EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Karen Brown	**v**	**London Underground Limited**

Heard at: Watford **On**: 11-14 June 2019
Chambers Discussion: 23 August 2019

Before: Employment Judge Henry
Members: Mrs L Thompson
Mr R Clifton

Appearances

For the Claimant: Mr L Harris, Counsel
For the Respondent: Miss R Thomas, Counsel

RESERVED JUDGMENT

The tribunal finds that:

1. The claimant has not suffered detriment on grounds of trade union membership or otherwise activities pursuant to s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992,

2. The claimant has not suffered detriment on grounds of health and safety activities, pursuant to s.44(1)(b) of the Employment Rights Act 1996,

3. The claimant has not suffered detriment on grounds of making protected disclosures, pursuant to s43B, 43C and 47B of the Employment Rights Act 1996.

4. The claimant's claims are accordingly dismissed.

REASONS

1. The claimant, by a claim form presented to the tribunal on 6 February 2018, and amended at a preliminary hearing on 2 August 2018, following a period of early conciliation between 24 October 2017 and 8 November 2017, brings complaints for; detriment on grounds of trade union membership/activities; detriment on grounds of health and safety activities; detriment for having

made protected disclosures; and a claim for an unlawful deduction from her wages.

2. The claimant commenced employment with the respondent on 17 November 2000. The claimant remains an employee of the respondent.

The issues

3. The issues for the tribunal's determination were agreed with the parties and annexed to the case management summary sent to the parties on 13 August 2018, and confirmed with this tribunal as follows:

> "Detriment on grounds related to union membership or activities (s.146 TULRCA)
>
> 1. Did the Respondent subject the Claimant to the following detriments?
>
> a. CSM Duru effectively applying disciplinary sanctions to the Claimant by sending her a letter dated 26/27 July 2017 and an email on 28 July 2017.
>
> b. CSM Duru failing to carry out a fair and reasonable investigation prior to sending the above letter and email.
>
> c. CSM Duru failing to arrange a disciplinary hearing in relation to the matter addressed in the above letter and email.
>
> d. CSM Duru refusing to give the Claimant notes of the interview on 25 July 2017.
>
> e. CSM Duru failing to give the Claimant a right of appeal in relation to the letter and email above.
>
> f. AM Painter sending an email to the Claimant on 14 August 2017 supporting CSM Duru without having heard from the Claimant.
>
> g. Failing to treat the Claimant's grievance dated 25 September 2017 seriously, by
>
> - Failing to accept the grievance as a complaint of harassment and bullying.
>
> - Failing to deal with the grievance in accordance with the Respondent's harassment and bullying procedure by failing to offer the Claimant a meeting with an accredited manager before a decision was taken not to consider her complaint as one of bullying and harassment.
>
> - Assigning to the grievance, managers who were not accredited to deal with harassment and bullying issues.

h. From late September until 9 November 2017, insisting that AM Painter was the appropriate manager to hear the Claimant's grievance.

i. On 14 October 2017, the Claimant being required to meet CSM Duru for a RTWI, despite the fact that she had an outstanding grievance against him.

j. On 14 October 2017, CSM Duru insisting the meeting go ahead, accusing the Claimant of insubordination and threatening her with disciplinary action.

k. On 25 October 2017, CSM Duru ordering the Claimant to work at Dollis Hill Station contrary to agreed restrictions.

l. On 25 November 2017, CSM Duru deducting a day's pay from the Claimant's salary in respect of 25 October 2017.

m. On 12 January 2018, refusing to meet the Claimant's request for Marlon Osborne to hear the grievance and to have a different PMA assigned to the case.

2. Did the Respondent subject the Claimant to any or all of the above acts or omissions for the sole or main purpose of seeking to prevent, or deter her from being a member of the RMT and/or from taking part in the activities of the RMT at an appropriate time, or penalising her for doing those things?

<u>Detriment on grounds of making protected disclosures (s.43B, 43C and 47B ERA)</u>

3. Did the Claimant make any or all of the following disclosures?

a. At a Jubilee North Tier 1 Health and Safety meeting on 23 March 2017, disclosing the following conduct of CSM Duru and another CSM:

i. Requiring a member of staff to work excessive hours in breach of the maximum hours permitted by the Respondent under its Framework Agreement for the Deployment of Station Staff.
ii. A member of staff closing Kilburn Station when not licenced to do so.
iii. Dollis Hill Station being left open and unstaffed after last trains, in breach of the Rule Book, causing an emergency call point alarm to be activated.

b. In an email to CSM Duru on 25 July 2017, disclosing that CSM Duru had not properly organised the station on the previous day and that managers needed to be mindful of all aspects of running a safe station when removing staff at no notice.

c. At a meeting on 25 July 2017, with CSM Duru and AM Painter, disclosing that CSM Duru should not have left CSS Opoku in charge of Kilburn Station because he was subject to a medical restriction.

4. If the disclosures were made, did each amount to a protected disclosure in that:

   a. Was it a disclosure of information?

   b. Did the Claimant reasonably believe that it was made in the public interest?

   c. Did the Claimant reasonably believe that the information tended to show that:

      i. The Respondent had failed to comply with its legal obligations under the Framework Agreement, the Respondent's licencing obligations, the Rule Book, and/or its health and safety obligations.

      ii. The health and safety of individuals had been endangered.

5. Were the disclosures made to the employer?

6. Was the Claimant subjected to any or all of the detriments at paragraph 1 above?

7. If so, in respect of each detriment, can the Respondent show that the detriment was not done on the grounds that the disclosures, or each of them was made?

   <u>Detriment on grounds of health and safety activities (s.44(1)(b) ERA)</u>

8. If the Claimant was subjected to any or all of the detriments at paragraph 1 above, were any of them done on the ground that the Claimant had performed functions as a representative of workers on matters of health and safety and/or as a member of a safety committee?

4. Were all of the Claimant's complaints presented within the time limits applicable under the TULR(C)A and ERA? If not, has the Claimant established that it was not reasonably practicable to present her complaints in time, and that she presented them within a further reasonable period?

5. At the commencement of the hearing the claimant withdrew her claim for an unlawful deduction from wages, and the further issue as set out at paragraphs 1(g), (h) and (m), of the issues above referenced. The claimant's claim for an unlawful deduction from wages was accordingly dismissed on withdrawal by the claimant, and she no longer relies on the acts of detriment set out at paragraphs 1g, h and m, of the above issues..

Evidence

6. The tribunal received evidence from the claimant and from the following witnesses on her behalf:

    - Mr Kayode Jimoh – Customer Service Supervisor – Elected Industrial Relations RMT trade union representative for Jubilee Line North.
    - Mr Jared Wood – Station Supervisor – Level 2 stations and Revenue Council trade union representative for the RMT.
    - Mr Mashud Ali – Customer Service Supervisor – RMT accredited trade union elected representative and trade union companion.

7. The tribunal received evidence from the following witnesses on behalf of the respondent:

    - Mr Uchenna Duru – Customer Service Manager (currently trains manager)
    - Euan Taylor – People Management Advice Specialist (currently ER partner)
    - Carl Painter – Area Manager Stations.
    - Mr Marlon Osborne – Head of Customer Service

8. The witnesses' evidence in chief was received by written statements upon which they were then cross-examined, save for Mr Taylor who did not give oral evidence. The tribunal had before it a bundle of documents exhibit R1.

9. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Facts

10. The respondent is the London Underground. The claimant was employed as a Customer Service Supervisor (CSS) who, whilst on duty, was essentially the responsible person for managing the respondent's staff, health and safety, and operational and customer services, for the particular station at which she was located during her shift.

11. Shift patterns are split between early - 7am to 3pm; late – 3pm to 11pm and nights – 11pm to 7am; to include a 30-minute meal break.

12. As a CSS, the claimant reported into a team of four Customer Service managers (CSM) whose roles involved managing the day to day operation of the Station Supervisors, dealing with operational issues, the deployment of staff, and dealing with attendance, discipline, performance, development and competency issues. The claimant's direct Line Manager was Mr Uchenna Duru (CSM). The CSM then reported into an Area Manager, who was responsible for managing the operation of a number of stations and

station staff, to ensure that they provided customer services for those using the underground. The Area Manager (AM) relevant to matters arising in this case, was Mr Carl Painter.

13. The London Underground addresses issues as to health and safety via *"The London Underground Health and Safety Machinery"* dated 17 April 2000, as amended on 31 July 2010, being an agreement between the London Underground, and the trade unions, namely; the Associated Society of Locomotive Engineers and Firemen (ASLEF); Unite the Union (UNITE); the National Union of Railway Maritime and Transport Workers (RMT); and the Transport Salaried Staff Association (TSSA).

14. By its objectives, the London Underground Health and Safety Machinery provides that, it is a framework for preventing and resolving health and safety at work issues at the most appropriate and effective level, ie, the workplace, covering all areas of London Underground.

15. By its purpose, it identifies that the:

> "machinery is to define LU's processes for ensuring that health and safety matters that affect or may affect employees can be openly discussed between LU and its employee Health and Safety Representatives as required by the Safety Representative and Committee Regulations 1977. This will facilitate the identification of health and safety issues, the constructive development and implementation of solutions and continuous improvement of health and safety in the workplace.
>
> …
>
> Welfare matters shall be implicit within the health and safety machinery".

16. The machinery then makes provisions for local representatives. Local representatives known as Tier 1 Representatives, are appointed by their relevant trade union and are treated by London Underground as Safety Representatives for the purposes of the Safety Representatives and Safety Committee Regulations 1977. The role does not impose any legal responsibilities for health and safety beyond those which apply to all employees.

17. As part of the role however, it was the function of the Tier 1 Health and Safety Representative, to raise with management, any matters of health, safety or welfare at work, which concerns those persons that they represent. It is also accepted that the role includes assisting in the promotion, development and maintenance of effective measures designed to safeguard the health and safety of staff. To this end, the representative will be consulted on different matters relating to health and safety, and will be provided with all relevant information and knowledge associated with such matters.

18. On 1 January 2017, the claimant became a Tier 1 representative for the RMT for the Jubilee North Line.

19. The London Underground also provides for a number of full-time Health and Safety Representatives, known as Tier 2 Representatives, for which there are six Representatives, representing Train Operators; There are 3 from the RMT and 3 from ASLEF Unions. There are a further 2 Tier 2 Representatives for the station and service control functions and asset functions.

20. Tier 2 Safety Representatives are London Underground employees who are appointed/elected by the trade unions and are then seconded from their substantive London Underground roles to act as full-time Health and Safety Representatives for the purposes of the machinery.

21. With respect Tier 1 Representatives, a Tier 1 meeting is held every three months between the Area Managers and the Tier 1 Health and Safety Representatives from each union, to discuss and resolve health and safety concerns that have been raised by; a workplace inspection; via staff concerns; health and safety legislation; and/or potential hazards.

22. Tier 1 representatives are released from their substantive roles in order to carry out their duties as Tier 1 representatives; they are allocated time away to attend Tier 1 meetings every quarter, attend depot/workplace inspections, and attend Health and Safety conferences. The claimant does not maintain that she was denied any of these facilities.

23. It is not in dispute that, on 23 March 2017, at a Tier 1 meeting chaired by the Area Managers, AM Painter and AM Buch, the claimant raised issues going to health and safety, that:

    23.1 A member of staff had been required to work excessive hours, being a 21-hour shift in breach of the maximum working hours permitted under the framework agreement,

    23.2 That a member of staff had been closing Kilburn station when not licensed to do so, and

    23.3 That Dollis Hill station had been left open and unstaffed after the last trains had departed, which resulted in an emergency call point alarm being activated on the platform.

24. It is equally not in dispute that, these were all legitimate concerns to have been raised in the context of the claimant's role as a Tier 1 Health and Safety Representative. The issues raised by the claimant are recorded in the minutes of the meeting at R1 page 60.

25. AM Painter acknowledged the incidents and confirmed that he would be reviewing them with the CSMs, which he reported back to the next Tier 1 meeting on 1 June 2017, which matters were then closed. Notes of the meeting are recorded at R1 page 64.

26. It is the claimant's claim that, having raised these issues, one of the CSMs who was responsible for the failing, was CSM Duru, whom the claimant states then took umbrage of, when the minutes of the Tier 1 meeting were posted on the notice board from which CSM Duru would have been aware that he was the individual being referenced for the failings, albeit not individually named, and, that he subjected her thereafter to unfavourable treatment and detriments, to be addressed infra.

27. In respect hereof, it is the respondent's evidence, which is not contested that, on the issues which the claimant refers having initially happened, these had earlier been raised and had been discussed at the respondent's weekly meeting between the Area Managers and CSMs, for which CSM Duru states, were not then new matters being raised by the claimant, and were not matters for which he would have taken exception to; the matters already having been addressed.

28. On 24 July 2017, the claimant was working the early shift at Kilburn Station, working 7am to 3pm, covering the role of Part-time Supervisor, from 7.30 to 11.30 and thereafter as spare - in that no duty was allocated to her for which she could be sent to cover anywhere on the group of stations.

29. At the Kilburn station working at the material time, were CSS Brady, and CSS Opoku. CSS Opoku however, was working altered hours on medically restricted duties, effectively covering a role of CSA (Customer Service Assistant).

30. Part of a CSS's role is to facilitate the collection of cash held within the station, by the third-party contractor G4S. Collections take place weekly, for which a four-hour window operates within which a collection is to be made. The rostered supervisor in charge has the responsibility for the collection, and is referred to as the "Consolidator".

31. On 24 July 2017, CSS Brady was the rostered supervisor in charge and the appropriate consolidator for cash handling, and responsible for the pending cash collection.

32. It is also relevant here to note that, staff are to take meal breaks within five hours of commencing their shifts. Outside of this period, staff can be asked to take their lunchbreaks for exigencies of the service, which lunch breaks then become paid lunchbreaks. Where staff have been unable to take lunchbreaks within the stipulated five hours of commencing their shifts, this may raise questions as to staff planning and is a matter to be addressed by management.

33. With regards the cash for collection, this is locked in a cash handling device (CHD) and coins, are kept in bags which are locked in a float safe, both located within the ticket office at the station. There are four keys kept at the station which give access to the supervisor's office where the key cabinet containing the ticket office key is kept; one key is on the Customer Service Assistant's bunch, which only enables access to the supervisor's office, but

not the key cabinet; one key is on the supervisor's bunch, which is held by the rostered supervisor in charge; one spare master key is stored in the key cabinet in the supervisor's office, and one key for emergency is kept in a red box, for which access is gained on breaking the emergency glass.

