Case No: 2213436/2023

EMPLOYMENT TRIBUNALS

Claimant: (1) Ms I Dos Santos Costa
(2) Mr H Acosta Piamonte
(3) Ms A Ferreira
(4) Ms R Gusque
(5) Ms S Fonnegra Rivera
(6) Ms S Yaguar Salinas

Respondent: DOC Cleaning Ltd

Heard at: Central London Employment Tribunal
On: 4, 7, 9, 10 October 2024 and 11, 14, 15, and 16 October 2024 in Chambers

Before: Employment Judge Keogh, Mrs W Ellis, Ms B Osbourne

Representation
Claimant: Ms E Bacon (Trade Union Representative)
Respondent: Mr A Williams (Solicitor)

JUDGMENT

1. The claimants claims of trade union detriment under section 146 Trade Union & Labour Relations (Consolidation) Act 1992 succeed in part, as set out in the attached reasons.

REASONS

Introduction

1. The claimant brings claims of trade union detriment under section 146 Trade Union & Labour Relations (Consolidation) Act 1992 in relation to their membership of the Cleaning and Allied Independent Workers Union (referred to in this judgment as *"CAIWU"* or *"the Union"*), alleging a long

course of detrimental treatment by the respondent's then Operations Manager at the Museum of London site, and alleging that following a consultation where their hours were reduced, they were not given first right of refusal for hours which subsequently made available as they had been promised, and that the respondent conducted a related grievance and appeal in a detrimental manner.

2. The hearing took place in person with Mrs Ellis appearing by Cloud Video Platform. While the claimants were present a Spanish interpreter was provided. The Tribunal did not sit on 4 October 2024 due to Employment Judge Keogh's absence for health reasons. The hearing resumed on 7 October 2024 however had to be postponed as a result of difficulties with the interpreter provided for that day. A fresh interpreter could not be found for the following day and the hearing resumed on 9 and 10 October 2024. The Tribunal deliberated its decision and completed this judgment in Chambers on 11, 14, 15 and 16 October 2024, reserving its decision on liability as a result of potential unavailability of the Tribunal to deliver judgment and deal with any required remedy hearing straight away.

3. We received a bundle of documents and one additional missing document, and witness statements from all claimants and from Mr Justin Gray (Operations Director), Ms Jane Malone (HR Director) and Ms Leigh Goldsmith (Senior HR Manager) for the respondent. We heard oral evidence from all witnesses. We received written submissions from the claimants' representative Ms Bacon and heard detailed oral submissions from her. The respondent did not provide written submissions and made a one-line submission orally, that the claims had no merit and should be dismissed. Mr Williams for the respondent declined to point the Tribunal to any evidence which might assist in its deliberations, and when asked specifically to deal with the issue of time limits, said that the respondent took no issue in that regard, and conceded that there was a series of events in this matter (having not confirmed that at the beginning of the hearing when it was discussed that time limits were a live issue for the Tribunal to consider). The Tribunal would like to note that it was a considerable discourtesy to the Tribunal and to the claimants not to provide any substantive submissions whatsoever in a case where serious allegations have been made against the respondent, and this made the Tribunal's task in its deliberations more difficult and significantly extended the time required to reach a decision.

4. The claimant Ms Sandra Fonnegra Rivera had been incorrectly named as Ms Rivera Martinez. Her name was corrected at the outset of the hearing and the correct name will be placed on the court record.

5. We considered all the written and oral evidence and the documentary evidence in the bundle to which we were referred and otherwise found during our reading and the submissions made to us. If we do not mention a particular fact or dispute in this judgment, it does not mean we have not taken it into account, only that it is not material to our conclusions. All our findings of fact are made on the balance of probabilities. Our decision was unanimous.

The Issues

6. The issues in this matter were discussed and agreed at a case management hearing before Employment Judge Brown. The parties confirmed at the beginning of the hearing that there were no amendments required, however during the course of the hearing one date was clarified. The issues in relation to liability are therefore as follows:

Time Limits

1. *Given the date the claim form was presented and the dates of Early Conciliation, any complaint about something that happened before 1st March 2023 may not have been brought in time.*

2. *Was the complaint made within the time limit in S.147 of the Trade Union & Labour Relations (Consolidation) Act 1992? The Tribunal will decide:*

   2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of the act complained of?

   2.2 If not, was thee a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?

   2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

   2.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Detriment on the grounds related to union membership – S.146 (1) (a) Trade Unions & Labour Relations (Consolidation) Act 1992

3. *Did the Respondent do the following things?*

   3.1 Did Ms Monica Rodrigues, Manager, disparage the union (CAIWU) and the Claimants?

      3.1.1 On 17 January 2019 did Ms Rodrigues tell the Claimant Ms Rosa Gusque that she was little and dirty;
      3.1.2 From November 2015 onwards, following the Claimant Mr Hernando Piamonte's involvement in a petition for better wages, did Ms Rodrigues make negative and inappropriate comments about his union membership and activities;
      3.1.3 On 13 October 2017, did Ms Rodrigues say verbally and directly to the Claimant, Ms Gusque, in a very aggressive tone that she doesn't like people that lie;
      3.1.4 On 20 October 2017, did Ms Rodrigues say to the Claimant Ms Gusque "don't play with me" in a very aggressive manner in response to Ms Gusque saying she would complete a specific task after she had finished with her current one;
      3.1.5 On 5 January 2018, did Ms Rodrigues shout at the Claimant, Ms Gusque that she did not do a good enough job cleaning the toilets and that she never did any deep cleaning work;

3.1.6 During all relevant times, and in particular on 12 January 2018, did Ms Rodrigues reprimand the Claimant Ms Gusque about her work in English, in spite of knowing that Ms Gusque does not speak English and Ms Rodrigues speaking to other colleagues in Spanish;

3.1.7 On or around July 2018, did Ms Rodrigues unreasonably reprimand the Claimant Ms Sandra Fonnegra Rivera about her work;

3.1.8 On 4 February 2019, did Ms Rodrigues tell the Claimant Mr Piamonte that she would deduct him 4 hours of pay if he did not clean the top of the cupboards to her standard;

3.1.9 During a meeting on 10 December 2019, did Ms Rodrigues tell the Claimant Ms Dos Santos Costa that she was tired of dealing with low educated and poor people, or words to that effect;

3.2 During a protest on 12 August 2017, did Ms Rodrigues stand directly in front of the Claimants using intimidatory body language during a protest held by the union?

3.3 Did Ms Rodrigues say: 'people who joined the union caused trouble, that employees should not join the union else they would be 'against' the company and were not trustworthy?' or words to that effect:

3.3.1 to Ms Dos Santos Costa on or around May 2017;

3.3.2 To all the Claimants repeatedly throughout the course of their interactions with her? The Claimants' case is that whenever they raised complaints about Ms Rodrigues, she would say words to this effect to everyone at the end of their shifts.

3.3.2.1 the Claimants Mr Piamonte, Ms Gusque and Ms Yaguar Salinas raised complaints on or around 20 March 2018;

3.3.2.2 the Claimant Mr Piamonte raised complaints on 3 September 2016 and 15 Feb 2019;

3.3.2.3 All the Claimants raised a group grievance on 8 March 2023.

3.4 During the consultation process in November 2022, in which the Claimants accepted a reduction in their working hours, did Mr Justin Gray, Operations Director, promise to give the Claimant's first refusal of hours that became available if cleaning demands increased?

3.5 Did the Respondent fail to offer the Claimants first right of refusal of any additional hours should they become available, as promised by Mr Gray? The Claimant's allege they lost up to 5 hours of work a week from March 2023 until present day.

