who has come forward and given a written statement. The other witness will give a statement only if a full, professional external (outwith*

southwest area) investigation takes place. This serious breach of service policy and privacy, then subsequent denial in front of management and HR has shocked staff. Mr Nicol's dishonesty and behaviour has left his position at Girvan questionable. Yours Thomas Lang".

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22. By e-mail dated 1 June 2016, Donna Higgins responded to that request advising that she needed further information before progressing. She asked the claimant to contact her when he returned after annual leave (page 59).

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23. The reason that she responded in this way was because she took the view, given the substance of the complaint, that it was not accurately described as a grievance in terms of the respondent's grievance policy (which would determine how it should be dealt with). She took the view that it looked more like a conduct issue, and therefore should more properly have been determined under the disciplinary policy. In addition, she was aware that similar allegations had been made in the past, and that further similar allegations had been made recently and she wanted to find out if this related to historic allegations or those that she was already aware of, or whether this was a new separate allegation.

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24. By e-mail dated 5 June 2016, the claimant responded asking whether the meeting to which he had been invited was part of the official grievance procedure. He copied in Tommy Steele, who is the GMB Convenor for the south west area (page 59).

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25. By e-mail dated 8 June 2016, Donna Higgins replied that "*The meeting is to try to understand the detail of your grievance but it's not the grievance hearing*" (page 59), and asked again for his availability. She asked again for times to meet by e-mail dated 20 June, advising that Barbara Wilson from HR would attend to give advice about the grievance process (page 62).

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26. The claimant replied by e-mail dated 20 June 2016, advising that he had sought advice from senior GMB representatives who had advised that he should not attend because the meeting was not part of the formal grievance process (page 62). He attached a copy of an official grievance form (page 5 63) and asked her to contact him when she had set a date for the formal grievance hearing and who would be attending. The formal grievance form stated under "*details of grievance being raised*", that: "*employees within Girvan station have raised concerns regarding lockers being accessed against policy and procedure by Kenny Nicol PTL*".
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27. On 21 June 2016, Donna Higgins telephoned the claimant to explain why she wanted to meet and said that she was looking for additional detail to ensure that they were using the right process, and to be advised of the names of those making the grievance, because there were historical locker 15 issues and she did not know if it was the same issue. He told her that the advice from the GMB was that he had already provided enough detail for the issue to be dealt with as a grievance and that if she did not reply not reply within 14 days they would escalate to the next stage. She said that what he had submitted was not a competent grievance but that she was 20 happy to discuss further. She suggested speaking to Tommy Steel for reassurance that as an organisation they would normally try to raise things informally in the first instance. He said that if it was a personal grievance he would discuss it with her if but would not go against union advice because it was a collective grievance.
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28. By e-mail dated 21 June 2016 (page 64), Donna Higgins wrote to Jacqueline Loye, HR and Wendy Quinn, then acting general manager, seeking advice about what to do in regard to this issue. She advised that the claimant was not willing to name the people raising the grievance, and 30 set out six issues which she wanted to discuss with him, namely: what specifically is the grievance as multiple issues were raised; whether the allegations of accessing the locker were 3 years old; details of other lockers being accessed; who is raising the collective grievance to invite them to a

hearing if necessary; the fact that the paperwork suggests the claimant has been carrying out his own investigation which was against process; and because that the paperwork makes allegations of dishonesty by Kenny Nicol whether grievance may not be the appropriate route.

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Further grievance by the claimant

29. On 5 July 2016, Donna Higgins wrote to the claimant, thanking him for the grievance of 31 May and confirming that she was unable to progress with the grievance as without further detail she did not consider it to be a competent grievance, and that she was unable to discuss it further because he had declined to meet her (page 69).

30. By e-mail dated 5 July, the claimant forwarded a grievance notification form to Wendy Quinn cc'd to Karen Leonard, in which he stated that "*The ambulance service has failed to address an outstanding grievance within the time limits set out in the services policies and procedures*" (page 68). Wendy Quinn passed this to Donna Higgins and replied on 7 July 2016, (page 72) advising that Donna Higgins's request to meet him was in accordance with normal procedure and asked him to reconsider his refusal to meet her and to advise which members of staff wished to raise the grievance.

31. On 9 July 2016, the claimant responded to Wendy Quinn's e-mail of 7 July (page 71), giving a brief history of the grievance, stating that he had taken advice from Tommy Steele and Karen Leonard, full time official at the GMB, who advised that the grievance policy had been fully adhered to and that he had escalated the grievance to her as Donna Higgin's line manager because the 14 day time limit had passed. He added, "*As you may appreciate this is my first case as a GMB rep and can only go by the advice I receive. I am also sure you agree, that as the matter is of such a serious nature with items missing from staff lockers and breach of human rigths this matter can only be addressed through a thorough formal investigation. If*

you are of the same opinion as Donna Higgins that the grievance is “not competent”, could I ask you to contact Tommy Steele or Karen Leonard to get through this impasse”.

- 5 32. By letter dated 29 July 2016 (page 75), Donna Higgins wrote again to the claimant asking to meet with her on 11 August to discuss the “locker issue” grievance.

“Dignity at Work” complaint made by Kenny Nicol

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33. In the meantime, on 26 June 2016 , Kenny Nicol had contacted the claimant by telephone to discuss the issue of missing keys. The next day, 27 June 2016, he wrote a letter to Eddie Goodwin headed “*Dignity at Work*” (page 67), which stated as follows:-

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“You will recall that we met in Girvan station with Jamie McNamee, Unite the union, to discuss the ongoing support to myself as line manager within Girvan Station during the difficulties I have been experiencing with regards the continual negative behaviours being displayed by some people within (and outwith) the station.

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It is with regret that I have to inform you of some ongoing actions/behaviour within Girvan Station that are now causing me real concern and I believe that they are not decreasing or indeed stopping, I am of the opinion that they are in fact being increased and are now being orchestrated on a more organised and concerted fashion.