34. At approximately 12:10pm on the 24 July 2017, CSM Duru called the station requesting that CSS Brady attend a track walk at West Hampstead Station, who, on learning of the claimant's presence at Kilburn, asked that the claimant join them for the track walk. The claimant declined on the basis that she did not have appropriate footwear for going on the track.

35. During this conversation, CSS Brady further informed CSM Duru that the claimant would be going on her lunch break, for which no issue was raised, it being CSM Duru's evidence that, on being informed of the claimant due to take her meal break, he had not identified there to have been a problem as CSS Opoku was then available to cover Kilburn station during the claimant's break, working an altered shift from 8am to 4pm, for which their meal break would not then have coincided. And on CSS Brady further asking CSM Duru whether the lift at the station should be taken out of service on her departure, it was CSM Duru's instruction that on CSS Opoku the other CSS at the station being on restricted duties, that the lift could remain in service as CSS Opoku could be left on his own for one hour.

36. CSS Opoku's restrictions prevented him from carrying out safety critical activities and from working on his own for more than an hour, they did not however impact on his ability to carry out non-safety critical activities for which CSM Duru states, which has not been challenged, that, it did not stop him from carrying out a collection or being in charge of the station for one hour. CSS Opoku, as a substantive CSS, was an officer able to facilitate a cash collection. It was further CSM Duru's evidence, which was not contested, that, provided CSS Opoku was contactable he could work on his own.

37. A track walk is a process where supervisors and managers go onto the track to familiarise themselves with the lay out and equipment, which knowledge may be required in order to recover the service. Operational procedures include opening and closing of sections which is a competent management systems requirement, requiring updating bi-annually. In respect hereof, a duty trainer had been made available for two weeks, for which CSM Duru was tasked to get as many staff as possible to attend a track familiarisation walk during that period.

38. On CSS Brady due to leave the station to attend the track familiarisation walk, CSS Brady offered the station bunch of keys to the claimant who stated that she did not need them as she had a set of keys.

39. On CSS Brady leaving the station, she left her keys on the supervisor's desk. On the claimant then asking CSS Opoku if he needed them, and on being shown that he had already had a bunch of keys, she then locked the keys in the key cabinet.

40. At approximately 12:30pm, the claimant left the station and went on her meal break taking the master key with her. At approximately 12:35pm, G4S arrived for the cash collection, but on CSS Opoku only having the CSA's bunch of keys, he did not then have access to the key cabinet to effect the cash collection. The claimant returned to the station between 12:55pm and 1pm.

41. On CSS Brady returning from the Track walk and learning of the missed collection, CSS Brady informed CSM Duru that G4S having visited the station had not been able to complete the cash collection because no one was available to give them access to the cash handing device or float safe in the ticket office.

42. With regards missed cash collections, the respondent, in a drive to save costs, has focused on the elimination of "missed collections" which has a cost implication of approximately £40 for each missed collection. Staff had been repeatedly informed thereof.

43. On CSM Duru being informed of the missed collection, at approximately 15:08pm, that afternoon, he wrote to CSS' Brady, Opoku and the claimant, stating:

> "As you may be aware there is a company drive to minimise costs where applicable and one area that has been identified to achieve the costs saving is the total elimination of "missed collections". Towards that end can you all please send me a memo detailing the following:
>
> 1. Why the collection was missed?
> 2. Who had the station master key?
> 3. Where was the ticket office key?
> 4. Who was on the station and on duty when it was missed?
> 5. What time did G4S arrive?
>
> Can you please send me your responses prior to the end of your duty tomorrow. Thanks a million…"

44. It was CSM Duru's evidence to the tribunal that, when a collection is missed, a "Missed Collection Notification" must be completed detailing the incident. This triggers an email to the Area Stations Manager and Revenue Collections Team, and that as a result, he would be asked, as the CSM on duty, for an explanation for which he sought to investigate in order to assess whether there was anything which could be done to prevent future instances occurring. There is no suggestion that in CSM Duru taking this course of action, he was motivated by any malice towards the claimant. Indeed, there is equally no suggestion at this time, that there had been any wrongdoing by any individual, or otherwise suggestion that the claimant was at fault in any way.

45. CSS Brady responded later that day advising that at the material time she had been on the track familiarisation walk; that the claimant had locked the station master keys in the key cabinet; that the POM Suite keys had been locked in the cabinet by herself; and that CSS Opoku, being on duty at the

station, did not then have the master key to access the key cabinet; and that the claimant had gone on her lunch break.

46. CSS Opoku, the following morning, wrote to CSM Duru that, on CSS Brady having been on the track familiarisation walk, the claimant had then taken her meal break, having in her possession the master keys and was off site at the time of the collection, and that he alone, was then in the station.

47. On CSM Duru receiving the above accounts and on it appearing to him that the collection was wholly avoidable, and that the claimant was largely responsible as she had been in possession of the master keys, he sought advice, holding the belief that the claimant had deliberately denied access to the ticket office for collection by having the master keys with her off site, enquiring whether it was appropriate for action to be taken, whether formal or informal, to prevent it happening again. CSM Duru was advised that missed cash collections were dealt with informally and that, on it being the claimant's first instance of being involved in a missed collection, disciplinary action was not appropriate. CSM Duru was advised to have a conversation with the claimant which he duly sought to have on 25 July, placing a call to CSS Brady to ask the claimant to see him at Willesden Green.

48. It is the claimant's evidence that, at the time CSM Duru made the call, she was writing the memo which CSM Duru had requested the previous day, and advised CSS Brady to inform CSM Duru that she would complete her account of the missed collection first, then have her meal and see CSM Duru thereafter. The claimant states that she then tried to contact CSM Duru to advise him thereof, but was unable so to do.

49. CSM Duru subsequently sought to find out the claimant's whereabouts on her not attending him, whereas the claimant states, on his speaking with CSS Brady and insisting to speak with the claimant, she states that she took the phone and advised CSM Duru that she was on her meal break and would go to see him once finished, around 1pm. The claimant states that she then placed the handset back on its base and immediately thereafter, CSM Duru again phoned, which on CSS Brady answering the phone, was instructed that when the claimant finished her meal, she was to go and see AM Painter. CSM Duru's evidence, is that, he requested the claimant to attend AM Painter's office but not to meet with him.

50. The claimant duly finished her meal break and sent CSM Duru, copy to AM Painter, her account for the missed cash collection, addressing the specific questions asked by CSM Duru in numerical order, which is here fully set out, as the claimant relies hereon as amounting to a protected disclosure.

> "Re Missed Collection at Kilburn 17/07/2017
>
> Hi Uche,
>
> I am very mindful and aware of the company's drive to minimise cost where applicable. I am also in full support of eliminating "missed collections".

1. The collection was missed because of the following reasons:

    a) Full time CSS- L. Brady was given less than 5 minutes notice when instructed by yourself to attend a track walk at West Hampstead, which left no room for organising staff deployment.
    b) Part time cover 0730-1130hrs CSS Brown on un-paid meal break from approx. 1230-1300hrs (which you were aware of as this was discussed with CSS Brady as per Kilburn log entry 3707498 24/07/2017 12:12hrs).
    c) CSS Opoku on medical restricted duties, which you were aware of and privy to what those restrictions are and what controls are in place, but neither myself or CSS Brady are aware of, as this has not been communicated by yourself and the rest of the management team and shared amongst the wider team of supervisors.
    d) Poor communication and no forward planning regarding release and coverage for track walks.

2. The main master key (CSS bunch) was locked in the key cabinet by myself, using the secondary master key which I kept about my person.

3. The ticket office key was locked in the key cabinet after use by CSS Brady.

4. CSS Opoku (medically restricted/restrictions unknown) was on the station when the collection was missed as he could not access the ticket office keys.

5. Advised by CSS Opoku approximately 1235-1245hrs as per Kilburn log entry 3708005 24/07/2017 13:51 hrs.

    This is not the first time that the lack of forward planning by some of the management team (past and present) has impacted on the safety and day to day running of stations in the Willesden Green Area. I understand that track familiarizations are a very important aspect of the job, however managers need to be mindful that all aspects of running a safe station must be taken into consideration when pulling staff out from their duties with no notice. Taking this forward, could I suggest that track walks be planned in advance around spare duties and also that the limits of medical restrictions are made known to the CSS on duty so that they can deploy staff accordingly."

51. For completeness, it is here noted that CSM Duru did not see this correspondence until after he had had his meeting with the claimant.

52. On the claimant arriving at Willesden Green station, she met CSM Duru on the platform and they proceeded to AM Painter's office where on arriving, it is the claimant's evidence that, AM Painter was working on his computer and greeted the claimant, following which CSM Duru opened the meeting stating that she had put the phone down on him that day, which on the claimant denying this, CSM Duru made reference to an occasion when he had put the telephone down on her, stating that they were then even, but that should the event happen again, "severe disciplinary action" would be taken. The claimant states that AM Painter sat quietly and listened. The

claimant then states that CSM Duru stated that he needed to interview her having three questions to ask, referencing:

> "1. Why didn't you attend the track walk yesterday?
>
> 5. Why did you take your meal break outside of the time permitted in the framework of agreement? And
>
> 6. Why was the collection missed at Kilburn?"

53. The claimant maintains that CSM Duru then stated, "We will go into the next room where I can interview you and we will see if there are any lessons that can be learnt from this". In respect hereof, the claimant states that she asked in respect of the missed collection, whether she was the only person being interviewed, for which she states CSM Duru stated that, "All staff on duty at Kilburn at the time of the missed collection will be interviewed". The claimant states in respect hereof, she was treated differently in that she was the only person, that was in the course of events, interviewed.

54. For completeness, it is the respondent's case in respect hereof, that, on the statements furnished by CSS Brady and CSS Opoku, and on the information provided by the claimant, there was then no need for further interviews.

55. The claimant further states that, CSM Duru then led her in to an adjoining room for which AM Painter requested that the door be left open.

56. On AM Painter being examined hereon, in his evidence to the tribunal, AM Painter's account is clear that, on the claimant and CSM Duru entering his office, they then proceeded to the adjoining room, that he made no comment as regards leaving any doors open and that he did not engage with the meeting, attending to his personal work, albeit the door to the adjacent room was left open, and that he did hear and was not part of CSM Duru's setting out his concerns to the claimant. The tribunal accepts AM Painter's evidence.

57. On CSM Duru asking for the claimant's account in respect of the missed collection and why she had secured the master keys in the ticket office and taken the supervisor's set of keys with her on her meal break, knowing that a cash collection was scheduled, the claimant advised that she had done so because she was aware that CSS Opoku had some medical restrictions in place, but that she did not know what they were, and so she thought it was better to do so as a safety measure, and on being asked why she had made such an assumption, she advised that she was erring on the side of caution as she had not been informed otherwise.

58. On the claimant being asked "What was the point in denying him (CSS Opoku) access to the station keys?", the claimant responded:

> "Because he is restricted and not carrying out CSS duties, I locked away the keys.

> I was going away on my meal break. The CSS on duty had been called away… so I secured the keys."

59. On the claimant being asked why she had not informed the CSM on duty to ask whether CSS Opoku's medical restrictions prevented him from carrying out cash collections, the claimant stated that it was the CSM's duty, and not her duty to ensure that cash collections happen. Notes of the meeting are at R1 page 73(a) to 73(d).

60. The claimant was further questioned as to taking her meal break outside of the five hours of commencing her shift. The claimant informed CSM Duru that she could not have taken her meal earlier as she was busy. CSM Duru informed the tribunal that the claimant then stated that he was used to breaking the framework agreement and therefore had no moral ground to query the timing of her meal break, and that towards the end of the meeting the claimant accused him of having a "vendetta" against her, for which she challenged why he had decided to send CSS Brady on the track familiarisation walk that day rather than her, to which she was reminded that she had declined to go on the track familiarisation walk because she was not wearing appropriate footwear.

61. Following the meeting, it is the claimant's evidence that, she thereon spoke to a AM Painter regarding the poor planning of track walks leading to unsafe practices, for which AM Painter responded, "We went from no one being track trained to quite a few more being trained" and that he thought she would be pleased. The claimant states that she responded that although track familiarisations were important she believed it was just as important that staff and public safety were not compromised whilst track walks were being delivered, and that she would be raising the issue at the next Tier 1 meeting. The claimant further states that on her then attempting to discuss her meeting had with CSM Duru, with AM Painter, AM Painter said that he had no intentions of going over what CSM Duru had already discussed with her. In evidence to the tribunal, AM Painter states that, he had no recollection of such discussion taking place with the claimant following her meeting with CSM Duru.

62. The tribunal has not been presented with evidence of the issues identified by the claimant, being addressed at the next following Tier 1 meeting.

63. Following the meeting with CSM Duru, the claimant wrote to CSS Opoku enquiring whether he had undergone a medical risk assessment, to see:

> "if the station/s that you are sent to are suitable for you to work at?
>
> This should have been done. If it hasn't I would like to be involved with your permission."

64. CSS Opoku responded that a medial assessment had not been conducted, stating, "I grant you permission to conduct one".

65. The respondent's provisions for dealing with employees with medical conditions are contained in a document entitled *Transport for London Employees with Medical Conditions*, and provides;

> "Work place risk assessments are based on an average employee and an employee with a medical condition maybe subject to a different level of risk."

It sets out the tasks for the respective personnel and in respect of which, it provides that the manager must;

- "Make sure an individual work place assessment is done by a competent person, if an employee reports a medical condition that may affect their ability to work normally.
- Arrange for an employee health and safety representative to be there during the assessment if the employee asks for it.
- Implement any additional risk controls identified.

And in respect of carrying out an individual risk assessment of a medically restricted employee, it provides that;

> "A competent assessor on being asked to do an individual risk assessment for an employee with a medical restriction that is affecting their ability to work normally, they must
>
> - Identify any new hazard or changes to risk as a result of the medical condition and take into consideration any advice provided by occupational health.
> - Annotate a paper copy of the existing work place risk assessment and any changes to the risk and risk controls as a result of the individual medical condition.
> - Communicate these to the manager.

66. On the 26 July 2017, the claimant wrote to AM Painter and CSM Ponsonby, stating that she had sought permission from CSS Opoku to be involved in his medical work place risk assessment when conducted, and that she would be tabling this on the agenda of the next Tier 1 meeting.

67. AM Painter responded thereto advising that CSS Opoku's restrictions had been made by the London Underground Occupational Health after having assessed him, and that CSS Opoku did not require a review of the work place risk assessment for the task that he was then currently undertaking as they were within those of his grade and within that as had been assessed by Occupational Health as capable of being undertaken safely. AM Painter further advised that, on CSS Opoku's range and type of duties being undertaken being reduced from his normal role, he was exposed to fewer safety risks than in his role as a CSS, advising that they could discuss the risks further at the next Tier 1 meeting should she prefer, stating that he hoped that the explanation provided was sufficient.