3.6 On or around 8 March 2023, did Ms Rodrigues inform the Claimants that the Respondent was 'proud to be bringing in new staff following new cleaning demands from the client.'

3.7 On or around 8 March 2023, did the Claimants query why they had not been offered the hours? If so, in response, did Ms Rodrigues say, 'it was because she wanted new people working on the site?'

3.8 Did the Respondent or any of its agents fail to properly investigate the grievance raised by the Claimants on 8th March 2023.

3.9 Did the Respondent fail to uphold the Claimants grievance?

3.10 On 12th May 2023, did Ms Leigh Goldsmith, Senior HR Manager, say to the Claimants / their union representative that 'the contents of [their] letter [appeal letter] and note does not set out [their] grounds for appealing the decision,' to obstruct and delay hearing their grievance appeal?

3.11 Did the Respondent or any of its agents fail to properly engage with the points of the Claimant's grievance appeal?

3.12 Did the Respondent, in its grievance appeal outcome on 30 June 2023, falsely accuse the Claimant Ms Dos Santos Costa of asking for Ms Rodrigues's dismissal and reprimand her for doing so?

3.13 These individual detriments are relied on in support of the Claimants' contention that the Respondents' conduct formed a series of linked acts, so as to be a continuing state of affairs from January 2015 to the date of submission of the Tribunal claim. Was there such a series of linked acts / continuing state of affairs?

3.14 By doing so, did it subject the Claimant/s to detriment?

3.15 *If so, was it done for the sole or main purpose of preventing, or deterring the Claimant/s from being or seeking to become a member of an independent trade union, or penalise the Claimant/s for doing so?*

7. As discussed above, in closing submissions the respondent conceded that the pleaded detriments amounted to a series of events, such that it did not pursue any issue in relation to time limits. As this is a point which goes to the jurisdiction of the Tribunal it is nevertheless an issue we felt bound to consider.

The Facts

8. The Union was formed in early 2016.

9. Contracts of employment have been provided for the claimants, although none are dated and signed. There is a list of commencement dates attached to a business case for redundancies in around October 2022.

10. Mr Acosta Piamonte was employed by the respondent's predecessor from 24 May 2010 as a cleaner, initially on 20 hours per week. He became a Treasurer for the Union in September 2016. He appears to have been involved with the Union from its inception.

11. Ms Fonnegra Rivera was employed by the respondent's predecessor as a cleaner from 2 March 2015, initially on 25 hours per week. She says she joined the Union in June 2015 however this must have been from its

inception in early 2016. She may have been a member of a different union previously.

12. Ms Gusque was employed by the respondent's predecessor as a cleaner from 13 May 2015. We prefer the date given on the contract and in the business case list to that given by Ms Gusque (8 May 2015), however there is no material difference. She was initially on 24 hours per week. She says she joined the union in October 2015 however this must have been from its inception in early 2016. She may have been a member of a different union previously.

13. Ms Yaguar Salinas was employed as a cleaner by the respondent's predecessor from 1 June 2015, initially on 18 hours per week, and became a member of the Union in 2016.

14. Ms Ferreira was employed as a cleaner by the respondent's predecessor from 27 June 2015. We prefer the date given on the contract and in the business case list to that given by Ms Ferreira (June 2016). She appears to have got the wrong year. She was initially on 20 hours per week. She joined the Union in July 2022.

15. On 1 or 2 February 2017 the respondent was awarded a contract for cleaning at the Museum of London and employment of existing staff transferred to them on that date.

16. Ms Dos Santos Costa says she was employed as a cleaner by the respondent from April 2017. The contract gives a date of 24 September 2018, however the business case list gives a date of 28 April 2017. She has given consistent evidence about events before September 2018. We find that the business case list gives the accurate date and she was employed by the respondent from 28 April 2017, initially on 20 hours per week. She joined the Union in January 2020.

17. By October 2022 each of the claimants was working 20 hours per week, Monday to Friday 6am to 10am.

<u>Alleged detriments</u>

18. Many of the detriments claimed are about things alleged to have been said to the claimants or things done by Ms Monica Rodrigues, who was the Operations Manager at the Museum of London site. We did not hear evidence from her and no witness statement was provided on her behalf. She no longer works for the respondent.

19. The claimants were all consistent in cross examination as to what was said to them at various times and for the reasons set out below we considered their evidence to be authentic and credible.

20. We accept Mr Piamonte's evidence that Ms Rodrigues said to him on occasions that the union was rubbish and that his actions were illegal and threatening to sue him, and was always trying to intimidate him. In particular, after a protest with the Union she said to him *"You think you're smart with your stupid union but we will see who wins."* This is supported by the inclusion of this comment in relation to a Union protest in around 2016 in a

grievance brought by him (pages 234 to 235 of the bundle). We find she would make comments of a similar nature when he asked her for annual leave or overtime.

21. In around June 2016 Ms Fonnegra Rivera had an operation. When she came back in September 2016 Ms Rodrigues reduced her hours by 4 hours per week. The respondent has not produced any evidence to the contrary. Ms Fonnegra Rivera links this to a comment she says was made to her by Ms Rodrigues to the effect that, *"These people who work for the unions are rubbish"*. We accept that a comment to this effect was made to Ms Fonnegra Rivera during one of the grievances. Ms Fonnegra Rivera gave a detailed account in cross examination as to Ms Rodrigues throwing pages of the grievance and making that comment.

22. On around 3 September 2016 (the exact date is not clear), Mr Piamonte brought a grievance against Ms Rodrigues. We accept his evidence, which is supported by Ms Gusque, that often after complaints were raised Ms Rodrigues would use words to the effect that, *"People who joined the union caused trouble", and that "Employees should not join the union else they would be 'against' the company and were not trustworthy"*, however in cross examination Mr Acosta Piamonte could not recall his grievance in 2016 and we cannot find on balance that words to this effect were used on that occasion.

23. In January 2017 Mr Acosta Piamonte brought a claim against the respondent and its predecessor for trade union detriment in relation to a promise he says was made to him to give him a full time porter position, which was subsequently given to someone else (claim number 2300410/2017). The judgment dated 9 August 2017 refused an amendment application to add further alleged detriments (none of which overlap with this claim or involve Ms Rodrigues), and found that the claim had been brought out of time.

24. We accept Ms Dos Santos Costa's evidence that in May 2017, when she was not yet a member of the Union, that Ms Rodrigues warned her to be careful about the 'Latin' people who worked in the Museum as they were members of the Union and 'troublemakers'. This was the same type of language which we have found was used previously as discussed in the paragraph above.

25. On 12 August 2017 the Union held a protest at the Museum. We accept the evidence of Ms Gusque, which was supported in cross examination by Mr Acosta Piamonte, that during the protest Ms Rodrigues stood in front of them in an intimidatory manner and made horrible and threatening comments about the union, saying they were against the company.

26. We also find that when Ms Rodrigues discovered Mr Fonnegra Rivera had participated in protests that she made unpleasant comments, which Ms Fonnegra Rivera described in cross examination as, *"She was grotesque and used dirty words with me"*.

27. The only evidence the respondent gave in relation to Ms Rodrigues's behaviour at and surrounding protests was that of Ms Malone, who said in cross examination that she said she was not employed by the respondent

at that time, but had been to subsequent protests where she did not witness this type of behaviour from Ms Rodrigues. However, she conceded that the protests that she attended she did not see any of the claimants. She cannot therefore give any evidence about what happened during the protest in 2017, and it appears that she was not at subsequent protests at the same time as the claimants. We cannot deduce anything about Ms Rodrigues's behaviour in 2017 from what Ms Malone saw subsequently. Ms Rodrigues's behaviour may well have been modified in the HR Director's presence.