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A formal investigation has been carried out following an alleged incident between myself and Joanne Lang. This incident occurred on 01/10/2015.

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5 *Since this date I have followed procedures and have been willing to move forward with all recommendations put to both parties. I have remained at work throughout some difficult and stressful times. I now feel it has gone on too long and I must come forward with some evidence showing that I am a victim of a witch hunt and acts of bullying and harassment.*

10 *Joanne Lang, along with her husband and others, has continued in a campaign to undermine my position as Team Leader. I have been subjected to several acts of intimidating, offensive and malicious behaviour and I now feel extremely stressed, frustrated and humiliated. It is clear from the investigatory processes (in which I have fully participated) that there is evidence to support collusion to undermine me in my personal and professional life. This is not only an attack on myself but the line management structures of the station and is a classic example of bullying and harassment.*

15 *I feel I need some formal intervention that would allow me to continue to perform to my optimal levels and I invite the division to initiate a formal dignity at work investigation on my behalf’.*

20 *I feel I need some formal intervention that would allow me to continue to perform to my optimal levels and I invite the division to initiate a formal dignity at work investigation on my behalf’.*

34. Eddie Goodwin passed this to his line manager, Donna Higgins. On 4 July 2016 she contacted Richard Reynolds, her counterpart in Forth Valley, who had no prior knowledge of the parties or the issue involved to ascertain if he had capacity to undertake this investigation. He confirmed that he could, and got approval from his regional general manager. She sent him a copy of the letter dated 27 June.

25 *I feel I need some formal intervention that would allow me to continue to perform to my optimal levels and I invite the division to initiate a formal dignity at work investigation on my behalf’.*

35. By letter dated 8 July, Richard Reynolds sent an invite letter to Kenny Nicol to meet him on Friday 29 July to discuss his Dignity at Work complaint (page 74).

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36. On 29 July 2016, Richard Reynolds met with Kenny Nicol. Mr Reynolds found that Mr Nicol was quite stressed and quite emotional and that his complaint not very structured, which made it difficult for him to understand the specific complaints that he was making. Mr Reynolds got the impression that he was talking about previous investigations, which he said he could not re-open. He distilled from the discussion three or four specific incidents which he believed that it was appropriate for him to further investigate to ascertain whether these incidents were of substance. Two of these were allegations related to the claimant. One related to him canvassing statements from other staff in respect of investigations which had involved Mr Crookson, and the other related to a telephone conversation which he had understood had taken place in June 2016 following an incident regarding a set of keys.

15 **Relocation issue**

37. Given the allegations that were being made against the claimant, Mr Reynolds gave consideration to the managing employee conduct policy and in particular the circumstances when it was appropriate to suspend an individual. He went through a mental checklist, based on the “*employee suspension – risk assessment form*” (page 241), with which he was very familiar. He concluded that while it was not necessary to suspend the claimant, relocation was an appropriate alternative option. This was because he was of the view, given the allegations, that there was a risk of the staff member interfering with the investigation or potential witnesses. He said that he made that decision to protect the integrity of the investigation and also to protect the claimant.

38. He discussed this decision with Donna Higgins, who decided that Eddie Goodwin should contact the claimant in person to advise him to expect a letter. On 2 August, Eddie Goodwin telephoned the claimant who was unfortunately on holiday. He explained that he was to be temporarily relocated from Girvan and the reasons for that, and said that he would

require to speak to workforce planning to ascertain what shifts were available on his return. (As it happened the claimant went on sick leave and therefore allocation of shifts was not initially required).

- 5 39. By letter date 2 August 2016 (page 76), Richard Reynolds wrote to the claimant to advise him of the investigation under the Dignity at Work Policy and Management of Employee Conduct Policy following the allegations which had been made against him by Kenny Nicol. That letter also stated that:-

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“while this confidential investigation is being undertaken, I feel it is necessary to temporarily relocate you to a different work location to ensure the integrity of the investigation process. Your local management will discuss this with you and identify a suitable alternative location. You should not discuss the case with any person who may be involved in the investigation, ie any of your colleagues from Girvan Station. However, contact me or Hazel Kielty, Assistant HR Manager in the meantime if you have any questions”.

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- 20 40. By e-mail dated 3 August 2016, 14.11 (page 80), Richard Reynolds who had been advised that the claimant was a GMB shop steward, and in accordance with policy (page 199), e-mailed asking for her to contact him to discuss the investigation. As he got no reply, he spoke to Tommy Shephard who said that he would speak to her (page 77).

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41. Richard Reynolds had difficulty conducting the dignity at work investigation because initially the union was advising their members not to attend the investigatory meetings they were invited to. That situation changed when Tommy Steele agreed to sit in on the meetings.

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The Parallel Investigations

42. On 5 August 2016, Karen Leonard telephoned Richard Reynolds to advise that she felt that the dignity at work investigation should not go ahead until the collective grievance from GMB [on the “*locker issue*”] at Girvan was resolved, and advised him that she would be speaking to the general manager for south west to have the Dignity at Work Investigation put on hold (page 82). This was the first time that Mr Reynolds became aware of the “*locker issue*” grievance.
43. On 8 August 2016, Karen Leonard e-mailed Wendy Quinn (page 83) raising concerns about the delay dealing with the collective grievance, and stating that she expected the grievance against the claimant (Dignity at Work complaint) to be suspended until his grievance had been concluded.
44. On 9 August, Richard Reynolds emailed Wendy Quinn to advise that, as two of those invited for interviews on 10 August indicated that they had received advice not to attend, he would need to reschedule to 22 or 23 August, but advised that “*I fear we may face the same problem on those dates, their TU is saying not to cooperate*” (page 87).
45. On 11 August 2016 at 12.09, Donna Higgins e-mailed Karen Leonard (page 88) expressing concern about the refusal of the claimant to meet her. Karen Leonard reply at 16.24 copying in Tommy Steele, stating:-
- “Tom Lang submitted two pieces of paper referring to a collective grievance on behalf of GMB members at Girvan Station. One a letter and the other in the formal grievance form. This grievance referred to an issue previously raised, informally, by Gordon Cree with Eddie Goodwin. I have emailed Wendy Quinn raising my concerns over the inordinate delay of the grievance hearing. It is my intention to discuss this with Wendy as soon as possible”.*
46. Then at 16.58 that same day Karen Leonard e-mailed Donna Higgins to apologise, saying that both she and Tom had been on annual leave, and