68. The tribunal has not been taken to any evidence of this issue then being raised at a subsequent Tier 1 meeting.

69. Following CSM Duru's meeting with the claimant on the 26 July 2017, CSM Duru wrote to the claimant correspondence which, the claimant states she received on the 29 July 2017, the letter being dated both the 26 and 27 July 2017.

70. By this correspondence, CSM Duru set out the outcome of his investigation into the missed collection on the 24 July 2017, which is here set out in full as the claimant relies hereon as being disciplinary action taken against her. The correspondence provided;

> "I am writing to confirm the outcome of my investigation into the circumstances surrounding the missed collection at Kilburn on the aforementioned date.
> I have taken statements from all the staff working at Kilburn on the aforementioned date and met with you on the 25 July 2017 to discuss your role and actions on the date in question.
>
> You stated that you went on your meal break at 12:30 hence you were unavailable when G4S came to execute the collection at 12:35. However, as CSS Brady had been asked by me to come to West Hampstead for a track familiarisation and had left the station at 12:14 that left you as the de facto CSS on the station, it therefore was behove on you to ensure that CSS Opoku was able to facilitate access to the ticket office at Kilburn should you not be available as he is fully qualified and it is the responsibility of all the staff on the Willesden Area, to irrespective, to ensure that the London Underground Ltd revenue is protected and collections facilitated.
>
> You stated that you were not aware of CSS Opoku's restrictions and as such you had secured the station keys in the key cabinet for security reasons.
> I do not accept that this course of action was justified as you were aware that there was a collection due and that access to the ticket office would be required not only to facilitate the collection but to aid CSS Opoku in assisting our customers should an issue arise with the POMs.
>
> Additionally, you confirmed that CSS Opoku had at no time informed you that he was restricted from ticket office duties hence I find that your action in securing the station keys was unjustified.
>
> Based on the facts gathered by myself I have come to the conclusion that the missed collection was avoidable and that your actions contributed wholly to the missed collection.
>
> Having sought advice as to the best course of action I have decided to issue you with a reminder and suitable advice on your unsatisfactory performance on this occasion and remind you that should a relative incident occur within the next 26 weeks from the date on this letter, this letter may be considered as relevant to any action disciplinary or otherwise that may be considered relevant.
>
> This letter does not constitute disciplinary action.
>
> Should you have any questions relating to this matter please contact either myself on 49466 or Euan Taylor, People Management Advice Specialist."

71. In respect hereof, it was CSM Duru's evidence to the tribunal that, he had not issued such an advice note for a missed collection previously, stating

that this had been because on previous occasions no member of staff were then to blame, citing incidences for missed collection where G4S had not arrived to carry out a collection or otherwise a member was lone working and assisting customers at the pertinent time, further stating that, he had "never dealt with a missed cash collection where more than one member of staff had been working at the time and one member of staff had deliberately denied another the requisite access to carry out the collection," stating that his action in issuing the note was because of what he considered to have been unsatisfactory conduct on the claimant's part which then had nothing to do with her being a Tier 1 representative or any other issues that the claimant had previously raised.

72. With respect the action taken by CSM Duru the tribunal was referred to the respondent's Discipline at Work procedure, that;

> "The companies Discipline at Work Procedure is the formal means for dealing with breaches of standards, rules and procedures. This procedure applies to all staff employed by the company.
>
> In many cases the right word at the right time and in the right way may be all that is needed and is often a more satisfactory way to help and encourage staff to achieve and maintain standards of conduct/behaviour and performance than immediate disciplinary action. With this in mind, minor cases of misconduct or poor performance will, in the first instant, be best dealt with by informal advice, coaching, training or counselling."

73. The tribunal has not been taken to any specific procedures in respect of informal action, however, it is not challenged that the respondent does operate a procedure of formal management advice.

74. In evidence to the tribunal, formal management advice was stated to be commonly used where disciplinary action was not warranted but where some formal record of advice being given was required, for which CSM Duru referred the tribunal to a similar issue of management advice in respect of an individual using his mobile phone whilst on duty, in contravention of the code of conduct regarding the use of personal mobile telephones at work, for which CSM Duru states that in issuing management advice to the claimant he was doing nothing more than he had in that instance, which did not amount to disciplinary action.

75. In respect of the advice, the tribunal here notes that, with regard the management advice issued to the member of staff using their mobile phone, CSM Duru there states:

> "In light of this, my decision is to give you a formal guidance issued in writing. Can I remind you that in future, you try to inform the supervisor if you need to make/receive a personal call whilst on duty.
>
> Further action could be taken if you are reported to be using your mobile phone whilst on duty."

76. This, however, is in contrast to the terminology used in respect of the management advice issued to the claimant, that:

> "I have decided to issue you with a reminder and suitable advice on your unsatisfactory performance on this occasion and remind you that should a relative incident occur within the next 26 weeks from the date on this letter, this letter may be considered as relevant to any action disciplinary or otherwise that maybe considered relevant.
>
> This letter does not constitute disciplinary action."

which is argued to be a material statement which the claimant relies on as evidencing its disciplinary nature, where a time limit of 26 weeks is imposed for a written warning, and the claimant states was the case in this instance, irrespective of the correspondence specifically stating that it was not disciplinary action, which the claimant dismisses in light of the 26 week time stipulation being relevant to written warnings.

77. The relevant provisions are at paragraph 3 of the Discipline at Work Procedure, and provides:

> "3. **Action**
>
> 3.1 **Local Disciplinary Interview – conducted by the local/immediate manager**
>
> Oral Warning
> For minor breaches of rules/standards/procedures, the manager will consider the issuing of an oral warning. An oral warning is valid up to a maximum of 26 weeks from the date of the breach.
>
> Written Warning
> If the breach of the rules/standards/procedures is more serious, the manager will consider the issuing of a written warning. A written warning is valid for a minimum of 26 weeks and up to a maximum of 52 weeks from the date of the breach."

78. On the 28 July 2017, at approximately 16:50 CSM Duru further wrote to the claimant by email, copy to CSM Willesden Green Area staff, in respect of the claimant having taken her meal break outside of the period of 5 hours from her commencing her duties. The tribunal again sets out this correspondence in full, as the claimant again relies hereon as disciplinary action being taken against her. The correspondence, under the subject heading, suitable advise on taking 30 minute unpaid meal break, provides:

> "Hi Karen,
>
> Following from my interview with you on the 25/07/2017 with regards to you taking your meal break not in accordance to the Framework of Agreement leading to a missed collection and a possible investigation for insubordination, I want to remind you that all meal breaks are to be taken within 5 hours of the

start of your rostered duty. Any variation or deferral of meal breaks past the 5 hour mark has to be agreed as a differed meal break either by choice or by request. Should it come to light that due to you taking your meal break not in accordance with the framework an incident occurred which required your presence and you were not available or you were seen to not attend a request for your presence for a similar reason without prior notification and approval, this may be classed as a breach or a failure to follow a reasonable instruction.

Please note that this e-mail may be used as part of any action disciplinary or not that may be taken under those circumstances.

A copy of this e-mail has been placed on your staff file. (this e-mail does not constitute disciplinary action)

Effective from 3 April 2016

Contingencies of the service, staff may be required to take their unpaid meal break earlier or later in their shift, but within the parameters set out in this framework. Staff may also be requested to take their meal break but remain on station premises and available to deal with issues arising on the station. Under these circumstances the 30 minutes meal break will be paid as overtime. When work is undertaken during Engineering Hours staff will be provided with an uninterrupted meal break to be taken on site provided meal break times are properly published. When no work is being carried out during Engineering Hours staff may take an off site meal break provided the Service Controller and staff on adjacent stations are informed.

3) Staff working shift lengths in excess of ten hours 30 minutes will have two 30 minute meal break periods.

4) The minimum period between duties may, exceptionally, be reduced to ten hours, and eight hours in an emergency situation.

5/ Staff may work eight consecutive days to facilitate the provision of long weekend rest periods and to minimise split rest periods during the week."

79. The claimant approximately 1½ hours later, at 18:15 replied to CSM Duru, copying CSM Willesden Green Area and copies to AM Painter, CSS Opoku and CSS Brady, in respect of her taking her meal break, advising:

"Hi Uche

1. You pulled out the full time CSS with less than 5 minutes notice to attend a track walk (not an emergency).
2. You were aware that there was a Medically Restricted CSS on the station as this was discussed with the FT/CSS.
3. You were also aware that I was going on my meal break which at the time you raised no objections and would have known what time I started my duty.
4. The Concerns were raised by the FT/CSS regarding keeping the lift in service with a medical restricted member of staff. You stated that the lift should remain in service as the staff could work alone for 1 hour.

5. I was later made aware by you, that the member of staff was restricted from pump/machine room, PTI activities, and was covering CSA duties. All of which only you were aware of at that time.

So, although you pulled out the FT CSS with less than 5 minutes notice, for a non emergency track walk and should have known there was a collection. Coupled with the CSSs medical restrictions (that you were aware of), with no objection from you when advised I was going on my meal break (all of which were logged). I find it difficult to believe that I was responsible for the missed collection when it was clearly your lack of forward planning, that the collection was missed.

I request that my response be added to my staff file."

80. At 18:49, the claimant again wrote to CSM Duru copying Kayode Jimoh, RMT Trade Union representative, and AM Painter, asking CSM Duru to forward minutes of their meeting held on the 25 July 2017, as he had promised.

81. In respect of CSM Duru's letter concerning the missed collection, the claimant furnished a reply on the 31 July 2017, copy to AM Painter and Mr Kayode Jimoh RMT Union Representative, stating:

"Hi Uche,

I received your letter earlier today regarding the outcome of your investigation. Whereby you have decided based on your findings to issue me with a reminder and suitable advice on what you deemed to be my unsatisfactory performance and that you have placed your letter on my file for 26 weeks. You state that this does not constitute disciplinary action, but maybe relevant to any disciplinary action.

My reasons are as follows.

1. Had the Secure key been where it should have been as per company procedure, then the collection would not have been missed (see attachment below).
2. I was instructed by you via a telephone call to another member of staff to see AM C. Painter regarding failing to obey a direct order.
   I attended and spoke with AM Painter but he did not discuss failing to obey a direct order.
3. Why was the emergency Secure Key not used as it is in the supervisors office and the member of staff could access it?
4. Although you stated that all 3 members of staff would be interviewed only I was, a clear case of victimisation.
5. You refused to show me your notes, these were not agreed and signed off.
6. If this is not a disciplinary, explain why this letter will sit on my file for 26 weeks?
7. Why was my Branch Secretary not notified of this meeting?

I shall expect a response from you and an answer within 7 days."

82. CSM Duru responded to the claimant on the 1 August 2017, copy to Area Manager Willesden Green Area, and Mr Euan Taylor, People Management

Advise Specialist (PMA) which the tribunal again here sets out in full, as it encapsulates CSM Duru's thoughts and reasoning concisely, being the evidence that he further presented before the tribunal.

> "Hi Karen
>
> I acknowledge your e-mail below and all its contents and I will respond to what I am able to.
>
> 1 – the secure suite key is kept in a safe bag in the key cabinet as we currently do not have enough red boxes on the station, this issue has been highlighted to T&R and a solution has been found however not yet implemented on all the stations in the Willesden Area, in the meantime as directed keys are to be signed for and the historical process maintained. (section 4)
>
> 2 – I did not instruct you to inform anybody to come and see AM Painter regarding whoever this person was for failing to follow anybody else's direct order. A fact that AM Painter will confirm.
> I invited you via CSS Brady to AM Painters office where I informed you that you had hung up the phone on me whilst I was speaking to you which was unacceptable, I informed you that I would not take formal action for this incident on that occasion however I was only going to make a note of it, I also informed you that should that behaviour repeat itself I would not tolerate it and may deem it necessary to take formal action. This was witnessed by AM Painter.
>
> 3 – I spoke to CSS Brady and she provided me with a statement as did CSS Opoku and based on the conversation with CSS Brady and CSS Opoku's e-mail I did not deem it necessary to formally interview them as I had received all the relevant information I needed. (CSS Brady was off station with me and CSS Opoku had been denied access to stations keys and by consequence the ticket office keys which led to the missed collection.
>
> 4 – As I had decided that though your performance on the balance of probability with regards to the missed collection had not met the standard required and had contributed to an avoidable situation contrary to sections 1 & 7. I did not think that it warranted as a first occurrence a formal disciplinary process, however it warranted a notable recording to ensure that should it repeat itself there was clear evidence that you had been informed of any concerns, T&R is my portfolio it behoves me to ensure that T&R processes are followed and where necessary corrective action or advice is given.
>
> 5 – As I had decided not to instigate a formal disciplinary process, there is no requirement to notify the union.
>
> 6 – My notes are not minutes of a disciplinary meeting nor were you subject to a formal fact finding interview which would be relevant had a formal disciplinary process be instigated, which would have meant you being invited to a formal fact finding interview had it be deemed necessary. My notes do not need to be signed off by you.
>
> Finally suitable advice letters are not disciplinary letters. However should the performance not improve they can form additional relevant information highlighting that the member of staff has been made aware of any concerns previously.

> My decision stands as it is, I will review my decision as part of your ongoing CMS assessments and at that point I will decide if it is still necessary owing to your performance having suitably improved or if a formalised process of management is required.
>
> Finally as you have mentioned an allegation of victimisation I have taken the liberty of copying in the Jubilee Line PMA Euan Taylor to ensure transparency and I will not be commenting any further. Please provide to AM Painter on his return any claim of victimisation you wish to make.
>
> I believe that I have responded to your concerns with depth and detail.
>
> Thank a million.."

83. In parallel, on the 30 July 2017, having received the correspondence from CSM Duru the claimant wrote for clarification of matters and precisely as to what was to then be placed on her staff file. The claimant wrote:

> "Hi Uche,
>
> I seek clarification/confirmation as to what it is that is going on my staff file, as this has never been discussed or made clear.
> 1. Is it a informal/formal warning?
> 2. Is it suitable advice?
> 3. Is this an investigation into insubordination?
> 4. Is this an investigation into a missed collection (which at interview you stated CSS Opoku and CSS Brady would be interviewed).
>
> As you can see I am confused as to what this is exactly. So as mentioned in my previous email, please could you forward me the notes (as promised) from the 25/07/17 meeting and also copy in any future correspondence regarding this issue to my IR Rep Kayode Jimoh, as he shall be representing me.
> At the meeting you said that this was an informal fact finding exercise to establish what lessons could be learnt, but now I find you are adding items to my file, for what reason I am unclear. I do believe that another manager whom was not directly involved should have interviewed me rather than you as there was a conflict of interest, which I made clear to you whilst being interviewed.
> I shall be requesting that AM Painter removes you as my CMS manager as there has been a breakdown in relations regarding trust issues."