28. While not relevant to the allegations in this claim, we note that a letter was written to Mr Acosta Piamonte by the Acting Director of the Museum of London, not the respondent, complaining about the protest which caused Mr Acosta Piamonte considerable upset at the time.

29. By letter dated 21 December 2017 Mr Acosta Piamonte, Ms Gusque and another employee raised a grievance against Ms Rodrigues. Details of the grievance were provided on 2 February 2018.

30. We accept Ms Gusque's evidence that, as noted in the grievance details, on 13 October 2017 Ms Rodrigues said to her in an aggressive manner, "I don't like people who lie".

31. Similarly, we accept her evidence, as noted in the grievance details, that on 20 October 2017 Ms Rodrigues approached her in relation to a particular cleaning task which Ms Gusque said she would do when she had completed her own tasks, and Mr Rodrigues said, "Don't play with me" in an aggressive tone.

32. We also accept her evidence, as noted in the grievance details, that on 5 January 2018 Ms Rodrigues approached her and shouted at her in an intimidatory manner about the standard of her cleaning work in the toilets. We note that it is alleged by her in this grievance that Ms Rodrigues only checked up on the work of people doesn't like or who are union members, and had not reprimanded a colleague whom Ms Gusque was aware had cleaned a toilet to a very poor standard. Further, we accept Ms Gusque's evidence that on this occasion, and at other times, Ms Rodrigues would speak to her in English, knowing Ms Gusque did not speak English, whereas she would speak to other colleagues in Spanish.

33. The grievance was investigated by Mr John Carter of Peninsula who provided a report on 15 March 2018. During the investigation he spoke to Ms Rodrigues and notes her account of these three incidents in his report. However, he does not provide a copy of the interview notes, and the denials and explanations given by Ms Rodrigues were not further explored with Ms Gusque. Mr Carter was not able to resolve the disputes in evidence and hence found the grievance was not substantiated. The points raised in the report attributed to Ms Rodrigues were not put to Ms Gusque in cross examination. In the circumstances we have given no weight to the content of the report as regards Ms Rodrigues's position in reaching our conclusions.

34. The grievance outcome was appealed on 24 March 2018. An appeal hearing was held on 16 April 2018. An outcome was provided on 10 May 2018 and the grievance appeal was not substantiated.

35. Ms Gusque raised a grievance against Ms Rodrigues on 12 January 2019. A grievance hearing was held on 13 February 2019, chaired by Mr Gray. One of the complaints made by Ms Gusque was that Ms Rodrigues was bullying her and had called her a "small person" and "dirty" on 17 January 2019.

36. During the hearing Mr Gray asked her if she was sure Ms Rodrigues used those words, and Ms Gusque replied, *"Yes of course I am. That's when I got really upset because this person is shouting at me."* The account given by Ms Rodrigues was that Ms Gusque had misunderstood her and she had asked her to vacuum and clean the small dirty green floor by the conservation area. She says that after that she found Ms Gusque screaming and crying with Ms Dos Santos Costa and another employee saying that she had said Ms Gusque was a small dirty person and told her she had misunderstood.

37. We prefer Ms Gusque's evidence that Ms Rodrigues said to her words to the effect that she was little and dirty, as described in her grievance. We do not give weight to what was said by Ms Rodrigues at the time. Even on her own account whatever was said prompted a strong emotional reaction from Ms Gusque. We have had no direct evidence as to the alleged misunderstanding and this point was not put to Ms Gusque in cross examination.

38. The outcome to the grievance was provided on 22 March 2019. The grievance was partially substantiated against Ms Rodrigues, however Mr Gray found there was insufficient evidence to substantiate the complaint about 17 January 2019.

39. On 25 January 2019 a formal meeting was held between the cleaning staff, Mr Gray and Ms Malone in relation to Ms Rodrigues's behaviour, as noted in Mr Acosta Piamonte's grievance of 23 February 2019.

40. That grievance included a complaint that Ms Rodrigues told Mr Acosta Piamonte that on 4 February 2019 she would deduct 4 hours of pay if he did not clean the top of the cupboards to her standard.

41. A grievance hearing was held on 11 March 2019 and an outcome provided on 22 March 2019. Mr Acosta Piamonte's allegation in relation to the threat to deduct his pay was substantiated as follows:

    "During the grievance hearing you told me that Monica had threatened not to pay you for cleaning the cabinet tops. I have investigated this and found that Monica did initially say she would not pay for the work due to the standard of the work, however she reflected on this and I can confirm that you have been paid for the work done. This point of grievance is substantiated and we will deal with this accordingly."

42. We accept Mr Acosta Piamonte's evidence that Ms Rodrigues made that threat on 4 February 2019.

43. We accept Ms Dos Santos Costa's evidence that on 10 December 2019 when she went to Ms Rodrigues's office to ask her about something in her

contract, Ms Rodrigues said in Portuguese words which roughly translate to, "I'm tired of dealing with badly educated / lower class people." She wrote a detailed complaint about this on the same day in an email to the respondent, which was forwarded to Ms Malone the following day. We accept her evidence that this was not dealt with by the respondent even though a complaint in relation to holiday made the same day was taken forward. The respondent has not suggested otherwise.

44. Ms Dos Santos Costa alleges that after she joined the union in January 2020, in the subsequent period around 2020 to 2022 Ms Rodrigues used her authority in relation to holiday approval as tool against her. We note that her email complaint about holiday on 10 December 2019 referred to a refusal by Ms Rodrigues to grant her annual leave which she said she had given sufficient notice for, and a threat by Ms Rodrigues that she would be subjected to disciplinary procedures and fired if she did not come back on time. She also refers to refusals to grant leave in January and August 2019. On 20 August 2021 she emailed Ms Rodrigues complaining about a further denial of her holiday requests.

45. In around October 2022 the respondent put together a business case for proposed changes to the staffing structure following the Museum of London's confirmation that the Museum's London Wall site would close with immediate effect from 5 December 2022. Details of the proposal were as follows:

"During the period where the London Wall site is closed to the public, the back of house areas of the building will remain in use from Monday to Friday, and Museum and Gallery spaces will be cleared on a gallery-by-gallery basis as artifacts are removed from display and placed into storage. We have been informed by the Museum of London that the London Wall site will continue to be used as a bookable event space during the period where it remains closed to the public.

Given the permanent closure of the London Wall site to the public, the following changes are proposed:

- *Removal of weekend cleaning.*
- *Reduction in cleaning taking place from Monday – Friday:*
    - *Daily early morning cleaning hours will reduce from 4 to 3 hours Monday to Friday. This will change from 6am to 10am Monday to Friday to 6am to 9am Monday to Friday.*
    - *End of day cleaning will reduce when the café and other front of house areas will not require cleaning*
- *One porter role will transfer to the Museum of London Docklands to support higher footfall and busier events schedule*
- *There will be a reduction in hours for the Supervisor role. The London Wall Supervisor position will reduce from 7am to 6pm Monday to Saturday to 9am to 6pm Monday to Friday and will become cross—site to support busy days at Docklands*

Although, the public will not be coming into the gallery spaces, Museum staff will continue to use the building and a reduced level of cleaning will still be required of the gallery spaces to maintain the cleaning standards.