that it was a misunderstanding on her part and she asked for alternative dates to meet (page 89). The meeting took place on 26 August when it was agreed that it should properly be dealt with and investigated as a conduct issue in respect of Kenny Nicol's conduct.

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47. Although the claimant had been due to return to work after his holiday on or around 13 August, he went on sick-leave (not returning until on or around 26 September).

10 48. Thereafter (between 26 and 30 August) Donna Higgins contacted Richard Reynolds to ask him to conduct the investigation into the "locker issue" as well as the dignity at work investigation. She asked him to do so because she considered the same witnesses would require to be interviewed for both investigations. Mr Reynolds had by this time interviewed two witnesses,
15 both of whom had brought up the "locker issue". From that time onwards, the dignity at work investigation and the locker issue investigation ran in parallel, with witnesses who were interviewed about the dignity at work investigation also being asked for their views on the locker issue investigation.

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Further grievance: "Shifts and Uniform" issue

49. By letter dated 30 August 2016 (page 91), Richard Reynolds wrote to the claimant, advising him of progress of the Dignity at Work investigation,
25 adding:-

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"While this confidential investigation is being undertaken I feel it is necessary to maintain the temporary relocation to a different work location to ensure the integrity of the investigation process. You should not discuss the case with any person who may be involved in the investigation ie any of your colleagues from Girvan Station. However, contact me or Barbara Wilson, HR Advisor in the meantime if you have any questions".

50. On 21 September when he was about to return from sick leave, the claimant e-mailed Wendy Quinn, copying in Karen Leonard (page 101), to advise that he had been “ordered” by Eddie Goodwin and Richard Reynolds not to turn up at Girvan Station or contact anyone there. He explained however that his uniform and PPE were located there and that he required to collect them in order to work on the shifts he had been allocated at Maybole on the Thursday and the Friday, Saturday and Sunday at Cumnock. He said that he had legal advice that he should be accompanied by his GMB rep.

51. Wendy Quinn responded by e-mail dated 21 September, copying in Karen Leonard, as well as Donna Higgins and Eddie Goodwin (page 100), giving him “authority to go into the station in the morning for a one-off”, advising that Martin McCormack Team Leader would meet him there but that there was no legal requirement for him to have anyone else with him or to be accompanied by his union rep. She advised that thereafter he should keep his uniform at home.

52. By e-mail dated 22 September, (page 99) the claimant asked her if she was denying his request to be accompanied by his GMB rep. He continued:-

“As the relocation, is an Amulance Service decision and I am not a relief member of staff, I would expect to be treated as any other board member with a personal locker within the station I am being relocated to, with access to laundry facilities (as I am sure it is not service policy to take soiled uniforms home). As a board member I have a shift pattern which allows myself and my family to organise our work life balance and would expect this shift pattern to be honoured”.

53. Wendy Quinn responded by e-mail dated 22 September (page 99) confirming that she had neither explicitly nor implicitly denied his request to be accompanied. She explained that he could take a clean uniform home

and use laundry facilities at any location. She said that she was not aware of the shift pattern that had been agreed but that he should cover the shifts allocated to him and raise the issue with Eddie Goodwin on his return from holiday.

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54. The claimant lodged a further grievance on the standard form dated 28 September 2016, (page 103), which stated:-

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“I was contacted on 2 August 2016 by telephone while on annual leave and out of the country to inform me that allegations had been made against me, that I would receive a letter confirming this and meantime I was not to return to Girvan station or contact anyone from the station. I was advised I would be contacted to arrange for an interview to take place. To date I have not been made aware of the nature of the allegation against me. I have been removed from my place of work and relocated causing detriment”.

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55. This further grievance was forwarded to Donna Higgins and Richard Reynolds, who responded by e-mail dated 29 September (page 105):-

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“As seems to be the case with other individuals involved, there’s a selective amnesia at work. Mr Lang has had written correspondence from me on 2 and 30 August 2016. The advice being given to staff not to attend for interview on the first two dates has contributed to the investigation delay. I cannot confirm but I believe this advice was given by a GMB representative. As per my reply yesterday regarding the email from Karen Leonard....there are 13 staff at Girvan, one has submitted the D@W, 2 are named in that document. Of the other 10, we’ve interviewed 8 and the last 2 will be interviewed on Friday 7 October. We have also interviewed 2 area service managers that have been involved in issues at Girvan. We would like to interview a third ASM, A Crookston, but he has been on long-term sick leave and did not respond to correspondence. I would like to convene a

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meeting after the interviews next week to discuss, what if any allegations in the D@W are supported by independent witnesses”.

56. Jackie Loye responded by e-mail dated 29 September (page 104) to ask
5 “*were the allegations outlined to Mr Lang in your correspondence*”, to which Richard Reynolds replied “*no specific allegations were outlined to Mr or Mrs Lang as none were really detailed in the D@W submission. The purpose of the meeting proposed after the last interviews on 7 October would be to discuss if any specific allegations could be issued from the available*
10 *evidence*” (page 104).