84. The claimant equally wrote to AM Painter stating that there had been a breakdown in the working relationship between herself and CSM Duru requesting that she be assigned another CSM in respect of the respondent's Competent Management System (CMS).

85. It was AM Painter's evidence to the tribunal that he did not respond to correspondence into which he had been copied, having been sent to CSM Duru for which it did not appear to him to invite a response from him and he did not wish to undermine CSM Duru's authority. He further advised the tribunal that at the material time he had been on leave, for which the claimant would have received an automatic reply of his absence to her emails to him, such that she would not then have expected a response from him at the material time.

86. CSM Duru responded by further correspondence of 1 August, referring to his earlier correspondence of the same date. As referenced at paragraph 82 above, advising that he had fully addressed her concerns by that earlier correspondence.

87. The tribunal pauses here, as the claimant has pressed her claim in respect of the missed collection, on grounds that there was to have been a red box secured in the supervisor's office into which the secure suite keys were to have been sealed and secured by a plastic seal, for which the sealing and unsealing of the keys was then to be recorded in the "secure suite door" key register, and that, had this been the case, then CSS Opoku would have had access to the secure suite keys and would have been in a position to facilitate the cash collection. The claimant here submits that, the failure to have the red boxes secured on the wall was then a factor for the missed collection. The tribunal does not find the fact of the red box not being placed on the wall of significance in this case, as on the factual state being that the box was not available, should the claimant then have been uncertain of the action she was then to have taken in respect of the suite key, she could have sought management instruction. This the claimant did not do, but instead, acted off her own initiative for which it was then reasonable that, that particular action was the appropriate action to be considered in all the circumstances, giving rise to the missed collection at the material time.

88. On the 9 August 2017, the claimant chased a response from AM Painter in respect of clarification, as to what was to go on her staff file, advising:

> "Hi Carl,
>
> I still haven't received a response from you regarding this issue.
> I believe that I have been treated unfairly by CSM Duru and he has abused his power, without considering all the facts that led up to the missed collection.
> In the interest of transparency and fairness I would like to know which procedure was applied which required a letter being placed on my staff file for 26 weeks, and is this standard practice throughout the network?
> Although all three of us are supervisors, why has CSM Duru concluded that I was the one in charge when he and CSS Brady were both aware that I was going on my meal break and why was I the only one interviewed?
> Also why has it not been mentioned that CSS Opoku had been issued keys.
> It also hasn't been mentioned that the TO emergency keys were available and accessible.
> CSM Duru promised at interview to send me a typed copy of his notes, this did not happen.
> CSM Duru, has attributed words that I have never said, and actions that never took place.
> It is against this background that I request until this matter is resolved, that he be removed as my CMS manager and also any further interaction between he and myself be kept to a basic minimum, and preferably put in writing.
> I struggle to understand how CSM Duru, whom was central to the events that led up to the missed collection, was then the same manager that investigated it, surely this would be deemed a conflict of interest."

89. AM Painter responded, advising that he would have to discuss the points she had raised with CSM Duru before he was in a position to respond.

90. The claimant later on the 9 August 2017, again wrote to AM Painter questioning why he was not able to address the issue, in that he had been copied into the claimant's correspondence to CSM Duru and that her request for a new CMS manager was a direct result of the action taken by CSM Duru in respect of the missed collection; the claimant stating in respect of the CMS that it "is about performance. I have been treated unfairly and as a result of this questionable "investigation" I believe if CSM Duru was to continue as my CSM manager, he could add anything to my staff file."

91. Following AM Painter making enquiries of CSM Duru, CSM Duru furnished a response to AM Painter, on the 11 August 2017, by which he outlined that CSS Brady had left Kilburn station at his request to attend a track familiarisation walk which then left CSS Brown and CSS Opoku on duty. He further explained that the cash collection had been missed whilst the claimant took her meal break being later than planned, and because the claimant had locked away the main station bunch of keys and taken the spare master keys with her, thereby leaving no way for CSS Opoku to open the key box to gain access to the ticket office keys to facilitate the cash collection. He further advised that despite operational restrictions, CSS Opoku would have been capable of undertaking the cash collection procedures had the claimant not taken the keys with her, stating that on CSS Brady having left Kilburn station this had effectively left the claimant as the de facto CSS on duty, adding:

> "2. Contrary to the framework CSS Brown chose to take her meal break at 12.30 which was over 5 hours into her duty (07:00-15:00), this was particularly relevant as she was also part covering the 07:30-11:30 CSS duty which would have meant that as of 11:30 she was essentially spare and should have already had her meal break.
>
> 3. Karen then decided contrary to the T&R Rule book section 1 & 7 to not facilitate the collection that was due at Kilburn by locking away the main station bunch of keys and taking the spare master key with her, thus leaving no way for anyone to access the ticket office keys which are kept in the key box, which can only be opened by a master key.
> When asked Karen claimed that she did so in the interest of safety for CSS Opoku as he was restricted however she could not tell me what restriction specifically had led to her locking away the keys, she also confirmed that CSS Opoku had not informed her that he was restricted from ticket office duties.
>
> 4. The entry referring to Karen going on her meal break was made at 13:45 and she failed to demonstrate why this was the case. Bearing in mind that with CSS Brady off the station she was the CSS of note.
> ….."

92. CSM Duru further explained that he had taken the action that he had as he saw the claimant's action as constituting "less than satisfactory performance" and accordingly issued her with suitable advice to aide

improvement, which letter could be used as evidence to demonstrate that the claimant had been made aware that her conduct had fallen below expected standards, further advising that he had made it clear to the claimant that his action was not disciplinary action and would be updated on her performance having improved.

93. On the 14 August 2017, AM Painter replied to the claimant in the following:

> "Karen,
>
> I have had the opportunity to get more information from CSM Uche and I do not believe that it is necessary to change the present arrangements for CMS for you. You may disagree with the action that CSM Uche has taken against you but it is important that your managers are able to assess your performance and competence via the CMS process. I cannot find any information to suggest that having CSM Uche undertake future CMS assessments with you would be unfair or unreasonable.
>
> Following your discussions with CSM Uche he had issued you with suitable advice and has not taken any formal disciplinary action against you. It is normal practice that a suitable advice letter outlining the reasons for this should be added to your staff records and to give a timescale for how long this suitable advice will be valid for. This is all part of the disciplinary process that is used by the company.
>
> You have asked for the notes of the meetings you had with CSM Uche to be made available to you – these may be hand written notes but if you have requested these and not had a copy yet please let me know and I shall request these from him for you once he returns from annual leave. Additionally you have suggested that CSM Uche's involvement could be a possible conflict of interest; I do not agree with your suggestion and was content that he investigate why there was a missed collection at Kilburn as he was on duty at that time.
>
> Ultimately the missed collection at Kilburn was avoidable and CSM Uche believes that your actions were less than satisfactory on that day. I do not consider that CSM Uche has acted improperly in investigating events at the station that day and am satisfied with his handling of the matter."

94. In respect of AM Painter taking this action, it is his evidence to the tribunal that he had sent his email of the 14 August 2017, without having interviewed the claimant because as far as he was concerned, this was not a disciplinary matter and that the issue generally did not require any involvement from him, stating that there was no consideration given to the claimant being a health and safety trade union representative or otherwise because she had raised issues at a Tier 1 meeting on the 23 March or otherwise, because the concerns she had raised by her email of the 25 July 2017, were specifically concerning a meeting with CSM Duru on that day.

95. On the 13 August 2017, the claimant commenced a period of sick absence, initially believing it to be flu. She was subsequently diagnosed as suffering from work-related stress, following an appointment with her GP on the 21 August 2017.

96. The respondent subsequently sent a contact letter to the claimant acknowledging the claimant's absence due to work-place stress, being certificated absent for the period to the 31 August 2017, asking that the claimant remain in regular contact with the duty manager's office and of her requirement to notify the duty manager the day prior to her returning to work, to enable the rescheduling of the claimant's return.

97. It was the claimant's evidence to the tribunal that she then, on the 1 September 2017, contacted the CSM's office updating them of her Doctor's diagnosis that she was suffering from work-related stress and needed complete rest. From the documents before the tribunal, the tribunal finds that this was not the case and that on the 1 September 2017, the claimant informed the respondent that she had a GPs appointment for the 5 September 2017. The tribunal however, has not been furnished with any particulars following, until the 14 September 2017, when the claimant phoned the CSM's office, advising that she had received a letter from Mr Ali Nazir (CSM Willesden Green) for a meeting, and that her industrial representative would be in touch with the area manager. The tribunal has not seen a copy of the correspondence from Mr Nazir.

98. On the 15 September 2017, the claimant's union representative Mr Jimoh, advised of a case conference having been scheduled for the 18 September 2017, that this was late notice for which he could not then attend, asking that the case conference be rescheduled.

99. The claimant subsequently proposed the 25 September 2017, for the rescheduled meeting for which Mr Ali Nazir, who had been identified to conduct the meeting, was then unable to attend and the matter referred to CSM Simon Ponsonby, for a sickness review meeting to be held at Starbucks coffee house, close to West Hampstead station, at the claimant's request.

100. The sickness review meeting duly took place on the 25 September 2017. The claimant was represented by her union representative Mr Jimoh. CSM Ponsonby took an attendance note which is at R1 at page 141. The claimant informed CSM Ponsonby that she was off work with work-related stress due to victimisation and bullying, advising that AM Painter was already partly aware of the details, and that she intended to formally submit a case against AM Painter and CSM Duru, further advising that she was certificated sick, to the 30 September 2017.

101. CSM Ponsonby also wrote direct to AM Painter advising of further comments from the claimant's trade union representative, raising issue as to procedure in respect of the arrangement for the sickness review meeting, which he stated should have been a case conference and for which he alleged that the claimant was then being treated differently.

102. On the same day, the 25 September 2017, the claimant presented a formal complaint of bullying and victimisation against CSM Duru and AM Painter which the claimant states she sent to Mr Marlon Osborne – head of

customer service, and Mr Euan Taylor – PMA, because of AM Painter's prior involvement and support for CSM Duru's conduct.

103. The claimant's complaint was presented as being "two-fold; firstly it concerned an investigation carried out by CSM Duru and his subsequent actions regarding the missed security collection at Kilburn station on 24 July 2017, and secondly that, AM Painter had not remained impartial, and had failed to ensure that CSM Duru's investigation had followed LULs policies, procedures and standards."

104. The claimant then set out her complaint which is here set out in full, as the particulars of the complaint as presented, are germane to the further aspects of this case.

105. The claimant's complaint states:

> "To whom this may concern,
>
> In line with LUL's grievance procedure please consider this correspondence to constitute a formal complaint. This is twofold, firstly it concerns an investigation carried out by CSM Duru and his subsequent actions regarding a missed security collection at Kilburn station on 24 July 2017.
> Secondly, AM Painter has not remained impartial, and has failed to ensure that CSM Duru's investigation followed LULs policies, processes and standards.
> This was because he had instructed the FT/CSS (CSS Brady to attend a track walk at West Hampstead) after giving her 5 minutes notice after speaking to her twice on the phone.
> I acted at all times under CSM Duru's instructions and had advised him via CSS Brady that I would be leaving the station to go on my meal break (which at the time CSM Duru raised no objections or concerns). I was present and witnessed both telephone conversations.
> CSS Brady logged the content of their conversation (evidence to be provided at meeting).
> Despite his involvement CSM Duru launched and led an investigation which lacked objectivity, fairness and transparency into why the collection was missed. Regarding the missed collection, he requested memos from CSS Brady, CSS Opoku and myself (evidence provided at meeting), only I was interviewed (25/07/2017), and this was the extent of his investigations.
>
> CSM Duru concluded that because I had left the station to go on my meal break (quoting the framework of agreement regarding 5 hours) and due to me locking the station keys in the key cabinet (for security reasons only) that I was wholly responsible for the missed collection (which I dispute).
> The interview resulted in 2 formal warning being placed on my staff file with threats of further sanctions, which both CSM Duru and AM Painter upheld (evidence provided at meeting).
>
> I believe that CSM Duru has abused his authority as a CSM3 (H&B 3.2 & 4.2) in order to undermine me by issuing 2 unwarranted formal warnings and in doing so has breached the following:
> **LU's Discipline Standard, Discipline at Work Procedure and Managing Staff Errors (Managers Handbook).**

> Furthermore, CSM Duru has also failed to follow the guidelines set out in the LU Discipline Support Pack.
> I believe that I have been singled out and victimised for being a Health and Safety Rep. CSM Duru has an established pattern of conflict with TU Reps. (which shall be expanded on at the hearing), and I believe that this is his motivation for targeting me.
> I have raised this issue locally.
> I raised the issue with CSM Duru and AM Painter and CSM Duru has stated that he will stand by his decision and AM Painter has been dismissive of my concerns and supportive of CSM Duru's actions (evidence to be provided at hearing).
> I have not had any success trying to resolve matters in this way, so now I am pursuing a more formal route.
> I was not afforded a hearing to defend any of the allegations made against me by CSM Duru.
> I was not allowed a trade union rep to be present at the meeting which led to the issuing of the 2 warnings placed on my staff file.
> This has impacted on me significantly.
>
> Victimisation, bullying and lack of support has led to work related stress. This has had a negative effect on both my mental and physical well being, which has been the reason for me being absent from work.
> This has also affected my trade union activities and has led me to discontinue my H&S role. I would like to resolve this issue internally and request a grievance hearing with my Trade Union Rep in attendance, as soon as possible.
>
> Owing to the prior involvement and support for CSM Duru's conduct demonstrated by AM Painter, I am submitting this complaint to the Jubilee Line Head of Customer Service and PMA…."

106. The claimant concluded her complaint stating, "I reserve the right to introduce additional information regarding this complaint if required."

107. The respondent's Grievance Procedure is at R1 page 424 and the respondent's Discipline at Work Procedure is at R2 page 463.

108. By correspondence of the 26 September 2017, the claimant's complaint was acknowledged and the claimant advised that she would again be contacted as to the way forward.

109. Mr Taylor - PMA, then made enquiries of Mr Mark Cullen an accredited manager for harassment, for his views on whether the claimant's grievance met the criteria for an investigation under the Harassment and Bullying Procedure.