Business reasons behind proposed changes

The proposed changes are driven by the Museum of London's decision to permanently close the Museum of London, London Wall site with effect from 5th December 2022, in preparation for the move to the new Museum at West Smithfield in 2025.

Key driving forces

This has come about as a result of the permanent closure to the public of the Museum of London's London Wall site.

Alternatives considered

To avoid/reduce the impact of redundancies, an organisation-wide ban on recruitment will be implemented to prioritise employees potentially displaced as a result of the closure of the Museum of London's London Wall site.

Given that the building will remain in use, despite its closure to the public, there is still anticipated to be a fairly significant level of cleaning required. We will consult with employees concerning potential reductions/changes to working hours and days to minimise compulsory redundancies.

Where possible, we will consult with employees concerning opportunities at other sites within the Museum of London contract and at sites across DOC Cleaning's wider portfolio.

Applications for voluntary redundancy may be considered in order to minimise compulsory redundancies.

How this will affect the current workforce structure

It is proposed that the days of work will alter to Mondays to Fridays only and that shifts may be shortened.

As the Museum of London sites at London Docklands and Mortimer Wheeler House within the Museum of London contract will not be affected by the closure of the London Wall site to the public, and cleaning of the London Wall site will continue, at a reduced level, it is not envisaged that the Operations Manager post will be affected.

Consultations

Consultations will be led the Operations Director Justin Gray and Operations Manager for the Museum of London contract Monica Rodrigues.

Union representation

There is no recognised union onsite.

Some operatives are represented by the Cleaners and Allied Independent Workers Union (CAIWU), which is not recognised by DOC Cleaning.

Previous redundancies/recent changes to terms and conditions within the company

During the Covid pandemic, the Museum of London was subject to government restrictions on opening and suffered a significant reduction in visitor numbers, and revenue. As a result, to contain costs, opening hours at the London Wall and Docklands sites were reduced from 7 days per week to 5 days per week (Wednesday to Sunday) – following consultation, changes to working hours and days were agreed with employees assigned to the London Wall and Docklands sites. Reduced working hours were implemented with effect from May 2021 when employees returned to work from furlough.

In April 2022, at the request of the Museum of London, pre-covid hours were reinstated.

Overall organisational structure

The company has headquarters in Bishop's Stortford and a London Hub employing administrative and managerial personnel. Overall, the company employs approximately 1300 employees, based across approximately 570 client sites. Job roles, hours and pay varies across sites.

Affected posts

All employees at the Museum of London; London Wall and Docklands sites.

Employees occupying affected posts (see table below)

1 x Site Supervisor
1 x Porter/Cleaner
15 x Cleaning Operatives

Department affected

Museum of London – London Wall site"

46. There then follows the details of employees, service dates, working hours, pay rates and hours per week, as discussed in paragraph 9 above and details of other considerations not relevant to the issues in this case.

47. Individual consultation meetings started around 27 October 2022. Prior to this there was a group meeting at which staff were told by Mr Gray about the closure and the consultation process. We accept the evidence of Ms Dos Santos Costa and Mr Acosta Piamonte that during this meeting staff were told that although their hours were being reduced if there were more hours available in the future, they would be offered them first. Both claimants gave clear and detailed evidence on this point in cross examination. All claimants gave evidence that this promise was made at some point during the consultation. Mr Gray denies saying this. The respondent's only explanation as to why this would not have been said is that at that time they could not know what increase in work and therefore hours there might be in the future. However, this would not have prevented them from making such a promise that *if* hours became available then the

claimants would have first refusal. We find that given the situation the respondent was in where it was trying to persuade staff to accept reduced hours, this may well have been said to try to reassure them. On balance we prefer the account of the claimants and find that a promise was made to them by Mr Gray that if there were more hours available in the future they would be offered them first.

48. Following the consultation all claimants agreed to reduce their hours.

49. On 15 December 2022 the London Wall site permanently closed to the public. All of the claimants had their hours reduced to 15 hours per week, working 6am to 9am Monday to Friday.

50. One of the other employees involved in this consultation was Mr Carlos Abreu Rodrigues. He joined the Union on 17 October 2022, and cancelled his membership on 22 November 2022. His membership expired on 21 December 2022.

51. We accept Ms Ferreira's evidence that she was told by Mr Rodrigues that he had been told by Ms Rodrigues that if he wanted to be a team leader then he had to leave the Union. She could not recall however when this was said.

52. We note from the grievance brought in 2018 that at that point Mr Rodrigues was an Assistant Supervisor. By the time of the business case in around October 2022 he is noted as being a Site Supervisor, which indicates he had had a promotion at some point. The proposal was for hours for the Site Supervisor to reduce from 7am to 6pm Monday to Saturday down to 9am to 6pm Monday to Friday, and for the Site Supervisor to become a cross-site role with additional responsibilities to support a site at Docklands. In Ms Goldsmith's email of 14 June 2023 (discussed further below) Ms Goldsmith asserts that he is a Site Supervisor, not carrying out the same duties as a Cleaning Operative, and that he had lost 10 hours of work per week during the consultation. There is a later email where he signs off as 'Museum Cleaning Supervisor'. In cross examination Mr Gray suggested he had lost 20 hours per week.

53. It it the claimants' case that Mr Rodrigues retained all his hours and was promoted during the consultation as a result of him cancelling his union membership.

54. We have found it difficult to work out precisely what happened with Mr Rodrigues due to a lack of disclosure on the point and no submissions being made by the respondent. We have looked at all available documents mentioning Mr Rodrigues to make our findings.

55. We find that the business case is a contemporaneous document and that at the very beginning of the consultation process he must have already been promoted to being a Supervisor. At that time he was doing 7am to 6pm for 6 days per week. We also find that he did lose 20 hours as a result of the reorganisation of work, as confirmed in as confirmed in the contemporaneous business case and confirmed by Mr Gray in cross examination. Ms Goldsmith's email is likely to be inaccurate. Mr Gray dealt with the consultations himself and would better know the detail. On balance

we find that he did not retain his hours, however the claimants are likely to have perceived the change in his role to being a cross-site Supervisor as a promotion.

56. Overall, we consider that Mr Rodrigues did lose out in the consultation, having his hours significantly reduced and apparently having to work across two sites. In the circumstances we find it unlikely that he gained any benefit as a result of cancelling his Union membership. It is not clear why he joined the Union for such a short period, however this may well have been to gain some assistance during the consultation period. While we accept that at some point Mr Rodrigues said to Ms Ferreira that he had been told he would not be promoted if he was Union member, this cannot have been around the time of the consultation.

57. From January to March 2023 the claimants worked their three-hour shifts, with some additional overtime as needed.

58. We accept the respondent's evidence that in around March 2023 the Museum identified a need for cleaning to be done in the afternoons. It is likely that if the areas were being used during the day by Museum staff they would want the area cleaned again before its use for evening events. As a result a vacant shift was created from 3pm to 7pm.

59. We do not accept the respondent's evidence that this was advertised on the respondent's employee portal or training platform as suggested by Mr Gray. If that were the case the respondent should have been able to disclose a copy of the advert, which they have not done. In any event we accept the evidence of Ms Dos Santos Costa, Mr Acosta Piamonte and Ms Fonngera Rivera that they were not able to access vacancies online around this period.