57. By e-mail dated 3 October 2016, Karen Leonard told Richard Reynolds that the claimant was yet to be informed of the nature of the allegation against him, and she expressed concern about the fact that no-one had discussed
15 with the claimant a suitable alternative location as suggested in his letters of 2 and 30 August to the claimant, and the fact that he had been given shifts in three different stations (page 108).

58. Richard Reynolds was concerned to hear this because he said that the
20 intention of the temporary relocation was that the claimant would be moved to a different station and based at that station, but “*it sounded as he was being messed around*”. He responded by e-mail dated 5 October 2016 to Karen Leonard (page 109), stating that he had requested a meeting with the commissioning officer as soon as possible “*as what I’m being told is*
25 *happening appears not to be*”. He continued, “*The allegations contained within the original Dignity at work submission were very broad brush and lacked any sort of detail. Therefore at present I am trying to ascertain what*
(if any) allegations will need to be presented to Mr and Mrs Lang”.

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Conclusion of investigation into allegations under the dignity at work policy

59. At that point, Richard Reynolds still had two witnesses to interview, which was scheduled to take place on 7 October. Donna Higgins updated Karen Leonard on 3 October and again on 18 October regarding the progress of the investigation by which time there were only three staff still to interview (page 120).
60. The claimant was again signed off sick on or around 6 October, and returned to work on or around 2 November. During this period, between 10 and 14 October, he had been due to go on a family holiday which he did not attend.
61. By letter dated 14 October Richard Reynolds invited the claimant to an investigatory meeting on 3 November in relation to two allegations, namely :-
1. *You have canvassed colleagues to submit statements/letters against Mr Kenneth Nicol your Team Leader whilst Service investigations were active.*
 2. *Your attitude and use of language towards Mr Kenneth Nicol during a discussion in respect of missing keys was inappropriate* (page 113).
62. As all potential witnesses (apart from the claimant) had been interviewed by this time in respect of the investigation, Mr Reynolds considered that temporary relocation could be lifted, because no interviewees could be influenced, and he advised the claimant in that letter.
63. The claimant advised he was not able to attend on 3 November because no GMB rep was available on the date (page 115). A further invite was sent to attend on 28 November (p 125) and then on 5 December (page 127 and 134) (but they ran out of time because of other interviews) then again on 21 December (p137).

64. On 20 October, Karen Leonard e-mailed Donna Higgins stating her view that *“the employee conduct investigation should be dealt with first and the “counter claim” for breach of Dignity at Work put on hold until there is an outcome”* (page 119). She believed there was a risk that GMB members would be *“denied natural justice through a faulty procedure”* (page 120). Donna Higgins did not agree, not least because by that stage the investigation was almost complete.
65. On 21 December the claimant was invited to an investigatory interview under the management of employee conduct policy (regarding the dignity at work complaint). Notes of that meeting were taken (page 139 to page 144). During the course of that meeting, the claimant was instructed by his trade union representative not to answer a number of questions.
66. Mr Reynolds commenced by advising that he had been asked to include in the investigation the issue with the locker keys (*“the locker issue”*). Although he had explored this issue alongside the dignity at work issue in the interviews with other staff members, at which Karen Leonard had been present, she raised objection to discussing that issue in this meeting, and therefore, at the suggestion of Barbara Wilson, HR, it was agreed that the claimant would be interviewed separately about that.
67. The claimant was also asked whether he had ever canvassed colleagues to provide statements against Mr Nicol in respect of an investigation by Alan Crookston in August 2015. After some concern raised by Karen Leonard that such a discussion was time-barred, the claimant stated that he had nothing to do with that investigation.
68. Mr Reynolds went on to ask about a telephone discussion with Mr Nicol regarding a set of oxygen keys going missing. The claimant said that he had spoken to him on a number of occasions and was aware that the keys had gone missing twice. However he advised that when he spoke to Kenny he

did so on speaker phone with someone present to “cover” himself. He said that at no time had he spoken to Kenny Nicol inappropriately, certainly not on the phone.

5 69. By letter dated 4 January 2017 (page 145), the claimant was then invited to a separate interview regarding the “*locker issue*” investigation, which took place on 23 January 2017 (page 145) and notes were taken (page 162 to 166).

10 70. Richard Reynolds issued his report regarding the Dignity at Work Investigation on 18 January 2017 (pages 150 to 161). He found neither allegation upheld, and concluded that there were insufficient grounds for formal action under the service’s dignity at work or management of employee conduct policy. Mr Reynolds concluded that there had been a
15 relationship breakdown between Mr Lang and Mr Nicol (as well as Mrs Lang) and facilitated mediation was recommended. If that failed, Mr Reynolds suggested that it could be necessary to consider transferring some staff to different locations (“*in order to safeguard the workplace environment for other staff*”). The claimant was provided with feedback at a
20 meeting on 15 February (page 167).

Conclusion of investigation into the “locker issue”

71. Richard Reynolds e-mailed Kenny Nicol on 21 October to advise that he
25 had been tasked with investigating “*the locker issue*” and asked to meet on 2 November to discuss the allegation “*You have on various occasions accessed staff lockers without the key holders consent*” (page 124). After that meeting, he issued his report regarding the Managing Employee Conduct complaint (“*the locker issue*”) on 23 February 2017 (pages 172 to
30 178).

72. He concluded that Mr Nicol had accessed lockers without consent on more than one occasion despite Mr Nicol’s statement that he had only done it

once. While he was of the view that some items had been removed, there was no evidence that Mr Nicol was responsible for that. It was recommended that Mr Nicol was given guidance on his role and the boundaries of his role; that team leaders should be given clear guidance that lockers should only be entered into without consent in extreme circumstances, and that spare locker keys should be held at ASM level rather than team leader and that conflict resolution mediation should be considered to *“try and resolve the ill feeling surrounding the issue”*.

- 5
- 10 73. There was a feedback meeting to Kenny Nicol which took place on 22 February 2017.