110. It was Mr Cullen's view, having reviewed the complaint against the definitions of harassment and bullying in the respondent's procedure that,

> "The nature of the complaint is to do with an investigation and a decision reached as a result of this investigation. There are no behaviours described which could be described as unwarranted conduct affecting the dignity of employees in the work place due to a protected characteristic other than a disagreement with the outcome.

> Therefore, I do not believe that this complaint meets the definition of harassment. However, I do note that the complainant asserts that the decision reached by the respondent is motivated by her trade union activities: should this be found, this could be considered to be harassment."

111. Mr Cullen then went on to consider the definition of bullying within the procedure, concluding:

> "I can see no evidence of any behaviour which would meet this definition. The complainant may wish to argue that the treatment is unfair or setting her up to fail but she has exercised her right to appeal under the Discipline Policy and this has been rejected in the policy. The Harassment and Bullying Policy cannot be seen as a further appeal against a decision reached within the Discipline Policy.
>
> Therefore, I do not believe that this complaint meets the definition of bullying."

112. On the claimant's complaint also having alleged victimisation, Mr Cullen then considered the claimant's complaint in relation to the Equality Act 2010, definition of victimisation, concluding:

> "From the submission sent to me, it would appear that there is no evidence of the complainant doing a protected act and, therefore, has not been victimised.
>
> It would appear that the respondent carried out an investigation under the Discipline Policy and found that the respondent has a case to answer. The claimant has exercised her right to an appeal and this has been unsuccessful."

113. Mr Cullen thereon concluded that, on the grievance centering around the outcome of a disciplinary process, it should not be allowed as it would constitute a further appeal. However, on the claimant asserting that the action was motivated by her trade union activities, he thereon recommended that an investigation be carried out into the motivation of the respondent and the appeal manager, recommending that the investigation be concerned solely with that element of the claimant's complaint. He advised that the investigation be carried out by a manager superior to the appeal manager, although they did not then need to be an accredited manager, further advising that the investigations outcome should then be referred to an accredited manager to review, as to whether they had adequately taken account of the Harassment and Bullying Policy, should they discover that the motivation of either manager, was as a result of the claimant's protected characteristic.

114. Mr Cullen concluded by recommending a risk assessment be carried out into the local management of the team and how best to mitigate any potential risk of further perceived acts of harassment or further allegations being raised, as a result of what appeared to be a difficult work relationship.

115. Following Mr Cullen's advice, Mr Euan Taylor clarified matters, advising Mr Cullen that, following the investigation by CSM Duru, the "warnings" that were placed on the claimant's file were letters of management advice and not disciplinary sanctions, and that as a consequence no hearing had taken

place and there had therefore been no appeal to the area manager, asking whether his advice changed, and if the complaint were a grievance, whether AM Painter could then address the matter.

116. Mr Cullen responded advising that, as AM Painter had not been involved in the process and had not conducted an appeal, there was no reason why he could not then investigate the grievance. He nevertheless maintained that, the outcome of the investigation should still be run past an accredited manager.

117. Mr Taylor subsequently instructed AM Painter of Mr Cullen's view, asking that AM Painter investigate the claimant's complaint as a grievance against CSM Duru, in line with the grievance process.

118. The claimant was thereon written to, being informed that her complaint had, at Mr Osborne's request, been sent to an accredited manager for harassment. The claimant was advised that an accredited manager for harassment (AMH), had assessed whether her complaints should be considered under the grievance procedures, or the harassment and bullying investigation procedures, and that, it had been decided that her complaint would be handled under the London Underground Individual Grievance Procedure. The claimant was further advised that based on her submissions, the AMH had advised that the claimant's manager, AM Painter, was the most appropriate person to hear that grievance.

119. It is the claimant's evidence that, having received the correspondence from Mr Taylor, she thereon considered that he could not be trusted because he knew that; AM Painter was one of the managers named in her complaint; that Mr Cullen had previously recommended that the investigation should centre on the motives of both managers; and now he was recommending that one of the respondents to her complaint should investigate both himself and CSM Duru.

120. The tribunal pauses here, as it is unable to understand the claimant's rationale for distrusting Mr Taylor, as the complaint that the claimant refers to Mr Taylor having acknowledge of, is the same correspondence that Mr Cullen had reference to and whose decision it was that AM Painter was then the appropriate officer to hear the claimant's grievance, which was not then Mr Taylor's decision.

121. On the 12 October 2017, the claimant's union representative Mr Jared Wood, wrote the Mr Taylor raising issue as to the identity of the accredited manager who considered the claimant's complaint and the basis for his advice, stating,

> "I now ask that Karen's complaint is given due consideration. Her complaint is that an individual abusing their managerial authority and is misapplying the LUL disciplinary process in order to single out Karen because of her trade union activities.

> The H&B policy plainly applies in such a case and is the appropriate process to apply in investigating Karen's complaint."

122. Mr Taylor responded, furnishing Mr wood with the correspondence between himself and Mr Cullen, and with the recommendation that the complaint be handled as a grievance to be investigated by AM Painter, with his outcome being considered by an accredited manager.

123. In the meantime, the claimant on the 2 October 2017, wrote to CSM Ponsonby advising that she would be returning to work on the 9 October 2017, which was subsequently agreed for the 14 October 2017; giving consideration to the claimant's leave entitlement.

124. On the 14 October 2017, CSM Duru was the only CSM on duty, who was working alongside AM Painter, who was the weekend centurion, by which he was the area manager for the whole line, being responsible for going across the line to ensure that all areas were operating and was the point of contact.

125. At the material time of the claimant returning to duty, AM Painter was at Willesden Green station, but also then had to visit the other stations on the line. The claimant was rostered as "spear" for a 5 hour duty, and booked on at Willesden Green, just prior to AM Painter leaving that station.

126. On the claimant returning to work from her period of absence, CSM Duru, as the only CSM on duty, sought to have a return to work interview with her. It is not in dispute that, on an employee's return to work following a long period of sickness absence, a return to work meeting is to be conducted in accordance with the attendance at work procedure, which will always be conducted by a CSM.

127. Return to work meetings are held to ensure that the employee's return to work is as smooth as possible and will generally seek to determine whether the employee intends to return to work on a permanent basis, whether they are fit to do so, and whether any restrictions on work place activities the employee can carry out is necessary, and whether there is anything that London Underground needs to know and whether any support is necessary. It is also not in dispute that, such return to work meetings would ideally be conducted as soon as possible, to ensure that any issues are resolved before they arise, so as to protect the employees' health and safety.

128. On AM Painter due to leave the station, CSM Duru had enquired whether it was appropriate for him to conduct the return to work meeting with the claimant in light of the grievance against him. It was AM Painter's evidence that, from his perspective the grievance did not prevent CSM Duru from continuing to manage the claimant on a day to day basis, and, he had not seen any problem for CSM Duru conducting the return to work meeting. The tribunal here notes that, in respect of a return to work meeting the meeting is directed by set questions on a form, that must be filled out with the answers given by the returning employee. The procedure does not

provide for any opinion or other input by the CSM conducting the return to work interview.

129. On the claimant being requested to attend CSM Duru for the return to work meeting, it is the claimant's evidence that, via the stations auto phone from the GLAP, she advised that due to the fact that she had been off work with work related stress due to his (CSM Duru) victimising and bullying her, she required another CSM to do her return to work interview. She states that CSM Duru advised that he was the only CSM on duty and that she could not refuse his instruction, to which she advised that she was not refusing his instruction but if he insisted, then she required a union representative, for which CSM Duru advised that it was not appropriate for a union representative to be present and that should she not attend he would "take severe disciplinary action against her for gross insubordination". The claimant's evidence is that she thereon went to his office as she did not want to be disciplined for disobeying a manager's instructions.

130. CSM Duru does not recall the telephone conversation a stated by the claimant. However, he states that at the commencement of the meeting the claimant advised him that she wished her return to work meeting be undertaken by another CSM because she had an issue with him and that he had been the reason behind her sickness absence, and that she wanted a trade union representative to be present. It was further his evidence that, he explained that he was the only CSM on duty and therefore the only person available to conduct the return to work meeting and that it was not the respondents practice to allow a representative to be present at a return to work meeting, for which the claimant refused to engage with the ensuing discussion, answering "no comment" to the questions asked of her. CSM Duru does not accept that he had threatened the claimant with disciplinary action.

131. On the claimant continuing to answer "no comment" to questions put to her by CSM Duru, CSM Duru telephoned AM Painter to ask for advice as to how to proceed, placing the telephone on loudspeaker. The claimant advised AM Painter that she was not comfortable with CSM Duru conducting her return to work meeting, having raised various issues against him, and that CSM Duru was picking on her.

132. CSM Duru was advised by AM Painter that, he should find someone else to conduct the claimant's return to work meeting; AM Painter's advice being that, it was for his, CSM Duru's benefit, to which AM Painter had joked that "life is too short and that his hair would go grey due to stress", to which remarks he had laughed. In respect of this incident, the tribunal was presented with a file note from CSM Duru sent to AM Painter at 11:44am on 14 October 2017, which further illuminates the circumstance, and is here set out.

> "Hi Carl,
>
> Today at 10:08 I invited Ms Brown to the CSM office to carry out her return to work interview, she informed me initially over the phone that she objected to

> me carrying out the interview as "*I feel that there is a conflict as you were the reason I went off sick*" which is ironic as she went off sick with flu like symptoms and then moved on to work related stress.
> She added that she would only attend if I insisted on it, I insisted that she attend as requested and she came over to the office at which point she repeated the above quote and added that she would only participate if her union rep was present. I reminded that under the AAW no one was entitled to a representation at a RTW interview. I then enquired if she had arranged for her Rep to be present to which she responded "*no comment until my rep is present*" I inquired if she wanted to speak to you and ask you instruct me to not carry out her interview to which she respondent "*that is your decision*" I then called you and passed the phone over the her.
> I then went upstairs and was informed by CSS Ogunleye that Kayode Jimoh had coincidentally been hanging around the station whilst she was with me in the CSM office.
> I have instructed her book on tomorrow at 11:00-16:00 WLG assist and to go upstairs and cover the gateline today."

133. The claimant's return to work interview was subsequently undertaken by CSM Ponsonby on the 16 October 2017. Notes of the return to work interview are at R1 page 163d-e, which after reviewing the claimant's absent and medical condition, identified underlying problems as "stress at work due to reported victimisation and bullying, which Karen has submitted a grievance regarding" for which a suggested resolve to the problems were identified as "carry out restricted duties during a phased return to work, subject to weekly review and medical advice". It was also noted that the claimant "requests that with the support of the area manager she and the CSM she has named in her grievance have as little (non-safety critical) contact at work as possible whilst she awaits the outcome of her grievance".

134. The agreed course of action following the return to work interview, was for CSM Ponsonby to forward the claimant's request as to the suggestion to resolve her problems to the area manager, and for the claimant to follow-up her GP referral and await occupational health's referral appointment. The note of the interview further provided:

> "Karen has resumed to restricted duties (non-Safety Critical, non-weight bearing, non-CSS, Ticket hall only) and a phased return to work, to support her resumption to full duties and hours, pending further medical advice. This is since 14th Oct, and this week, Karen will work: initially 4 hrs per duty, between 1030 and 1430, Mon to Thu (at KIL), **w/e 21st Oct**; and, for her second week, 4 hrs per duty, between 1030 and 1430, Mon to Thu (at WHD), **w/e 28th Oct**. this will be reviewed weekly with a CSM, next on Thu 26th Oct 1030."

135. From CSM Ponsonby's interview with the claimant, he recorded on his referral of the claimant to occupational health, in respect of the claimant being fit to resume full duties; "no, as currently experiencing side effects (light headedness, drowsiness, heart palpitations, constipation, back pain and abdominal pain), and identified restrictions for the claimant as; "non-safety critical, non-weight bearing, non-CSS, ticket hall duties only."

136. By the claimant's referral to occupational health, which is at R1 page 159-162, Occupational Health was asked the following questions: 1, exactly what activities of the claimant's role as CSS she needed to be restrictive from whilst experiencing the side effects reported; 2, for how long was it estimated that the claimant may continue to experience the restrictive side effects from the medication her GP had prescribed; 3, whether the condition for which the claimant had been prescribed the medication was likely to be on-going or recurring and 4, whether the claimant needs to take part in a phased return to work for longer than 2 weeks.

137. CSM Ponsonby also, on the 16 October 2017, following the return to work interview, sent an email to AM Painter and the cover group support officer, Mr Clifford, copying the correspondence to the CSMs Willesden Green Area, which stated,

> "Please see RTWI notes (on Eamonn's desk) for full details.
>
> In summary, Karen has resumed to restricted duties (due to the side-effects she is experiencing from medication prescribed by her GP) and a phased return to work, pending further medical advice.
>
> Karen has requested a referral to LUOH and counselling and will try to arrange an urgent follow-up appointment with her own GP, if possible for next week, between Mon 23rd to Thu 26th Oct.
>
> Her restrictions are:
>
> - Non-Safety Critical,
> - Non-weight bearing,
> - Non-CSS,
> - Ticket hall duties only.
>
> The phased RTW hours and days agreed for this week (w/e 21st Oct) and next week (w/e 28th Oct) are:
>
> - 4 hours per day, 1030-1430,
> - Mon to Thu this week, w/e 21st;
> - Mon to Fri next week, w/e 28th Oct;
> - Weekly review with CSM;
> - Next review date Thu 26th Oct at 1030"

138. It was CSM Duru's evidence to the tribunal that he had had reference to this email, but had not seen the return to work interview notes of CSM Ponsonby.

139. Following the return to work interview with CSM Ponsonby, the claimant furnished a further complaint against CSM Duru, referencing the 14 October 2017, of CSM Duru attempting to hold a return to work meeting with her, which complaint is again set out in full, as it is again illuminating of the circumstance on the day. The complaint provides,

> "I would like to make a complaint regarding CSM Duru's conduct regarding a return to work interview on the 14/10/2017.
> Although I had clearly stated to CSM Duru that I requested my return to work interview to be carried out by a different CSM due to my unresolved grievance against him. He said that I could not refuse a RTWI with him. I said that I was not refusing a RTWI with him but if he insisted, then I would require for my own protection my TU Rep present and until then I had no further comment. He accused me of insubordination, made threats of severe disciplinary action being and at one point began laughing. I responded to all of his questions with no comment until my TU Rep is present. I had to endure 5 minutes of this until he put you on the phone to me and the matter was then resolved.
> It was my first day back to work on a phased return, after being off with stress due to CSM Duru's prior victimisation and bullying campaign against me.
> This is totally unacceptable and I request that CSM Duru and myself have minimal contact at work until this issue is resolved."