60. Nor do we accept this role was posted physically in the cleaner's cupboard. The respondents have disclosed a photograph of a piece of paper which states, hand written:

    "1 x … Porter/Cleaner – 15:00 – 19:00 – Mon – Fri £11.95 phr
    1 x Cleaner – 15:00 – 18:00 – Mon – Fri £11.95 phr"

61. We accept the evidence of all claimants that they did not see this at any point. It has no date or any details of how to apply for the roles. It cannot relate to any posts available in March 2023 because the piece of paper is posted on top of a printed job vacancy which includes a date of 26 June 2023. We find that the details are more likely to relate to the vacancies which came up in June 2023, discussed below, but note the slight difference in the hours offered for the Porter/Cleaner role compared to the printed document. Ms Malone stated candidly in cross examination that the photograph had been taken in order to provide evidence. We find that this piece of paper has been deliberately created by the respondent to produce evidence for this case and is not a genuine document which was ever posted in the cleaner's cupboard. It is unlikely that if it was posted in the cleaner's cupboard not one of them would have seen it.

62. The role for the afternoon shift created in March 2023 was given to Maria Dos Santos on 8 March 2023, who was an existing employee. We accept

the respondent's evidence that she was at risk of redundancy and that is why she was offered the role. This would have been a reasonable operational decision.

63. We accept the claimants' evidence as to what was said about this by Ms Rodrigues on 8 March 2023, namely that she was *"proud to be bringing in new staff following new cleaning demands from the client"* and that when the claimants enquired why they were not being offered additional hours, she said it was because she wanted *"new people working on the site"*. It is not challenged by the respondent that she said she wanted new people, and the claimants have been consistent about what was said.

64. On 8 March 2023 the claimants raised a collective grievance complaining about what had been said to them by Ms Rodrigues and about their overtime in the afternoons being removed and an afternoon shift being given to another employee (i.e. Ms Maria Dos Santos). They asserted that it was unfair that the hours were not offered to them and that they were concerned the decision had been made due to their trade union membership and activities.

65. A grievance investigation meeting was held on 25 April 2023, chaired by an external consultant from Peninsula, Ms Charlotte Davey. Ms Dos Santos Costa was nominated to be the lead claimant and was assisted by Mr Karim Pal of the Union.

66. The following day Ms Davey emailed Ms Malone asking various questions:

"1. Can you comment on the reason for why hours were removed from Ines and the team following a consultation at the end of last year?
2. The Grievance states the team were promised the hours back were they to come available again. Can you comment?
3. The Grievance states that new staff have been employed at the Museum of London, following the reduction in their hours last year. Can you comment?
4. The Grievance states that the team have been discriminated against for the trade union membership. Can you comment?
5. Can you provide any further commentary on the "client demand" for when they wish hours to be scheduled?"

67. Ms Malone responded to the effect that employees had not been promised hours back when they became available again, that the new employee was a long serving employee who at risk of redundancy (referring to Ms Maria Dos Santos), and that she was not aware of any examples of employees being treated differently due to union membership, and that the Museum required cleaning during the afternoon and the respondent identified a need to employ a cleaner from 3pm to 7pm.

68. Ms Davey also emailed Ms Rodrigues asking about the various allegations made against her. Ms Rodrigues responded, denying the allegations except for saying that she wanted fresh people to work at the Museum and was referring to someone from another location who was about to receive redundancy (ie Ms Maria Dos Santos). She noted that Mr Rodrigues was present during this conversation with the claimants.

69. Ms Davey conducted no further investigation. She did not interview any of the claimants other than Ms Dos Santos Costa and did not interview Mr Rodrigues. She did not seek further information from Ms Malone and in particular did not seek any documentation other than the contracts of employment she was provided with for the claimants.

70. Ms Davey produced a report dated 27 April 2023. She did not uphold the grievance. She notes in the grievance she had to spoken to Ms Rodrigues, when this was not the case. She found that the reason hours were not offered was because the respondent was avoiding a redundancy situation and there was no evidence to suggest detriment on the grounds of trade union membership. In relation to comments alleged to have been made she found that there was 'no evidence' to prove Ms Rodrigues had made those comments. The grievance was dismissed in its entirety.

71. Each claimant was sent a brief letter summarising the outcome of the grievance and attaching the report.

72. On 9 May 2023 the claimants appealed the outcome of the collective grievance. This included the following:

"*The sole ground of this appeal is that the factual findings of the investigator are manifestly unreasonable in finding there was no evidence in support of any of the grievances raised. It is noted that the investigator was provided by a third party, namely Peninsula Face2Face. It is also noted that it is DOC Cleaning that employ Peninsula Face2Face and pay for their services. We therefore dispute that the investigator can be considered entirely independent.*

Discriminatory comments made by Monica Rodrigues

The refusal of the investigator to reconsider the grievances relating to discriminatory comments made by Monica Rodrigues, in the context of the group grievance and further evidence of mistreatment by Ms Rodrigues was unreasonable. Further, the resulting finding that there was no evidence of such comments is incongruous with the statement that no investigation had be carried out.

Transfer of new employees to the Museum of London

The investigator found that no promise was made for cleaners to be offered increased hours at the Museum of London should additional work materialise. She makes the finding on the basis that it was not mentioned by Jane Malone or in the brief individual consultation meeting notes (which were, of course, produced by DOC Cleaning). It is the case of those raising the grievance that the promise was made to each of them, orally, at their respective consultation meetings and was not subsequently recorded in the minutes. It is not clear on
what basis the investigator took the word of Ms Malone over that of the multiple cleaning operatives who alleged such a promise was made.

Trade Union detriment

The grievance made allegations that Ms Rodrigues made comments to discourage cleaners from joining CAIWU and disparage those who had. At §54 of her report, the investigator states there is "no evidence to prove [Ms Rodrigues] made comments of this nature towards any of the employees and feels these concerns cannot be substantiated for this reason."
It is entirely unreasonable for such a conclusion to be drawn. Witness testimony is evidence and the investigator heard such testimony from the employee's representative, Ms Ines dos Santos Costa. Ms dos Santos made further statements relating to her colleague's similar experiences. To conclude that no evidence existed on this point is wrong and had impacted the outcome of the grievance. If it is DOC Cleaning and Peninsula Face2Face's position that witness testimony does not constitute evidence, we wish to have confirmation of that fact and an explanation as to how it would be possible for any grievance relating to a verbal interaction could be upheld. Clearly, such interactions can only be proven by witness testimony.

Had the investigator considered witness testimony as evidence (as she should have done) she should then have contacted the other members of the grievance, to corroborate Ms Dos Santos' account. The investigator did not contact those colleagues to confirm any of those accounts. Had she done so, she would have been in a position to make what can be the only correct conclusion when seven employees' word is weighed against a single other employee: that they account is the correct one. This would have led to the grievance being upheld on this point."

73. On 12 May 2023 Ms Leigh Goldsmith, Senior HR Manager for the respondent, emailed Mr Pal about the appeal:

"I have reviewed the contents of your letter and note it does not set out your grounds for appealing the decision. I also note that in the first paragraph of your letter you refer to staff at "British Museum", which I am presuming is an error and should read the Museum of London.

To ensure I can adequately prepare, can I ask that you let me know your reasons (in writing), as to why you are dissatisfied with the original decision. I note from your letter that you have stated, "The sole ground of this appeal is that the factual findings of the investigator are manifestly unreasonable in finding there was no evidence in support of any of the grievances raised." I further note that you have not provided any additional evidence to be taken into consideration and therefore fail to currently understand your rationale for appeal. Therefore, as a matter of urgency please can you provide the relevant evidence you believe has not been considered at the original hearing."