Relevant law

- 15 74. Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act) states at subsection(1)(b) that:-

20 *“a worker has the right not to be subjected to any detriment as an individual by any act or failure to act, by his employer if the act or failure takes place for the sole or main purpose of....preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so”*.

- 25 75. The purpose behind an employer’s actions should be distinguished from its effect (**Department of Transport v Gallacher 1994 ICR 967 CA**).

76. Section 148(2) states:-

30 *“On a complaint under Section 146 it shall be for the employer to show what was the sole or main purpose for which he acted or failed to act”*.

77. The EAT in **Yewdall v Secretary of State for Work and Pensions** **UKEAT/0071/05**, set out guidance on the correct approach, that the Tribunal must as itself:-

- 5 1. whether there have been acts or deliberate failures to act on the part of the employer;
2. whether those acts or omissions have caused detriment to the claimant;
- 10 3. if so, were those acts or omissions in time;
4. if so, has the claimant established a prima facie case that they were for the purpose stated.
- 15 5. If so, then has the employer shown the purpose was not to prevent or deter the claimant from taking part in trade union activities.

78. Thus while the burden of proof of showing purpose is on the employer, the claimant must first establish a prima facie case before the burden transfers to the employer and the employer has the burden of showing that the alternative purpose relied on is genuine (see **Serco v Dahou [2017] IRLR 81 CA**).

25 **Claimant's submissions**

79. Mr McLaughlin lodged a brief written submission, in which he first set out the relevant legal provisions and relied on relevant passages of Harvey and the EAT decision of **Serco v Dahou UKEAT/0027/14/JOJ**, which was upheld by the Court of Appeal, **Dahou v Serco Ltd [2016] EWCA Civ 832**.

80. With regard to the factual background, the claimant lodged a collective grievance but was met by a repeated and concerted attempt to thwart the

5 progression of the grievance in the way that the union expected it to be dealt. This shows an antipathy to dealing with a legitimate complaint on behalf of members. Any reasonable employer would have immediately investigated such a serious allegation but here no action is taken because of hostility to the GMB. The evidence from Donna Higgins was that Tommy Steele said that GMB intended to blow this up to a maximum and Wendy Quinn said in evidence that Karen Leonard was not fond of partnership working. These points were not put to the claimant. Even assuming this is true, the reference in evidence to these discussions can only be designed to
10 cause animosity to the GMB.

81. Mr McLaughlin asked the Tribunal to compare and contrast the response of the employer to a grievance by a manager, Mr Nicol. His grievance was investigated within a matter of days. No satisfactory reason was given why
15 Richard Reynolds did not also relocate Mr Nicol following the complaint against him. Mr McLaughlin submitted that the different treatment was because the claimant was a GMB shop steward.

82. Mr Reynolds was clear in his evidence that he only expected the claimant to be relocated, but Eddie Goodwin without reference to Richard Reynolds telephoned the claimant while he was on holiday and ordered him not to turn up at Girvan Station or to contact anyone there. This was despite the fact that Mr Reynolds had not expected that to happen, and that he deemed it to be penalising him. That resulted in the claimant being prevented or
20 deterred from trade union activities, which was for raising the grievance. If the purpose of this action was not to penalise him, then the employer should have said that he was free to contact members, but he was never told that. Eddie Goodwin never reverted to Richard Reynolds to advise him that it was not in fact possible to relocate the claimant without penalising him. The respondent's actions in making him an itinerant relief worker were for an
25 improper purpose and to penalise the claimant. The respondent's failure to respect the claimant's position as a permanent board member caused him to suffer stress and ill-health and to miss his holiday.
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83. With regard to the investigations, Richard Reynolds investigated the complaint of Kenny Nicols even though there were no specific details, and no prima facie case to justify further investigation, It was not until this hearing that there was any allegation about foul language. Yet Richard Reynolds dragged this out and he took the decision to do so to placate local management, whereas with his 37 years of experience he should have stopped the investigation as soon as he realised that it had no substance. He did this with a view to deterring the claimant from trade union activities. This was the view of William Campbell who gave evidence that the union members believed that what was happening to the claimant was happening because of trade union activities.

84. Richard Reynolds was set up by the management in the region to fail, and in particular there could never have been any full and fair investigation because he was never actually forwarded the collective grievance, which was a critical document in the investigation. This shows the employer's antipathy to the GMB. That failure was deliberate, not accidental. If that had been done in isolation, it could have been said that it was a mistake, but in the context of everything else that was happening, it was clear that related this to the claimant's trade union activities.

85. Mr McLaughlin relied on the case of **Bone v North Essex Partnership NUS Foundation Trust [2016] EWCA Civ 45** to support his argument that here too there was a "*lamentable failure of responsibility*" on the part of this employer in respect of the claimant.

86. Mr McLaughlin relies on the case of **Ibarz v University of Sheffiled UKEAT/0018/15/JOJ** to seek repayment of fees paid.

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Submissions for the respondent

87. Mr Watson lodged written submissions on which he addressed the Tribunal, and which he supplemented with oral submissions. He set out the relevant legislation, and stated that without otherwise accepting liability, they accept that a temporary relocation (including working temporarily as a relief member of staff) would be a detriment; that the temporary relocation was an act of the employer; and that submitting a collective grievance as a trade unions representative, on behalf of members, is a trade union activity.
88. This temporary relocation was not however for the sole or main purpose of preventing or deterring the claimant from taking part in a trade union activity or penalising him for doing so. The respondent was at all times trying to deal with a difficult employment situation fairly whilst balancing the interests of all parties involved. If the effect of the respondent's actions is that trade union activity has been discouraged, that is irrelevant. Its purpose was well-meaning and lawful.
89. Richard Reynolds was stated to be responsible for the decision to temporarily relocate the claimant and continue with an investigation into the dignity at work complaint. He submitted that Richard Reynolds was a credible witness, who had been a shop steward himself and has a long service with the respondent and a good relationship with unions. He worked in a different area and had no interest or involvement in the trade union activities at Girvan Station. He was coming to the matter from an independent and impartial viewpoint.
90. When asked to carry out the investigation on 4 July, he was unaware that there was a separate complaint by the claimant. His decision to relocate after a "risk assessment" was to protect him from further allegations and ensure the integrity of the investigation. The letter advising of relocation only restricts the claimant from discussing the case, not otherwise carrying out trade union activities. He was only made aware of the collective grievance after the decision to relocate. He later ended the temporary relocation immediately after concluding interviews with staff.