140. AM Painter responded acknowledging the issue being raised and suggested that it be included as part of the claimant's grievance, against CSM Duru, which he would be hearing and was seeking to arrange a date for. He further advised that he would ask CSM Duru to respect the claimant's wishes for minimal contact, however, noting that as he was one of her managers at Willesden Green, there would be a need to communicate and interact with her whilst she undertook her normal working duties.

141. With regard the claimant's representative Mr Wood raising his concerns about the accredited manager, on the 20 October 2017, Mr Wood replied to Mr Taylor, raising further concern, advising him that he had he misstated the nature of the claimant's complaint, in that:

> "The AM claims that Karen is disputing the outcome of a formal disciplinary hearing. Her complaint makes clear that she has been threatened with formal disciplinary action and has been issued with letters that appear to constitute disciplinary warnings but have been issued without a hearing or appeal. In short, Karen is complaining about the misuse of LUL procedures to single her out because of her trade union activities and duties"

142. Mr Wood then set out the definition of bullying, giving examples as to what constitutes bullying as expressed by Mr Cullen in his review of the claimant's complaint, Mr Wood then stating,

> "It is clear that Karen's complaint alleges all of the elements of bullying that I have highlighted. For clarity, the victimisation is in respect of Karen's trade union activities and duties.
>
> I note that the AM states:
> *"However, I do note that the complainant asserts that the decision reached by the respondent is motivated by her trade union activities:* ***should this be found this could be considered to be harassment".***
> The AM has therefore concluded that were Karen's complaints to be upheld then the behaviour of the CSM could constitute harassment. It is plainly untenable to argue that a harassment investigation is not appropriate while also accepting that if the complaint were upheld then harassment could have been found to have taken place*."*

143. Mr Wood thereon askes that the matter be referred to another Accredited Manager with no previous involvement in the complaint, submitting that the Harassment and Bullying Policy was the appropriate policy in this instant.

144. Mr Wood's concerns were referred to Darren Clare PMA manager, for consideration, who having identified that the claimant had raised a grievance and therein also raised issue of harassment and bullying the complaint had, in line with process, been passed to an Accredited Manager for harassment in the form of AMH Mark Cullen for review, whose recommendation was that the complaint be investigated as a grievance by AM Painter, the claimant's local manager. In direct reply to Mr Wood's correspondence he advised;

> "Following my review of your email of 20th October 2017 and a close reading of AMH Cullen's recommendations, I am satisfied that AMH Cullen has fully taken into consideration everything Karen raised in her letter – namely the outcome of 'an investigation' by CSM Duru which resulted in a letter providing informal management advice rather than a 'hearing' in the way that has been suggested. AMH Cullen has given a detailed rationale of how he has reached his recommendations.
>
> I also note that AMH Cullen refers to the B&H policy in two important respects:
>
> - 'However, I do note that the complainant asserts that the decision reached by the respondent is motivated by her Trades Union activities: should this be found this could be considered to be harassment.'
> - 'I believe the investigation outcome should be referred to an Accredited Manager to review whether they have adequately taken account of the Harassment and Bullying Policy, should they discover that the motivation of either manager was as a result of the complainant's protected characteristic.'
>
> So – his recommendation is that the complaint should be investigated by AM Painter as a grievance and, if he feels that the actions/decisions of CSM Duru were motivated by Karen's TU activities, this could be considered as harassment. Irrespective of this, the outcome will need to be referred to another AMH (not AMH Cullen) to ensure that adequate consideration of the H&B policy has been given.
>
> Based on the information I have, I am satisfied that this is a prudent approach, in line with policy and one that fully takes into account the details of Karen's complaints."

145. Mr Wood again challenged Mr Clare's finding, stating, "it is quite clear from AMH Cullen's email to Euan Taylor that he had not understood the basis of the complaint in respect of either the facts of the case (he stated that a disciplinary appeal had been held) or the nature of the complaint, which was not an appeal against a disciplinary outcome," arguing that the case concerning harassment was then irrational for a non-accredited manager to investigate the matter for it then to be further investigated by an Accredited

Manager, he again, called for the claimant's complaint to be referred for investigation by an Accredited AMH in the first instance.

146. Mr Clare responded clarifying the position that, whilst there had been an initial misunderstanding this had been clarified with AMH Cullen and his advice was re-checked on that basis, and that on the basis of the claimant's complaint, AMH Cullen had advised that the investigation proceed as a grievance. Mr Clare concluded,

> "I would emphasise the point that I made at the end of my earlier email. If the outcome of AM Carl Painter's grievance investigation is that he feels that the actions/decisions of CSM Duru were motivated by Karen's TU activities, this could be considered as harassment. Irrespective of this, at the conclusion of his investigation, AM Painter's outcome will be referred to another AMH (not AMH Cullen) to ensure that adequate consideration of the H&B policy has been given."

147. On the 24 October 2017, the claimant attended occupational health who on assessment, advised of suffering on-going symptoms of light-headedness, palpitations (increase in heart rate), decreased energy and back ache symptoms, but not suffering loss of consciousness or of falling, which occupational health acknowledged were not uncommon side-affects for the medication the claimant was taking. Occupational Health advised that for the next few weeks, it would be advisable to restrict the claimant to non-safety critical work only, the report providing;

> "She is unfit for
> - Platform edge duties
> - Unfit to assist VIPs/MIPs
> - Unfit to work with moving machinery
> - For the time being she may also be unfit for her supervisory role (people supervision)
> - She would be fit to assist with ticketing in the ticket hall and work at the ticket gate.
>
> In my opinion, Ms Brown does not need to take part in a phased return to work longer than 2 weeks. However, she should remain on adjustments and restrictions as mentioned above for the time being or until her side-effects wear off."

148. On the 25 October 2017, the claimant was on duty at West Hampstead station where she was approached by CSM Duru, who informed her that for the following day, the 26 October 2017, he needed her to start duties at 13:00 hours, and take off the supervisor at Kilburn, and remain there until the late turn CSS booked on for duty. She was then at 15:00, to go and see CSM Naz Ali for a sickness review meeting.

149. The claimant informed CSM Duru that she was on restricted duties and a phased return, and that the hours agreed by her return to work interview were 10:30 hours to 14:30 hours, and that she would be "sticking to them". The claimant also stated that it had been agreed that for that week, she would be working at West Hampstead station and that CSM Ponsonby had

also told her that he would be conducting her return to work interview. CSM Duru responded that CSM Ponsonby was not on duty on the 26 October, and that it would only be he and CSM Naz Ali on duty, and that he was on earlies and CSM Ali on late, and therefore the claimant would be having her sickness review meeting with CSM Ali. CSM Duru further advised that Mr Ali would be sending her an email later that day with the arrangements for the sickness review meeting. The claimant was then informed that she was to take the supervisor off at 1300 and that, that was not a request but an instruction.

150. Following this conversation with the claimant, CSM Duru reviewed the email from CSM Ponsonby, above referred to at paragraph 137, satisfying himself as to the restrictions on the claimant; CSM Duru's evidence to the tribunal being that he noted that whilst the claimant was restricted from safety critical duties, she was not restricted to working at particular stations and that Dollis Hill station was a station that did not involve safety critical working, and was a station that was commonly used for staff with restrictions as to safety working.

151. CSM Duru thereafter at 11:15am, sent an email to the claimant, Mr Herrero-Verde and Mr Quao, copy to CSMs at Willesden Green Area, stating,

> "Hi Karen
> You are instructed to relieve the CSS at Dollis Hill Jose Herrero Verde at no later that (sic) 13:00 and to remain at Dollis Hill until relieved by CSS Wahid.
>
> Jose; can you please make your way once relieved by CSS Brown to Kilburn and relieve CSS Quao.
> ….
>
> Thank you all for your cooperation."

152. CSS Jose Herrero Verde replied that, it was not a problem and sought confirmation that the instruction was for the working arrangements the following day, 26 October.

153. The claimant responded at 11:56, copy to her union representatives Mr Jimoh and Mr Gared, CSM Ponsonby and AM Painter, stating,

> "Hi Uche
> As previously stated, I am on restricted duties and a phased return to work. Your instruction goes against all the medical advice get (sic) received by my GP and occupational Health and contrary to what has been agreed in my back to work interview.
> Therefore what you are instructing me to do is unsafe and I refuse on the grounds of health and safety.
> Regards
> Karen"

154. It is the claimant's evidence that, at around 12:00, on CSM Duru having a meeting with senior managers at West Hampstead, she knew that once that meeting was over, CSM Duru would want to have words with her for which

she states she was fearful as to what he would do next, and for which on the advice of her union representative advising her to remove herself from the situation and to go home, she wrote a further email to CSM Duru, copy to her union representative, AM Carl Painter and CSM Ponsonby, advised:

> "Uche
> Although I have requested on numerous occasions for contact between us to be kept to a minimum until the grievance that I have raised against you has been resolved, you have chosen to ignore this. As acting AM you have continued to victimise and bully me and have left me feeling unsafe.
>
> In order to protect myself from any further abuse from you I am left with no other option but to book off until I can feel safe at work."

155. The claimant then left the station and went home.

156. It is the claimant's evidence that whilst travelling on the train on her way home, she received a call from her union representative who informed her that he had spoken to the area manager, Mr Hillman, who advised that it had been agreed with CSM Duru that no action would be taken against her, and she would not be marked absent for going home. The claimant was further informed that the important thing was for her to attend a sickness review meeting the following day and that on CSM Ponsonby not being at work that day, the review meeting would instead be had with Mr Ali.

157. In respect of the claimant's absence, an entry was entered in the log book by a Mr Ian Allen, of the claimant having booked off, and entered on the variation sheet as unauthorised absence at the request of CSM Duru. In respect hereof, the claimant made a sub-entry stating, "LE booked off due to bullying from CSM Duru."

158. In respect of the events on the 25 October 2017, on the claimant leaving the station, CSM Duru sent an email to Euan Taylor, AM Painter and AM Hillman, headed "refusal to follow a reasonable instruction", which is here set out in full, as the rationale is material to the issues in this case,

> "Hi Euan/Carl/Richard,
>
> I want to ensure that there is no misinterpretation please note the following.
>
> 1: I made two visits to West Hampstead today firstly at about 10:48 and secondly at 11:39.
>
> 2: The first visit was to deliver some coins which was desperately needed by the station as they have been complaining that they were short and as West Hampstead is an interchange station it gets more than it's fair share of Oyster refunds by people on their way to Luton airport. (I have attached an e-mail from CSS Allen the CSS on duty today at West Hampstead requesting for **change delivery)**

> 3: The second visit was a result of a meeting with Claude Snowden (see email chain titled **Catch up**) with reference to a job raised for a camera at West Hampstead. (see also email titled **APJNP metro Maximo fault report**)
>
> 4: The reason why Jose and Karen where instructed to move around is to facilitate an urgent request by CSS Quao who had requested that he needed to attend to a personal issue necessitating him leaving tomorrow (Thursday at about 13:00) hence why AM's Assistant Eamonn was informed by myself to update SAP.
>
> 5: There are no restrictions agreed or otherwise that restrict what location Karen can and cannot work (see LUOH referral email as detailed by CSM Ponsonby) Nor are there any medical reasons via either her doctor or LUOH that justify Karen stating that she is refusing a CSMs instruction to babysit Dollis Hill station. There is no agreement either on her RTW nor via any CSM's instruction that she only works at West Hampstead.
>
> 6: The instruction was not just to her but to CSS Herrero-Verde who has acknowledged. (email attached) And the instruction was to remain there until relieved by another colleague well within the hours that had been agreed that she will work (10:30 – 14:30) how then is being asked to baby sit a station for a short while unreasonable?
>
> 7: I take absolute and total umbrage that a reasonable instruction to babysit a station to minimise unnecessary overtime being paid out when we have a spare member of staff thus best utilising the labour that is available to me as the CSM on duty can be refused and then an attempt to besmirch my name and reputation and the role to which I am tasked to perform taken in vain.
>
> 8: Karen booked off today 12:38 and has failed to provide a valid reason for booking off as stated in AAW."

159. Following discussions between AM Hillman and CSM Duru, it was agreed that the claimant should attend work at 13:00 hours on the 26 October to have her review meeting with CSM Ali at Willesden Green, that she would not be required to work at Dollis Hill on the 26 October, and would be free to go home after the review meeting. It was also agreed that her name would not be added to the variation sheet for the 25 October. The information was then relayed to the claimant's union representative and subsequently relayed to the claimant.

160. With regards the claimant leaving working on the 25 October, this was subsequently an issue of contention, which is addressed infra, the material facts being that the variation sheet for the day as amended then recorded the reason for the variation as "alternative duties" and on the 26 October, AM Painter forwarded a copy of the claimant's correspondence to CSM Duru,- by which she had stated that "in order to protect myself from any further abuse from you I am left with no other option but to book off until I can feel safe at work" above referred to at paragraph 154, - to Eamonn Clifford for which it is Mr Clifford's account of the payroll entry (R1 page 347c); that, having received the correspondence, he could,

> "find no SAP absence code more suited for recording the absence. As per the excerpt from my email below I did inform the management of the record and asked for guidance. There was no authorisation in relation to having payments stopped but I assumed the use of this particular absence reason could have resulted in stoppage of pay.
> I can confirm I made the entry and it was based on the content of the attached email."

161. Mr Clifford subsequently wrote to CSM Willesden Green Area, on the 11 December 2017, that,

> "Karen Brown is recorded in SAP as "refusal to work on safety grounds" for 25.10.2017 – I have added her to the list of outstanding RTW interviews as I have not had any guidance on how to process the absence (this is for the day Karen booked off). I assume she will need a documented RTW. Can one of you please get back to me and let me know how to action this absence?"

162. A Return to Work interview was not conducted with the claimant, and Mr Clifford was not further instructed how to action the absence.

163. For completeness, the tribunal here notes the evidence of CSM Duru to the tribunal that, the 25 October was his first day back at work after a few days leave and that in respect of the arrangements for the claimant's review meeting, he had not been involved therewith, and in respect of his informing the claimant as to CSM Ali undertaking the review, this was information he had been given which he then simply passed on to the claimant, and in respect of CSM Ponsonby being absent on the 26 October, this again was information he had been given, having been absent from work for the few days previous as stated.

164. The tribunal also here notes that the claimant does not challenge the emergency nature of the request made by CSM Duru.