74. Mr Pal replied the same day:

"I am unsure which part of the appeal you do not understand: you have quoted what our ground of appeal is. For the avoidance of doubt, the evidence that has not been considered is the witness evidence of Ms dos Santos and her colleagues. It is clear that it has not been considered as the investigator has stated, in refusing to uphold any grounds of the grievance that there is "no evidence" to support them. The finding that there is no evidence (despitethe obvious existence of witness evidence) is clearly unreasonable and means the outcome is wrong.

…
It is our view that this grievance is not being properly investigated due to the fact that its contents relate to the detriment our members have suffered as a result of their trade union membership."

75. On 15 May 2023 Ms Goldsmith replied:

"Just to clarify, the confusion regarding the points of appeal is predominantly regarding the evidence you refer to. Any evidence which was provided as part of the grievance hearing, was considered and therefore your statement which reads "that the factual findings of the investigator are manifestly unreasonable in finding there was no evidence in support of any of the grievance raised" is the statement that I am seeking clarification on. Based on the content of the report, anything submitted as evidence was considered. The decision could only be made on the evidence submitted, and if there was no additional evidence submitted then that is what the decision was based on.

In addition to this, there was no further evidence submitted as part of the appeal. If there were signed witness statements (which you refer to below) which you have not submitted and that you feel have not been considered, please can I ask that these are sent through as a matter of urgency so we can review and make the necessary arrangements to hear the appeal…"

76. Mr Pal replied:

"I understand what you are saying about evidence being considered. The conclusion of the grievance, though, says that on each point there is "no evidence" to support it. My concern is that the investigator heard evidence from Ines during our meeting. She also did not speak with the other members of the grievance. My concern is on that point, how could she possibly thing there was "no evidence" at all in support of the grievance. If the investigator had decided there was evidence, but that evidence was outweighed by the email from Ms Rodrigues, our appeal would be different, but that is not what the investigator found. She found there was "no evidence" in support of any point.
…
It is my view that you are making this process unnecessarily difficult and the reason for this is the trade union membership and trade union related complaint is the reason for that.

Please can we organise and hold the appeal."

77. Ms Goldsmith did not reply to this email. The next correspondence was the letter inviting Ms Dos Santos Costa to the appeal hearing dated 22 May 2023. A further letter was sent on 26 May 2023 with a revised date for the hearing.

78. The claimants commenced early conciliation on 31 May 2023.

79. The appeal hearing took place on 9 June 2023 chaired by an external consultant from Peninsula, Ms Bryony Keeling. During the hearing Mr Pal questioned why no effort had been made in the investigation to speak to the people who brought the collective grievance other than Ms Dos Santos

Costa. Ms Keeling offered to put questions to the others, which was agreed, and Mr pal indicated he had been collecting testimonies which could be sent.

80. On 14 June 2023 Ms Keeling sent an email to Ms Goldsmith asking her to respond to various questions about the subject of the grievance. This included discussion of the reduction in hours for Mr Rodrigues, the transfer in of an employee from another site (i.e. Ms Maria Dos Santos) and noting that during the consultation the collective employees had been offered alternative shifts at other sites across the company, including more hours and full-tome positions, which they did not accept for various reasons.

81. On the same day Mr Pal emailed Ms Keeling:

"I am afraid we are not going to be able to provide witness statements in relation to the group grievance for each member. My apologies for this, it has not been feasible for us to meet the member and prepare each of the statements in time. It would be preferable if you or an investigator were able to speak directly to the members of the grievance so evidence can be gathered from them directly."

82. On 20 June 2023 Ms Keeling emailed Mr Acosta Piamonte, Ms Ferreira and Ms Yaguar Salinas posing some questions about the grievance and received their responses. The questions were posed in English. Ms Keeling did not conduct any interviews.

83. A grievance appeal report was prepared by Ms Keeling darted 22 June 2023. This notes that Ms Keeling had "spoken to" Ms Dos Santos Costa, Ms Goldsmith, Ms Yaguar Salinas, Mr Acosta Piamonte and Ms Ferreira. In addition to the documents provided at the grievance hearing stage, Ms Keeling also considered the business case for closure and consultation documents. There is no explanation why the other claimants were not spoken to.

84. In her findings in relation 'Discriminatory comments by Ms Rodrigues', Ms Keeling concluded it was for the claimants to provide witness statements and an investigation had been completed in relation to the comments. She noted that it was not unreasonable for Ms Davey not to further investigate the alleged discriminatory comments as these had been previously investigated by the employer. (We note that this was not the reason given by Ms Davey for rejecting the grievance.) This point of appeal was not upheld. In relation to the allocation of the afternoon shift, Ms Keeling focussed on the consultation process for the claimants. She concluded that Mr Gray may have believed in good faith hours may be restored and may have suggested to employees hours would be given back to them. She concluded that it would have been unreasonable for the afternoon shift to have been distributed among the claimants because it would not amount to a reinstatement of their hours, that overtime hours had been made available to them (ignoring the point made by the claimants that the overtime had been taken away), that a new employee was not offered new hours but that an employee was transferred into working hours instead of being made redundant, and that there had been no increase in available hours, therefore no hours able to be offered. This point of the appeal was not upheld.

85. In relation to trade union detriment Ms Keeling noted what was said in the emails received from the claimants and Ms Goldsmith. There is no evaluation of the comments made by the claimants and no attempt to ensure that her questions had been translated for them. She notes that Ms Rodrigues was a member of a union. In relation to the desired outcome, Ms Keeling states:

"76. BRK noted the desired outcome of the grievance was to have MR removed from the Museum of London site. Document 3b.

77. BRK considered that it is not reasonable for IDSC to feel she has the right to suggest a loss of employment for MR, based on the alleged actions of said individual MR. Further there is no lawful right for an employee to know a sanction that may be imposed upon another employee, as this would fall to the Employer to impose, after careful consideration and following due process as per their organisation's policies. BRK finds IDSC dictating a sanction to be imposed upon an employee may be deemed improper behaviour."

86. She goes on to conclude that on balance, because Ms Rodrigues was herself a union member she would have respect for unions and the protection they give to employees, and on that basis rejected the appeal on this point.

87. Although she dismissed the grievance she did recommend workplace mediation, effective communication training and an apology from Ms Rodrigues in relation to the comments made of 8 March 2023.

88. On 30 June 2023 the respondent provided the grievance appeal outcome by letter to each claimant, dismissing the appeal in its entirety. The letters say the respondent was going to enact the recommendations and mediation is offered but we were not provided any evidence in respect of effective communication training, or an apology being offered.

89. Ms Maria Dos Santos resigned on 26 June 2023. We accept Ms Malone's evidence that around this time two new employees were taken on, a Cleaning Operative and a Porter/Cleaner. One worked from 6am to 9am, the same shifts as the claimants, effectively replacing Ms Maria Dos Santos, and one worked from 7.30am to 4pm. We find the latter was the Porter/Cleaner role. This is referred to in email correspondence shown on the printed advert photographed by the respondent as being for 3pm to 6pm Monday to Friday from 26 June 2023.

90. On 27 June 2023 Ms Rodrigues emailed Ms Malone passing on Ms Maria Dos Santos' resignation letter and indicating that she thought the Museum wanted to move back to morning cleaning. Ms Malone replied:

"Once you have clarification from the Museum as to whether they wish for us to continue with the PM cleaning or would require more cleaning in the morning, please let me know. If more cleaning is required in the morning, it makes sense for the additional hours to be offered amongst the existing team."