91. Wendy Quinn was stated to be responsible for the move to a relief role. Her evidence was that she was not interfering with the decision made in this regard. The decision appears to have been made by Eddie Goodwin, and facilitated by the respondent's workforce planning function, and Mr Goodwin gave evidence to say that a relief role was the only realistic possibility for such a temporary relocation.
92. Mr Watson dealt with each of the specific detriments identified in the Scott schedule, submitting that there was no evidence to support the view that the actions were for the purpose of deterring the claimant in his trade union activities.
93. Mr Watson relied on **Department of Transport v Gallacher [1994] ICR 967** and **Marshall and Others v Hampshire Probation Service EAT/1440/98** to submit that the tribunal required to distinguish between the employers "*purpose*" and "*effect*". He submitted that purpose must be an illegitimate purpose which contravenes the statute and even if the employer's actions had the effect of deterring an individual from taking part in union action, that was not the purpose.
94. With regard to the **Bone** case, in that case the employer had apparently failed to intervene at all, whereas in this case the respondent undertook investigations, any delay being the fault of the claimant and in any event, no detriment is being claimed in respect of that period.
95. He submitted that the respondent's witnesses were credible and sincere, and all had prior experience of being a shop steward, and were aggrieved at the suggestion that their actions had been for trade union reasons.

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Tribunal's discussion and decision

Observations on the witnesses and the evidence

5 96. Despite appearances, there was little evidence in dispute in this case, or where the evidence was in dispute, it was not significant to the central issues for determination. Further, we accepted that all of the witnesses who gave evidence in this case were generally credible.

10 97. We accepted the evidence of the respondent's witnesses and considered they all gave evidence in a straightforward and fair way. We noted that they all had considerable experience dealing with unions, that they were all union members and indeed as it happens had all in their time been shop stewards. We noted that Mr Goodwin in particular was especially indignant, even incredulous, when it was put to him that he had acted with a view to penalising the claimant or to deter him from trade union activities.

15 98. While we found the claimant to be generally credible, it was apparent to us that he exaggerated or considerably over-stated the effect that the actions of the respondent had on him and stressed certain evidence with a view to bolstering his case. For example, we thought that he exaggerated the impact of the telephone call while he was on holiday and given the background to this case, and that his claim to have never had a cross word with Kenny Nicol was at the very least a gloss on reality. The claimant now suggests that the issue with childcare and holidays was something to do with the respondent. Had it been an issue at the time it is clear from his actions that he (or the union) would not have been slow in raising this with management.

20 99. While Mr McLaughlin made (appropriate) objections throughout to highlight passages of evidence which had not been put to the claimant and were therefore "uncontested", we did not take the view that the result was that we should not take evidence which was unchallenged into account. Credibility is a matter for the Tribunal and we gave the evidence which we heard from other witnesses, the detail of which had in some cases not been specifically

put to Mr Lang, appropriate weight, bearing in mind our view of the other witnesses credibility in the round.

5 100. As a Tribunal we were very aware that we were hearing evidence on a narrow issue which had been raised but that there was a great deal of history which while not relevant to this particular claim, sets the context for the claim. We noted in particular evidence that Girvan Station used to have a positive working environment but that had changed in recent years following personal and work incidents which had impacted on relationships
10 between various members of staff. We were therefore very well aware that management was operating in very difficult circumstances in relation to the context of this particular event, and that to some extent at least does explain the actions both of the respondent's witnesses and of the claimant. We noted in passing from the evidence we heard that the police and the Health
15 and Care Professional Council (the paramedics professional association) had been alerted to some of the issues arising at the station. We noted the outcome of the investigations, and recognised that there was a clash of personalities which had apparently resulted in very deep divisions in the team.

20 101. Although conscious that the respondent was operating in very challenging circumstances at Girvan Station, we came to the view that there were a number of aspects of the way that the respondent dealt with this case, discussed below, that inevitably made the claimant feel aggrieved and
25 which explain why he came to think that he was being unfairly treated. However, the question for this Tribunal is not whether the claimant was treated unfairly or the reason for that, but rather the purpose of the employer's actions.

30 **Applicable law and tests from case-law**

102. Turning to the applicable law, Section 146(1)(b) of TULRA states that "*a worker has the right not to be subjected to any detriment as an individual by*

any act or failure to act, by his employer if the act or failure takes place for the sole or main purpose of...preventing or deterring him from taking part in the activities of an independent trade union at an appropriate time, or penalising him for doing so". While a number of terms in this provision have been the subject of scrutiny, such as whether the detriment was to the claimant "as an individual" or whether the activities took place "at an appropriate time", these are not issues in this case. Nor did we understand that there was any dispute as to whether the claimant's actions could be categorised as a "trade union activity", and indeed in submissions Mr Watson accepted that submitting a collective grievance as a trade union representative, on behalf of members, is a trade union activity.

103. The focus of our deliberations is not whether the claimant was subject to a detriment because of his trade union membership or activities, but specifically on the purpose the employer was seeking to achieve by subjecting the claimant to any detriment. Further, it is important to distinguish between the purpose and the effect of the employer's actions, since they may well have the result of deterring or preventing the claimant's trade union activities, but that may well not have been the employer's intention or purpose.