165. AM Hillman subsequently sent an email to Mr Wood, the claimant's union representative, Ms Jones, employee relations leaders and Euan Taylor, copy to AM Painter and Mr Osborne, explaining his actions, that

> "I have spoken to Uche and Jared and I've taken the pragmatic approach that the most important thing is for Karen to have her review meeting tomorrow. This will be carried out by CSM Naz Ali tomorrow at 13:00. I believe it will take place at the office at Willesden Green station. Karen will not be required to work at Dollis Hill tomorrow as the RTWI did stipulate she should only work at named stations pending the review. Jared has spoken with Karen and she has confirmed her intention to attend this review meeting. In terms of her duty tomorrow Karen just needs to come to her review meeting."

166. On the 26 October 2017, the claimant arrived at Willesden Green at approximately 11:00am. The claimant stated that this was the time previously agreed with CSM Ponsonby for a sickness review meeting. On booking on, she was informed that she needed to see Steve Weston in the CSMs office which, on entering the CSM office, the claimant's evidence is that she saw CSM Ponsonby, and on questioning CSM Ponsonby as to his

presence, she was informed on her further questioning him as to her having been informed that he was off that day, that he had stated “no, I told you I would be here for your sickness review meeting”. The claimant thereon saw Mr Weston in respect of a matter of her late attendance on the 23 October 2017, the particulars of which are not material to the issues in this case.

167. The claimant subsequently had her sickness review meeting with CSM Ponsonby, for which CSM Ponsonby prepared an update on the claimant’s desires which are at R1 page 218, and further sent an email to CSM Willesden Green Area and DSMs and AM Painter. The correspondence advised of the claimant being; on restrictive duties until further notice, subject to a weekly review with a CSM; that she was on restrictions as to non-safety critical, non-weight bearing, non-CSS and ticket hall duties only. CSM Ponsonby also set out the hours of work for the claimant of 6 hours per shift, setting a further review date for the 3 November 2017, with LTCSM.

168. The tribunal pauses here, and notes the claimant’s evidence in cross-examination as to her attending Willesden Green for the review meeting at 11:00am, as opposed to the 13:00 that she had been informed of by AM Hillman, as relayed by her union representative, where the claimant stated that she did not have any complaint against Mr Ali who was to have conducted the sickness review meeting, which the claimant accepted was an appropriate person to undertake a sickness review meeting, and on the claimant accepting that she did not follow AM Hillman’s instruction, the claimant’s evidence for so doing, was that,

> “I did not believe CSM Duru because he told me that CSM Ponsonby would not be at work the next day.
> The reason I did not come in at 1pm was that I believed CSM Duru was trying to manipulate the situation, therefore I stuck with the arrangements set by CSM Ponsonby.”

169. The tribunal particularly here notes that, by the notes of the claimant’s sickness review meeting with CSM Ponsonby on the 16 October, the next following review meeting was to have been at 10:30 on the 26 October and not 11:00 hours. The tribunal also notes, by the record of the review meeting, that CSM Ponsonby records that the next review meeting was to be with any CSM, CSM Ponsonby stating, “This will be reviewed weekly with a CSM, next on Thu 26 October at 10:30.”

170. The tribunal on the balance of probabilities does not accept the claimant’s explanation for attending for her sickness review meeting on 26 October at 11:00am, because of any agreement with CSM Ponsonby, where specific provision had been made for her, by AM Hillman, for the review meeting to be held in circumstances where she would then have minimal contact with CSM Duru, namely attending the then arranged sickness review meeting for 1:00pm and for her thereafter to go home and not having to carry out any duties. The tribunal finds the claimant’s action to be at odds with her fear of CSM Duru that she complains of.

171. For completeness, the tribunal here notes that in respect of the claimant's grievance against CSM Duru and AM Painter, she persisted in her request to have the matter dealt with under the Harassment and Bullying Procedure and for AM Painter to be removed as the officer investigating the grievance, and challenged the decision taken by the respondent, of which the claimant remained aggrieved, however it is not an issue relevant for this tribunals determination following the withdrawal of the claimant's complaints as referred supra.

172. The final circumstance giving rise to an issue for this tribunal's determination arises on the claimant, on the 22 February 2018, after checking her payslip for the period ending 25 November 2017, noted a deduction of 1 days' pay for the week ending the 28 October 2017, which on clarification with payroll, it was identified as relating to the 25 October 2017, and imported by E Clifford, with the reason given as "refusal to work on the grounds of health and safety". The claimant thereon asked AM Tarak Buca, who was then addressing a payments grievance, to look into the matter, the claimant stating that on the 25 October 2017, she had left work following further harassment and bullying from CSM Duru.

173. The claimant's union representative Mr Wood, equally raised the issue with AM Hillman, drawing AM Hillman's attention to the events of the 25 October 2017, advising that on that day, "we agreed that no action would be taken regarding Karen leaving work early." asking AM Hillman to take such action to restore the claimant's pay.

174. On the 27 February 2018, AM Hillman responded to Mr Wood advising that he had found the relevant correspondence in which he had stated, "that Karen should not be added to the variation sheet for the 25 October" and informing Mr Wood that he would speak to Mr Tarak Buca explaining the background for the claimant's pay to be reinstated. The claimant's pay was duly reinstated.

175. On the 27 February 2018, Mr Wood wrote to the claimant in respect of the deduction of pay stating "FYI. This means that whoever entered you on the variation sheet did so in direct contradiction to the senior managers instruction."

176. The claimant in respect hereof presents a claim that by the procedure for payroll control sheets, authorisation regarding payments must be given by a manager, which instruction needs to be recorded on the variation sheet and this must be signed by the manager who authorises the deduction, which the claimant maintains was CSM Duru in her particular case, although the variation sheet in her instance does not reflect the deduction, the claimant being recorded as "alternative duties". The claimant maintains that this was not unusual as the variation sheet did not always reflect the true nature of the events regarding payment, for which the claimant took the tribunal to a variation sheet dated 23 February 2017, in respect of another member of staff.

177. On the claimant having raised this issue at the appeal hearing of her grievance, it was the finding of the hearing officer, Mr Marlon Osborne, that,

> "You provided an audit trail which you felt supported that CSM Duru had instructed that you be marked down as unauthorised absent for the 25 October 2017 and as a consequence of this you were deducted 1 days' pay.
>
> Having investigated this I have established that it was Eamonn Clifford who had made the entry onto SAP. It had been recorded as a "refusal to work on safety grounds" on the basis of an email he had received, in his role as the administrator, so that your absence from the work place was captured and recorded. It appears that as a result of using this entry code on SAP this then meant no payment was made for this day. He was not instructed to this by CSM Duru, but used his initiative based on the list of options he had available to him, from a list within SAP and he felt that this was the best category under which to capture it. I am therefore satisfied that the failure to pay you for this day was an administrative error and not on the direction of CSM Duru."

178. Mr Osborne further found that in respect of this absence, there was a failing of general management to ensure a return to work interview was conducted in respect of the absence which, had this occurred, would have captured the correct reason for the claimant's absence and the SAP code amended accordingly. He further found that this failing could not be apportioned to CSM Duru.

179. For completeness, the tribunal notes the evidence of Mr Kayode Jimoh, industrial relations RMT trade union representative for Jubilee Line North – (customer service supervisor) and Mr Mashud Ali, RMT elected and trade union accredited industrial relations representative, of an antipathy of CSM Duru towards union officials, in aid of the claimant's contention, of CSM Duru having taken action against her for her union activities. The tribunal here particularly notes that there is no evidence presented to the tribunal of CSM Duru, save for the acts herein alleged, of him having made any comment or objections to the claimant carrying out her union activities, but to the contrary, the evidence presented to the tribunal is that the claimant has at all times been afforded facilities to carry out her union activities without hindrance.

Submissions

180. The tribunal received written submissions which were exchanged between the parties on the 5 August and submitted to the tribunal on the 19 August 2019. The submissions have been fully considered.

The law

181. The law relevant to the issues in this case has been succinctly set out by the parties in their written submissions and are set out at paragraph 2 to paragraph 10 of the claimant's submissions and paragraph 3 to paragraph 10 of the respondent's submissions which the tribunal adopts as it here more particularly set out.

182. The Tribunal is also reminded as to what is a detriment – per Lord Justice Brandon in Ministry of Defence v Jeremiah [1980] ICR 13 CA – that "Detriment" means simply "putting under a disadvantage" and per Lord Justice Brightman that a detriment "exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment". And, in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL that it is not necessary for there to be physical or economic consequences to the employer's act or inaction for it to amount to a detriment. What matters is that, compared with other workers (hypothetical or real), the complainant is shown to have suffered a disadvantage of some kind."

Conclusions

183. On the claimant presenting claims under s.146 of the Trade Union and Labour (Consolidation) Act as to trade union detriment, s.144 of the Employment Rights Act in respect of health and safety detriment and s.47B of the Employment Rights Act in respect of detriment on making protected disclosures, the tribunal has adopted the approach directed by the Employment Appeal Tribunal in Yewdall v Secretary of State for Work and Pension UK EAT/0071/05/TM as being the correct approach to claims under s.146 of the Trade Union Labour Relations (Consolidation) Act 1992 to first, address the issue whether there has been acts or deliberate failure to act on the part of the respondent. Second, whether those acts or omissions caused detriment to the claimant. Third, whether those acts or omissions were in time and, fourth, if in time, and had caused detriment, whether the claimant can establish a prima facie case that they were committed for a purpose prescribed by reference to s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 and s.44 of the Employment Rights Act 1996 and/or for the purposes of s.47B of the Employment Rights Act 1996 was done because the claimant had made a protected disclosure.

184. Whilst the tribunal acknowledges that this is not necessarily the correct sequence in addressing the elements relevant to the particular provisions, it does give rise to clarity in respect of this case by first addressing the acts of detriment of which the claimant complains and from those acts determining whether there is evidence to support the claimant's allegations, finally, considering the detriments proved to union membership or activities, health and safety activities and/or protected disclosures.

185. The tribunal accordingly addresses the detriments in order as set out in the list of issues:

"CSM Duru effectively applying disciplinary sanctions to the claimant by sending her a letter dated 26/27th July 2017 and an email on 28th July 2017."

186. The claimant advances her claim for detriment on the basis that she has suffered detriment on CSM Duru applying disciplinary sanctions to her on two grounds, namely;

186.1 The letter of advice being identified as "formal management advice" by CSM Duru in itself was evidence of the formal nature of the document and that by the claimant's grievance and grievance appeal outcome letters having identified that the claimant could have been given the impression that formal action had been taken, this was then a detriment, and

186.2 Secondly, praying in aid the case of London Underground Limited v Ferenc-Batchelor [2003] ICR 656, in support of the submission that disciplinary action had been taken against the claimant referencing paragraph 23 of the judgment, per Judge Altman.

187. The tribunal giving careful consideration thereto does not accept the claimant's submission in that, addressing the disciplinary nature of the letter of advice, giving regard to Altman J, paragraph 23, of the London Underground Authority, that:

> "It seems to us that the distinction to be drawn, inevitably, on looking at all the guidance from the ACAS Code and the references to formal and informal warnings, is that an informal warning may signal the initiation of a disciplinary procedure in the future if there is a repetition. However, should there be a repetition in the future and the disciplinary procedure is initiated, the moment that an earlier formal or informal warning forms part of anything that then follows, it becomes part and parcel of the procedure. The intention, it seems to us, of having informal oral warnings, whilst they may lead to the initiation of later disciplinary procedures, is that once those procedures are initiated, the earlier warnings fall away and play no part in what is to follow or in the judgment of the employer as to the sanctions that he may later impose."

188. Applying this then to the respondent's procedures, and as been made clear by CSM Duru in evidence to the tribunal, the value of the letter of advice was merely to record that the claimant had been addressed in respect of such an incident so that should such an incident re-occur, there was then record that the claimant had had the advice given. The letter of advice did not then form any part of any later disciplinary procedure beyond its input in signalling the initiation of future disciplinary action which as Judge Altman identified "fall away and played no part in what is to follow or in the judgment of the employer as to the sanction that they may later impose." The tribunal does not find the letter of advice to be disciplinary action.

189. Turning to the contents of the letter itself, applying the test of what a normal, reasonable, member of the public would make of such correspondence, in context, the tribunal is satisfied that on any reasonable reading of the letters of advice, it is clear that it is not disciplinary action having been specifically stated by CSM Duru in the correspondence itself and later clarified to the claimant on her enquiries, that for the correspondence to have the meaning prescribed to it by the claimant, this could only be achieved from a selective

reading of the correspondence with a particular specialist knowledge of the disciplinary procedures which would not be held by the average individual, and indeed, was not such held by CSM Duru, CSM Duru advising that the letters of advice to the claimant was the first letters of advice he had issued, that to give the correspondence such a narrow interpretation, would be to take the correspondence out of context giving it an artificial meaning. Having considered the correspondence in context, and in light of the clarification given by CSM Duru, the author of the correspondence, the tribunal is satisfied that the correspondence was not disciplinary in nature or effect.

190. The tribunal accordingly finds that the claimant has not suffered the act, and so a detriment by CSM Duru "effectively applying disciplinary sanctions to the claimant by the correspondence of the 26th/27th July or of 28th July 2017".

"CSM Duru failing to carry out a fair and reasonable investigation prior to sending the letter dated 26th/27th July 2017 and email on 28th July 2017."

191. On the parties relevant to the missed collection being CSS Opoku, CSS Brady and the claimant, the tribunal is satisfied that any investigation of the missed collection would revolve around these individuals. In respect hereof, on CSM Duru requesting accounts for the missed collection from these individuals, initially receiving written accounts from CSS Brady and CSS Opoku, where the material evidence identified the missed collection arising on CSS Opoku, who was at the material time the sole member of staff on the station at the time of the cash collection, who, save for not having access to the ticket office keys, could have facilitated the cash collection, of issue then, was why did CSS Opoku not have access to those keys which, on it being clear that the station office key had been locked away by the claimant and the claimant then had left the station with the remaining keys with access to the ticket office, which evidence the claimant did not dispute on being interviewed or in her written account, the tribunal is unable to see what further investigation could have been carried out or otherwise needed to have been carried out, for which further investigation was required.

192. The tribunal finds in light of the evidence presented to CSM Duru, that there had been such reasonable investigation as the circumstance demanded, which this tribunal is satisfied that a fair and reasonable investigation had then taken place, sufficient for CSM Duru to send his letter of 26th/27the July and email of 28th July 2017.

CSM Duru failing to arrange a disciplinary hearing in relation to the matter addressed in the letter of 26th/27th July 2017 or email of 28th July 2017.