91. This work was not offered to the existing team, namely the claimants. The email chain suggests the claimants were asked informally about possible shifts in the afternoon but it does not appear to have been suggested that the additional hours might be shared among them, added to their morning shift. These emails also suggest that the times of the shifts at this point were flexible from the point of view of the Museum. We do not accept the respondent's evidence that the hours had to be worked between 6am and 9am as a result of the client's stipulations. The fact that a role was given to someone for 7.30am to 4pm suggests that cleaning work could be done throughout that period. Even though this was a Porter/Cleaner role there was still cleaning involved. In addition if there was a stipulation as to hours of cleaning we would expect to have seen some record of this in writing.

92. ACAS early conciliation ended on 12 July 2023, and the claim was presented on 10 August 2023.

93. Ms Dos Santos Costa resigned on 26 February 2024 to end her employment on 4 March 2024. We accept Ms Malone's evidence that when she left a further cleaner was employed to undertake a 6am to 9am shift. There is no evidence that these hours were offered to the claimants.

The Law

94. Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides:

"(1) A worker has the right not to be subjected to any detriment as an individual by any act, or any deliberate failure to act, by his employer if the act or failure takes place for the sole or main purpose of—

(a) preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so
…

(5) A worker or former worker may present a complaint to an [employment tribunal on the ground that he has been subjected to a detriment by his employer in contravention of this section."

95. The burden of proof is dealt with in section 148 which provides:

"(1) On a complaint under section 146 it shall be for the employer to show what was the sole or main purpose for which he acted or failed to act.

(2) In determining any question whether the employer acted or failed to act, or the purpose for which he did so, no account shall be taken of any pressure which was exercised on him by calling, organising, procuring or financing a strike or other industrial action, or by threatening to do so; and that question shall be determined as if no such pressure had been exercised."

96. 'Detriment' is not defined in the Act, however we accept the claimant's submission that the general principles to be adopted are the same as those in discrimination cases, namely whether a reasonable worker would or might take the view that the treatment was in all the circumstances to his

detriment, from their point of view, or that they had a justified and reasonable sense of grievance (**Shamoon v Chief Constable of the Royal Constabulary** [2003] ICR 337). This could include being treated less favourably than others.

97. The question of the employer's *'sole or main purpose'* is a subjective question, to be judged by enquiring into what was in the mind of the employer, and in particular the person or persons within the organisation who have committed the 'act' or 'deliberate failure to act' at the time (by analogy with **University College London v Brown** UKEAT/0084/119/VP). It is for the employee to show that there is something which calls for an explanation. If that is done then it is for the employer to show the purpose of his act, and therefore to prove what were the factors operating on the mind of the decision maker. There must be an assessment by the Tribunal of the matters advanced by the employer to see whether it has discharged the burden of proof (**Dahou v Serco Ltd** [2015] IRLR 30).

98. Helpful guidance on how to approach these issues is set out in **Yewdall v Secretary of State for Work and Pensions** UKEAT/0071/05/TM (the claimant's appeal in that case to the Court of Appeal was dismissed):

"23. We nevertheless find that, although clearly this is not necessarily a binding way for a tribunal to approach this statute, a very sensible way to do so would be to follow this structure which, in effect, follows the route of the Act as we see it to be:

(i)Have there been acts or deliberate failures to act by an employer? On this, of course, the employee has and retains the onus;

(ii)Have those acts or deliberate failures to act caused detriment to the employee?

We then interpose a cross-reference to s147 because it appears to us that this is a sensible time to do so:

(iii) Are those acts in time?

(iv) In relation to those acts so proved which are in time, where detriment has been caused, the question of what the purpose is then arises. We are satisfied that Mr Russell was right to concede - and, in any event, this is our judgment - that there must be establishment by a claimant at this stage of a prima facie case that the acts or deliberate failures to act which are found to be in time were committed with the purpose of preventing or deterring or penalising i.e. the illegitimate purpose prohibited by s146(1)(b).

24. This gives the same mechanism to sections 146 and 148 of TULR(C)A as is provided, for example, by section 63A of the Sex Discrimination Act 1975, where the onus of proof only passes to the employer after the establishment of a prima facie case of unfavourable treatment on discriminatory grounds by the employee which requires to be explained. Once it requires to be explained, then the burden passes to the employer. Plainly that, in our judgment, is correct in this case. Otherwise the employer will have the burden of giving some explanation in a case where it is not

clear what it is he has to explain. … Once that prima facie case is established, then the burden passes to the employer under s148."

99. The applicable time limit for a claim to be brought is set out in section 147:

"(1) An employment tribunal shall not consider a complaint under section 146 unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to which the complaint relates or, where that act or failure is part of a series of similar acts or failures (or both) the last of them, or

(b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable.

(2) For the purposes of subsection (1)—

(a) where an act extends over a period, the reference to the date of the act is a reference to the last day of that period;

(b) a failure to act shall be treated as done when it was decided on.

(3) For the purposes of subsection (2), in the absence of evidence establishing the contrary an employer shall be taken to decide on a failure to act—

(a) when he does an act inconsistent with doing the failed act, or

(b) if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a)."

100. In **Arthur v London Eastern Railway Limited** [2007] ICR 193 guidance was given as to the factors to consider when determining whether there is a series of similar acts or failures (discussing similar provisions in section 48 Employment Rights Act 1996):

"Parliament considered it necessary to make exceptions to the general rule where an act (or failure) in the short three-month period is not an isolated incident or a discrete act. Unlike a dismissal, which occurs at a specific moment of time, discrimination or other forms of detrimental treatment can spread over a period, sometimes a long period. A vulnerable employee may, for understandable reasons, put up with less favourable treatment or detriment for a long time before making a complaint to a tribunal. It is not always reasonable to expect an employee to take his employer to a tribunal at the first opportunity.

…

The provision can therefore cover a case where, as here, the complainant alleges a number of acts of detriment, some inside the three-month period

and some outside it. The acts occurring in the three-month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case. There must be some relevant connection between the acts in the three-month period and those outside it. The necessary connections were correctly identified by Judge Reid QC as (a) being part of a "series" and (b) being acts which are "similar" to one another.

…

In order to determine whether the acts are part of a series some evidence is needed to determine what link, if any, there is between the acts in the three-month period and the acts outside the three-month period. We know that they are alleged to have been committed against Mr Arthur. That by itself would hardly make them part of a series or similar. It is necessary to look at all the circumstances surrounding the acts. Were they all committed by fellow employees? If not, what connection, if any, was there between the alleged perpetrators? Were their actions organised or concerted in some way? It would also be relevant to inquire why they did what is alleged. I do not find "motive" a helpful departure from the legislative language according to which the determining factor is whether the act was done "on the ground" that the employee had made a protected disclosure. Depending on the facts I would not rule out the possibility of a series of apparently disparate acts being shown to be part of a series or to be similar to one another in a relevant way by reason of them all being on the ground of a protected disclosure."

101. At least one of the detriments relied upon has to be in time and actionable to bring the series in time (**Royal Mail Group Ltd v Jhuti** [2018] 3 WLUK 425). By analogy with the position in cases of unlawful deductions from wages, individual acts can form part of a series regardless of whether there is more than three months in between them (**Chief Constable of Northern Ireland v Agnew** [2024] ICR 51).

Conclusions

Detriments

102. Our conclusions in relation to the pleaded detriments are subject to conclusions on time limits.

From November 2015 onwards, following the Claimant Mr Hernando Piamonte's involvement in a petition for better wages, did Ms Rodrigues make negative and inappropriate comments about his union membership and activities

103. Mr Acosta Piamonte has not given evidence about his petition for better wages or any specific comments made to him around that time. The Union was only formed in early 2016 so any comments which may have been made by Ms Rodrigues to him in 2015 to do with such a petition would not have been to do with his membership of the Union.