104. Although Section 148(2) suggests that the burden of proof is on the employer, the EAT set out guidance on the correct approach to the burden of proof in the case of **Yewdall**, and we now deal with each stage of the test in turn.

Whether there have been acts or deliberate failures to act on the part of the employer

105. In his submissions, Mr Watson accepted that the temporary relocation was an act on the part of the employer, so to that extent at least this hurdle is met. Mr McLaughlin set out a number of additional "acts or failures to act" in the Scott Schedule, although we did not accept that the acts as listed and described there accurately reflect our findings in fact.

106. In particular, we did not accept that the claimant was “*ordered out of his place of work*”, and thereby denied access to his trade union members and facilities, but rather that is how the claimant chose to interpret the letter which he was sent from Mr Reynolds following the telephone call from Mr Goodwin. The letter and subsequent letters from Mr Reynolds advise the claimant to get in touch with him if any issues required clarification and he did not do so.
107. We did not accept that the claimant was “*placed under disciplinary investigation as a retaliatory act for pursuing the collective grievance*”. Rather, a preliminary investigation was held into allegations made against him, which did not progress to a disciplinary hearing. We have found as a matter of fact that when Mr Reynolds made the decision to temporarily relocate the claimant, he was not aware that the claimant had lodged a collective grievance on behalf of members.
108. We did not accept that the temporary relocation could accurately be described as being “*demoted*” from being “*a board, permanent employee*”. We have made no findings in fact that the claimant was “*prevented from being able to carry out childcare for his family*”. The claimant raised no specific concerns about childcare with the respondent.
109. While we accept that the respondent carried out an investigation under the dignity at work policy, we do not accept that continuing with that investigation before it was concluded could or should be specifically categorised as an act or failure to act on the part of the employer.
110. We did not accept that being unable to go on holiday was an act or failure to act on the part of the respondent, because the claimant made no specific complaint about this to which the employer could act in response. The claimant was in any event on sick leave at the time, and it was not clear from the evidence why he did not attend the family holiday.

111. We did not accept that the invitation to the claimant to attend a meeting in connection with the investigation (which we have found was not a disciplinary hearing) could be categorised as a specific or separate act of the employer, beyond the employer's action in carrying out an investigation.

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112. Thus we accepted for the purpose of the provision that the decision to investigate the dignity at work complaint and the decision to temporarily relocate the claimant were acts of the employer.

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Whether those acts or omissions have caused detriment to the claimant

113. In his submissions, Mr Watson accepted that the temporary relocation of the claimant, including working temporarily as a relief member of staff, was a detriment for the purposes of the relevant provisions, and therefore to that extent at least this hurdle is met.

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114. We also accepted that the respondent's decision to investigate the dignity at work complaint, although it did not result in a disciplinary hearing, could be said to have caused the claimant a detriment to the extent that he had this issue hanging over him and there was a significant delay (for reasons which are explained) in him being advised of the allegations against him, and then of him being invited to the investigatory meeting and being advised of the final outcome.

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If so, were those acts or omissions in time

116. There was no issue in this case about whether the actions were time-barred.

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If so, has the claimant established a prima facie case that the actions were for the purpose stated.

117. This is the crux of this case. While the burden of proof of showing purpose is on the employer, the claimant must first establish a prima facie case before the employer has the burden of showing that the alternative purpose relied on is genuine.

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118. Mr McLaughlin, who made his arguments very forcefully, sought to argue that all of these issues considered in the round were sufficient to point to the behaviour being for trade union related reasons, and therefore to raise a prima facie case, and that the employer had failed to prove that its purpose was not related to trade union activities.

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119. In this case, as discussed above, we understood why the claimant believed that he had been treated unfairly. That included the fact that Donna Higgins dealt with the collective grievance and the dignity at work policies very differently, with one starting an investigation very quickly, the other delaying the investigation; the fact that Richard Reynolds relocated the claimant on the strength of relatively thin accusations which did prove in the end to be unfounded, whereas Kenny Nicol was not relocated when he was accused of wrongdoing in the collective grievance; and the confusion between the meaning and consequences of a relocation between what Richard Reynolds expected to happen and what Eddie Goodwin said was the inevitable consequence.

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120. However, that surface impression is belied by looking at the details. This case, like *Serco v Dahou*, "*necessitates a descent into considerable detail*" in order to understand why certain things were done by the employer.

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121. Although we got the impression that both the respondent and the unions were too hide bound by the details of the employer's procedures, it is clear that the procedure for dealing with a collective grievance and a dignity at work complaint were very different. We were of the view that Donna Higgins was at pains to advise the claimant that she would deal with the complaint (even though she had the impression that it might have been an attempt to

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re-raise issues already dealt with) but wanted to make sure that it was dealt with under the appropriate procedure. It is however clear from the terms of the grievance policy that attempts should rightly be made to deal with policies informally and that the union's insistence on a formal grievance meeting being held in compliance with the policy was not a requirement of the policy at all, at the initial stages. Although much was made of the claimant's impression that it was not a "*competent grievance*" because it was not on the right form, it was clear from the evidence that this was nothing to the point, but rather that it was the subject matter which Mrs Higgins had in mind in so describing it.

122. While Mr Reynolds, rightly or wrongly, decided that it was appropriate to temporarily relocate the claimant, he was not at that time even aware of the collective grievance against Mr Nicol. While Mr Reynolds did not consider it necessary to temporarily relocate Mr Nicol, he explained that the reason for that was that he did not consider that the conduct of which he was accused could reoccur because "the second key issue" had been dealt with by management. We accepted that Mr Reynolds explanation for the need to temporarily relocate the claimant was genuine, as was his reasoning why he had not relocated Mr Nicol.