193. The tribunal deals with this issue briefly, in that, CSM Duru did not seek to discipline the claimant, and therefore circumstance did not then exist to arrange a disciplinary hearing. The tribunal can find no detriment befalling the claimant by a disciplinary hearing not being arranged in circumstances

where the claimant was not being disciplined or otherwise received a disciplinary sanction as above stated.

CSM Duru refusing to give the claimant notes of the interview on 25th July 2017.

194. It is not in dispute that the claimant having requested the notes of the interview, these were not given. To the extent that the claimant had not received something that the claimant had been promised, such that her expectations were not then satisfied, the tribunal finds that this could amount to a detriment.

CSM Duru failing to give the claimant a right of appeal in relation to the letter dated 26th/27th July 2017 and email on 28th July 2017.

195. The tribunal finds that the letters of advice were not the product of disciplinary action or a disciplinary sanction in themselves, and accordingly there was not a right of appeal therefrom. The tribunal accordingly finds that CSM Duru has not failed to give the claimant a right of appeal in relation to the letter dated 26th/27th July 2017 or the email on 28th July 2017

AM Painter sending an email to the claimant on 14 August 2017, supporting CSM Duru without having heard from the claimant

196. Exactly how the claimant presents her claim for detriment in this instance is not clear. Whether it is that; AM Painter supported CSM Duru in his finding; whether not hearing from the claimant in itself in addressing the matter was detrimental; or a combination of both.

197. In considering the first proposition that, AM Painter supported CSM Duru, the tribunal finds that on AM Painter making enquiries of CSM Duru as to his actions of which the claimant complains, he was then in a position to consider the issues being raised and reasonably make a determination as to whether CSM Duru had taken appropriate action. In these circumstances, the tribunal does not find AM Painter to have merely been supporting CSM Duru.

198. Considering the second proposition as to whether AM Painter was to have heard further from the claimant, the tribunal finds that on the claimant raising her concerns, she had done so in clear terms for which the tribunal does not see a reason arising why it would then be necessary to further hear from the claimant in respect of her concerns.

199. On considering the third proposition, that of supporting CSM Duru without having heard from the claimant, the tribunal again finds that on the claimant having made clear her concerns via correspondence to AM Painter, and on AM Painter receiving CSM Duru's account for the action he had taken, the tribunal finds that AM Painter's action in sending the claimant the email on 14 August 2017 was reasonable and did not require further input from the claimant; AM Painter having before him sufficient information on which he could make an informed decision.

200. The tribunal specifically finds that AM Painter's email was a reply to the claimant's emails of 9th August and 30th July where the claimant set out her concerns fully and reasons for her request, which AM Painter then addressed in light of management's obligation to manage on a day to day basis where the facts, as presented, provided nothing to support the claimant's assertion of there being a breakdown in relationships for the single event on 25th July and the claimant being issued a letter of advice, which was management action that a manager would have been entitled to take in the circumstances.

201. The Tribunal finds that AM Painter's action in sending the claimant the email on 14 August 2017,was reasonable and did not amount to treatment of a kind that a reasonable worker would or might take the view that in all the circumstances such action was then to their detriment. The Tribunal finds the claimant's sense of grievance in this instance to have been unjustified and is not sufficient to amount to a detriment.

<u>On 14th October 2017, the claimant being required to meet CSM Duru for a RTWI despite the fact that she had an outstanding grievance against him.</u>

202. It is not in dispute that the claimant was required to meet CSM Duru for a RTWI despite the fact that she had an outstanding grievance against him.

203. On the claimant having an outstanding grievance against CSM Duru complaining of bullying, the tribunal finds that to require the claimant to then meet with CSM Duru for a return to work interview was a detriment to the claimant, in that it placed the claimant under undue pressure, reasonably perceived by the claimant, for which the tribunal is satisfied that a reasonable person would take that view, in the circumstance of the claimant having an extant grievance against CSM Duru, despite the nature of the RTWI and the pre-set questions.

<u>On 14th October 2017, CSM Duru insisting the meeting go ahead, accusing he claimant of insubordination and threatening her with disciplinary action</u>

204. For the reasons above stated, the tribunal finds the claimant here equally to have suffered a detriment although the tribunal does not find that at this meeting the claimant was accused of insubordination or otherwise threatened with disciplinary action.

<u>On 25th October 2017, CSM Duru ordering the claimant to work at Dollis Hill station contrary to agreed restrictions.</u>

205. On the claimant being on restricted duties, which by CSM Ponsonby's recommendations as detailed in his record from the 16 October RTWI, the claimant had been restricted to working at particular stations, which Dollis Hill station was not one. Accordingly, CSM Duru's instructions on the 25 October 2017, were contrary to agreed restrictions, and a detriment to the claimant.

On 25th November 2017, CSM Duru deducting a day's pay from the claimant's salary in respect of 25th October 2017.

206. On the evidence before the tribunal, the tribunal finds that CSM Duru had not taken action against the claimant by deducting a day's pay from the claimant's salary in respect of 25 October 2017, or otherwise was responsible for the claimant not having been paid her salary for 25 October 2017 when due and payable, which the product of the payment system and the input of information by Eamonn Clifford of his own initiative, based on the available categories in SAP to reflect the claimant's absence due to the "refusal to work on safety grounds" entry on the variation sheet and not due to anything directed by CSM Duru."

207. The tribunal does not find any evidence to support the claim that CSM Duru had instructed or otherwise bought about the non-payment of the claimant's wage for the 25 October 2017.

Did the respondent subject the claimant to any or all of the above acts or omissions (paragraphs 186 to 208 above) for the sole or main purpose of seeking to prevent or deter her form being a member of the RMT and/or from taking part in the activities of the RMT at an appropriate time or penalising her for doing those things.

208. On the claimant's claim in respect hereof being premised on CSM Duru and/or AM painter having taken the actions alleged as a result of her raising the issues at the Tier 1 meeting on 23rd March 2017, the tribunal has been unable to find any evidence to show a connection to, or otherwise an inference from which the tribunal could say that, the acts complained of were the consequence of CSM Duru or AM painter taking umbrage, or otherwise motivated on the claimant having raised the issues of unsafe practices, and health and safety at the Tier 1 meeting, or otherwise any actions of the claimant relevant to her undertaking her duties as a Tier 1 representative, which, save for the acts alleged having occurred, the reason for such actions on the part of CSM Duru and AM painter being the product of circumstance at the material time, which was not related to the claimant's Tier 1 activities which is further addressed infra, (Paragraphs 216, 217, 218 and 219) and not otherwise done for the sole or main purpose of preventing or deterring the claimant from taking part in the activities of the RMT Union.

Did the claimant make any or all of the following disclosures?

a. At a Jubilee North Tier 1 Health & Safety Meeting on 23 March 2017 disclosing conduct of CSM Duru and another CSM in:

    1. Requiring a member of staff to work excessive hours in breach of the maximum hours permitted by the respondent under its framework agreement for the deployment of staff.

    2. A member of staff closing Kilburn Station when not licenced to do so.

3. Dollis Hill Station being left open and unstaffed after last trains, in breach of the Rule Book, causing an emergency call point alarm to be activated.

209. The tribunal is satisfied that on the claimant raising the above issues at the Tier 1 meeting on 23rd March 2017, she had thereby disclosed information tending to show that, a person had failed to comply with a legal obligation to which he was subject and/or that the health or safety of an individual had been, endangered and amounted to a "qualifying disclosure".

b. In an email to CSM Duru on 25th July 2017, disclosing that CSM Duru had not properly organised the station on the previous day and that managers needed to be mindful of all aspects of running a safe station when removing staff at no notice.

210. The tribunal is satisfied that on the claimant raising the issue on 25 July 2017, going to safe working conditions, this was sufficient to amount to a qualifying disclosure pursuant to s.43B (1) (b) and or (d).

c. At a meeting on 25th July 2017 with CSM Duru and AM Painter, disclosing that CSM Duru should not have left CSS Opoku in charge of Kilburn Station because he was subject to a medical restriction

211. On the evidence before the tribunal, the tribunal finds that the discussion had, on 25th July 2017, had been with CSM Duru and not AM Painter, to which discussions there had, as to safe working conditions considering CSS Opoku's being on restricted duties, the tribunal is satisfied that the raising of these issues were sufficient to amount to a qualifying disclosure pursuant to s.43(b) (1)(b) and/or (d) of the Employment Rights Act 1996.

212. With regards the said discussion had between CSM Duru and the claimant on 25th July 2017, whilst the issues raised are not reflected in the notes of the meeting taken by CSM Duru, the tribunal notes the claimant's statements in her correspondence to CSM Duru in respect of the missed collection on 25th July and in her response to the letter of advice on 28th July, and that what she alleges is consistent with what she had been saying at the material time, such that the tribunal finds, on a balance of probabilities, that the claimant did mention that CSM Duru should not have left CSS Opoku in charge of Kilburn Station because he was subject to medical restrictions.

<u>Did each disclosure amount to a protected disclosure?</u>

213. With respect the disclosures made at the Tier 1 Health and Safety Meeting on 23rd March 2017, the tribunal is satisfied that these disclosures disclosed information which the claimant reasonably believed to have been made in the public interest in carrying out her duties as a Tier 1 representative, which reasonably tended to show that the respondent had failed to comply with its legal obligations under the framework agreement and/or its health and safety obligation and that the health and safety of individuals had been

endangered for which the tribunal finds that the claimant had thereby made protected disclosures.

214. Of the email sent to CSM Duru on 25 July 2017 advising that CSM Duru had not properly organised the station on the previous day and that managers needed to be mindful of all aspects of running a safe station when moving staff at no notice, the tribunal is again satisfied that the claimant had there disclosed information of the station being inappropriately manned. Which the claimant reasonably believed was then being made in the public interest; the information tending to show that the respondent had failed to comply with its legal obligations and that health and safety of individuals had been endangered and for which this tribunal is satisfied that this disclosure of information was sufficient to amount to a protected disclosure.

215. Of the meeting on 25th July 2017 with CSM Duru, as above found, disclosing information that CSM Duru should not have left CSS Opoku in charge of Kilburn Station because he was subject to a medical restriction, the tribunal finds that this was not a protected disclosure, in that, the claimant in raising this issue was not so raising them in respect of issues of health and safety but was being offered as an explanation as to why she was not at fault for the missed collection and was not information that the claimant was then disclosing in the public interest.

<u>In respect of the acts above identified at paragraphs 186 to 208 above, as detriments, were the detriments done on the grounds that the protected disclosures above determined were made.</u>

<u>CSM Duru refusing to give the claimant notes of the interview on 25th July 2017.</u>

216. The tribunal does not find that the reason for CSM Duru failing to furnish a note of the meeting to the claimant for reasons of the claimant having made protected disclosures. The tribunal finds that, the notes of the meeting were not furnished for the specific reasons stated by CSM Duru, which the tribunal accepts, namely that, there was no procedure for the supply of his notes, where he was offering management advice, and that to type up his handwritten notes were too time consuming and not necessary in the circumstance, where no disciplinary action had been taken, or contemplated against the claimant necessitating the furnishing of the notes of the meeting. In accepting CSM explanation, the tribunal is satisfied that CSM Duru had not acted as he did for reasons of the claimant having made protected disclosures, or for any other reason relating to the claimant.

<u>The claimant being required to meet CSM Duru for a return RTWI despite the fact that she had an outstanding grievance against him, on 14th October 2017.</u>

217. The tribunal finds that on CSM Duru being the only CSM then on duty on the claimant returning to work on 14th October 2017, and where the Return to Work Interview was a process based on set questions for which the manager taking the Return to Work Interview then simply recorded the returnee's answers and puts in place any adjustments the individual

returnee requests, the tribunal does not find, when AM Painter determined that it was appropriate for CSM Duru to undertake the return to work interview, on his leaving Willesden Green station, his determination was done for any reason otherwise than to satisfy a then present management process, which did not give rise to considerations of the claimant having made protected disclosures, or otherwise penalising her for so doing, or for any other reason relating to the claimant otherwise than completing a relatively basic management function, where management decision and action within the process was minimal.

CSM Duru insisting the meeting go ahead, accusing the claimant of insubordination and threatening her with disciplinary action on 14th October.

218. As above stated, the tribunal does not find the claimant to have been threatened with insubordination and disciplinary action although CSM Duru had insisted that the meeting go ahead. The tribunal reiterates its finding above that, in accordance with procedure, CSM Duru then being the only CSM on duty and the appropriate manager to conduct the Return To Work Interview, in insisting that the meeting go ahead in accordance with procedure, was then so insisting in accordance with procedure and not because the claimant had made protected disclosures, or for any other reason relating to the claimant.

On 25th October 2017, CSM Duru ordering the claimant to work at Dollis Hill station contrary to agreed restrictions.

219. The Tribunal is satisfied that CSM Duru's instructions for the claimant to work at Dollis Hill Station was contrary to agreed restrictions. However, on considering the recommendations of CSM Ponsonby as furnished to the CSMs Willesden, and that consulted by CSM Duru, the tribunal does not find that correspondence to have identified the restrictions so as to restrict the claimant to working at particular stations. In these circumstances, when CSM Duru requested the claimant to work at Dollis Hill station, this was not contrary to the there observed agreed restrictions and was a direction that CSM Duru ostensibly could reasonably have made, and to all intents and purposes, was following the agreed recommendations, although mistaken. In these circumstances, the tribunal does not find CSM Duru to have taken his course of action for any reason otherwise than as reasonable management action in an urgent situation, which urgent situation is not disputed by the claimant, and was not action taken for a reason relating to the claimant's actions in making any disclosures or for any other reason relating to the claimant.

Detriment on grounds of Health & Safety activities (s.44(1)(b) Employment Rights Act 1996)

220. For the reasons set out above in respect of detriment on grounds related to union membership and/or activities, and detriment on making protected disclosures, the tribunal restates its findings for detriment, there being no evidence to support the claimant's contentions that she has suffered any

detriment on grounds of her performing functions as a representative of workers or matters of health and safety and/or as a member of the respondent's Safety Represented and Safety Committee Regulations.

221. For the reasons above stated, the tribunal finds that the claimant has not suffered detriment on grounds of trade union membership or otherwise activities pursuant to s.146 of the Trade Union Labour Relations (Consolidation) Act 1992, or otherwise detriment on grounds of health and safety activities, pursuant to s.44(1)(b) of the Employment Rights Act 1996, or otherwise detriment on grounds of making protected disclosures, pursuant to sections 43B, 43C and 47B of the Employment Rights Act 1996.

222. The claimant's claims are accordingly dismissed.

_____
Employment Judge Henry

Date: ……02/12/2020..

Sent to the parties on: 18/12/2020.....
T Henry-Yeo
.....
For the Tribunal Office