123. The temporary relocation did have unfortunate consequences for the claimant. Mr Reynolds may have made a different decision had he been aware of the complex factual circumstances at Girvan Station. It is understandable that the claimant may have perceived this as a punishment. We heard from Mr Reynolds that it was not intended to have that effect, that he had not intended to penalise him, and his understanding was that the clamant would be relocated to another station (and not treated as if the were a "relief" paramedic). While we accepted that Mr Reynolds position on that was genuine (as indicated by his responses at the time in e-mails), we were aware that he had 37 years of experience with the respondent, but we did wonder how it might be possible to slot a paramedic with their allocated shift pattern into another station. Indeed, that was Mr Goodwin's position, is

that such a temporary relocation on his allocated shift pattern was simply not possible. Whether that was because Ayrshire and Arran operated differently from Forth Valley we do not know. Further, while the claimant's position was that he was "ordered" not to attend Girvan station, the respondent's evidence was that he was required not to discuss the investigation (as it clearly states in the letter to the claimant about the temporary relocation), and this seems to have been what the claimant decided to take from what he was told by Mr Goodwin, but without ever going back to Mr Reynolds to check.

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124. The difficulty for the claimant was that there was no evidence, either of primary or secondary facts, from which it could be established or indeed from which any inference could be drawn that the reason for the treatment and for the acts by the employer was for the purpose of preventing or deterring trade union activities. There was simply nothing that we heard in evidence that led us to believe that. We did not accept, as submitted by Mr McLaughlin, that the references by Mrs Higgins to what Mr Steele said or by Mrs Quinn's view on the preferred approach taken by Ms Leonard displayed animosity towards unions, or were in any way designed to further stir up animosity towards them.

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125. We came to the view that there was simply no evidence to support a prima facie case, both looking at all of the acts individually, and also looking at the evidence in the round.

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If so, then has the employer shown the purpose was not to prevent or deter the claimant from taking part in trade union activities.

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126. While we were not convinced that the claimant had even raised a prima facie case, even if we had believed that the facts were sufficient to say that he had, we considered that the employer has shown in evidence that their "purpose" in temporarily relocating the claimant was a genuine one, and the temporary relocation was not therefore not for the purpose of preventing or deterring the claimant from taking part in a trade union activity or penalising

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him for doing so, and nor was the decision to undertake an investigation into the allegations made by Mr Nicol.

5 127. While we are critical of the respondent's handling of this issue, we accepted that any perception that the claimant might have that he was being treated unfairly was the result of miscommunications which were all the more likely given the background history of the situation at Girvan Station. We accepted Mr Watson's submission that the respondent was at all times trying to deal with a difficult employment situation fairly whilst balancing the interests of all
10 parties involved. While it may well have been that the effect of the respondent's actions was that trade union activity has been discouraged, we accepted that their purpose was well-meaning and lawful.

15 128. We heard evidence that the respondent works very closely and apparently very constructively with the three trade unions. All of the witnesses we heard from were union members and had been shop stewards in their time. The respondent's witnesses all spoke very highly of Tommy Steele and we got the impression that he enjoyed a good relationship with both the employer and with union members, and was perhaps less inclined to rely on
20 the letter of the employer's policies but rather sought to encourage dialogue in the spirit of good industrial relations between the respondent and the union.

25 129. There was nothing to indicate why the respondent might single out the claimant for unfair treatment related to the fact that he was a shop steward. This was not least because he was newly appointed and so had no track record of dealing with management as a shop steward and had not
30 built up any kind of reputation that might explain why the respondent would seek to penalise him in particular for raising this issue. Our impression was that management were at pains to deal with his claims as fairly as possible, despite their impression that he was re-raising issues which had been raised before and dealt with.

130. Another reason we were convinced that the actions of the respondent were not related to the claimant's trade union activities was because of the requirement for several different employees (from two different regions) to have colluded and conspired to make it happen. The claimant largely points the finger at Richard Reynolds, but it was Donna Higgins who made the decisions in relation to how the "collective grievance" would be handled (which Richard Reynolds did not know about until 5 August 2016) and it was Donna Higgins who instructed him to carry out the investigation into the dignity at work complaint. (We considered that it was of no moment that he was not forwarded the initial grievance letter because, as he said in evidence, he dealt with all of the issues which it raised). It was Eddie Goodwin who implemented Richard Reynold's decision regarding the temporary relocation, apparently on a misunderstanding about how it would be implemented and Wendy Quinn who compounded that error by advising the claimant that he should follow the instructions he had been given. Looking at the state of mind of all involved, we could not say that either singularly or as a collective, they had acted the way that they did with the purpose of deterring or preventing the claimant from carrying out his trade union duties, or penalising him from trade union activities.

131. We therefore considered that the respondent had satisfied us on the evidence that their actions had not been for the purpose of deterring trade union activities, but for other genuine purposes.

Conclusion

132. We therefore conclude that the claimant has not made out his claim under Section 146(1)(b) of TULRA.

133. We have a good deal of sympathy for management in this case who are trying to deal with a difficult situation which has arisen at the Girvan Station as fairly as possible. We were of the opinion that the claimant has taken

5 advantage of this legislation to air his grievance and highlight what he considers to be unfair treatment when there were no primary facts which could possibly indicate that the reason for the treatment had anything to do with his trade union activities, far less for the purpose of deterring him from such activities.

10 134. We were conscious that the respondent is well aware of the difficulties and has arranged mediation at Girvan Station. It is to be hoped that the mediation will prove fruitful in resolving the difficulties. We were inclined to agree with Mr Reynold's conclusion that staff transfers may require to be considered in order to resolve the difficulties at the station caused by the breakdown in relations between Mr Nicol and the claimant and other members of the team. It is to be hoped that both parties, the union and the employer, can agree a way forward for Girvan station which avoids unnecessary and expensive litigation of this nature in future, which does not benefit staff either as employees or as union members, and indeed resolves nothing.

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Employment Judge: Muriel Robison
Date of Judgment: 15 August 2017
Entered in register: 17 August 2017
and copied to parties

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