104. We have found (paragraph 20 above) a comment was made to him by Ms Rodrigues in around 2016 after a protest with the Union, *"You think you're smart with your stupid union but we will see who wins"*, however the grievance which refers to that comment was not to do with any petition for wages and Mr Acosta Piamonte in his witness statement connected this comment to a protest. We do take this comment into account as a background matter but do not find that it goes towards proving this alleged detriment.

105. Further, if specific comments had been made in relation to membership of the Union in relation to a petition for wages we would have expected that to have been mentioned and included as part of the claim brought by Mr Acosta Piamonte in 2017.

106. In the circumstances this detriment is not proven.

On 13 October 2017, did Ms Rodrigues say verbally and directly to the Claimant, Ms Gusque, in a very aggressive tone that she doesn't like people that lie

On 20 October 2017, did Ms Rodrigues say to the Claimant Ms Gusque "don't play with me" in a very aggressive manner in response to Ms Gusque saying she would complete a specific task after she had finished with her current one

On 5 January 2018, did Ms Rodrigues shout at the Claimant, Ms Gusque that she did not do a good enough job cleaning the toilets and that she never did any deep cleaning work

During all relevant times, and in particular on 12 January 2018, did Ms Rodrigues reprimand the Claimant Ms Gusque about her work in English, in spite of knowing that Ms Gusque does not speak English and Ms Rodrigues speaking to other colleagues in Spanish

107. We have taken these four alleged detriments together as they all involve Ms Gusque and are around a similar time period.

108. We have found that these incidents did occur (paragraphs 30 to 33 above).

109. We find that comments and behaviour of this nature would naturally lead to a hostile working environment which readily fulfils the definition of a detriment as set out in **Shamoon**.

110. In determining whether there is an arguable case that the sole or main purpose of Ms Rodrigues' conduct was to prevent or deter Ms Gusque from being or seeking to become a member of the Union or penalising her for doing so, we have looked at background matters up to this point, including:

(i) The comment found to have been made by Ms Rodrigues to Mr Acosta Piamonte in around 2016, after a protest with the Union, *"You think you're smart with your stupid union but we will see who wins"*;

(ii) The comment found to have been made by Ms Rodrigues to Ms Fonnegra Rivera in June 2016, *"These people who work for the unions are rubbish"* (paragraph 21 above); and

(iii) Ms Rodrigues' actions at the Union protest in August 2017 (paragraph 25 above and discussed further below);

(iv) Ms Rodrigues' actions towards Ms Fonnegra Rivera when she discovered Ms Fonnegra Rivera had been involved in protests (paragraph 26 above).

111. All of these comments and actions by Ms Rodrigues relate specifically to union membership, and displayed a hostile and aggressive approach towards members of the Union. While the detriments under consideration do not relate specifically to Union membership, we find that as Ms Rodrigues would have been aware that Ms Gusque was a Union member there is an arguable case that the sole or main purpose of her poor treatment of Ms Gusque was to penalise her for that membership.

112. The respondent has provided no evidence or explanation as to Ms Rodrigues' motivation for this behaviour. It has therefore not discharged the burden of proof. All four allegations are proven.

On or around July 2018, did Ms Rodrigues unreasonably reprimand the Claimant Ms Sandra Fonnegra Rivera about her work

113. Ms Fonnegra Rivera did not give evidence about this alleged detriment in her witness evidence or in oral evidence. This allegation is therefore not proven.

On 17 January 2019 did Ms Rodrigues tell the Claimant Ms Rosa Gusque that she was little and dirty

114. We have found that this comment was made to Ms Gusque (paragraphs 35 to 37 above).

115. This is an unpleasant comment which was clearly a detriment to Ms Gusque.

116. For the same reasons as in paragraphs 110 and 111 above, we conclude that there is an arguable case that that the sole or main purpose of Ms Rodrigues making this comment to Ms Gusque was to penalise her for being a Union member.

117. We have rejected the suggestion made in the grievance document that there was a simple misunderstanding, and the respondent has presented no other evidence or explanation as to Ms Rodrigues' motivation for this behaviour. It has therefore not discharged the burden of proof, and this allegation is proven.

On 4 February 2019, did Ms Rodrigues tell the Claimant Mr Piamonte that she would deduct him 4 hours of pay if he did not clean the top of the cupboards to her standard

118. We have found that this comment was made (paragraphs 40 to 42 above).

119. The threat of a deduction of pay and this kind of hostile interaction is clearly a detriment.

120. In determining whether there is an arguable case that the sole or main purpose of Ms Rodrigues' conduct was to prevent or deter Mr Acosta Piamonte from being or seeking to become a member of the Union or penalising him for doing so, we rely on the same matters as set out in paragraph 110 above, noting that by this time Ms Rodrigues had made comments to Mr Acosta Piamonte specific to his Union activities. We therefore consider that there is an arguable case that the sole or main purpose of Ms Rodrigues' threat was to penalise Mr Acosta Piamonte for his Union membership.

121. The respondent substantiated Mr Acosta Piamonte's grievance about this comment and has provided no explanation or evidence as to Ms Rodrigues' motivation. It has therefore not discharged the burden of proof, and this allegation is proven.

During a meeting on 10 December 2019, did Ms Rodrigues tell the Claimant Ms Dos Santos Costa that she was tired of dealing with low educated and poor people, or words to that effect

122. We have found that Ms Rodrigues did make this comment (paragraph 43 above).

123. This is an unpleasant comment which was clearly a detriment to Ms Dos Santos Costa.

124. Ms Dos Santos Costa was not member of the Union at this time, however we accept her evidence that treated badly by Ms Rodrigues because she was friends with members of the Union. Given Ms Rodrigues' treatment of Union members as discussed above, we find there is an arguable case that the sole or main purpose of Ms Dos Santos Costa's poor treatment was to deter her from becoming a member of the Union within meaning of s146.

125. The respondent has not provided any evidence or explanation as to Ms Rodrigues' conduct, and the complaint made by Ms Dos Santos Costa was not even investigated. It has therefore not discharged the burden of proof, and this allegation is proven.

During a protest on 12 August 2017, did Ms Rodrigues stand directly in front of the Claimants using intimidatory body language during a protest held by the union?

126. We have found this happened, and that at the same time made horrible and threatening comments that against the company (paragraph 25 above).

127. Interfering with a Union protest in an intimidating manner is clearly a detriment.

128. This conduct was specifically related to Union activity which gives rise to an arguable case that the sole or main purpose was to penalise the claimants for their Union membership.

129. As discussed above, the respondent has given no evidence about this specific protest and no evidence or explanation as to Ms Rodrigues' motivations. It has therefore not discharged the burden of proof, and this allegation is proven.

Did Ms Rodrigues say: 'people who joined the union caused trouble, that employees should not join the union else they would be 'against' the company and were not trustworthy?' or words to that effect

1. to Ms Dos Santos Costa on or around May 2017

130. We have found that Ms Rodrigues warned Ms Dos Santos Costa to be careful about the 'Latin' people who worked in the Museum as they were members of the Union and 'troublemakers' (paragraph 24 above).

131. Making hostile comments in relation to Union membership is clearly a detriment.

132. For the same reasons as set out in paragraph 124 above, and because of the inherent nature of these comments, we find there is an arguable case that the sole or main purpose of making these comments to Ms Dos Santos Costa was to deter her from becoming a member of the Union.

133. The respondent has not provided any evidence or explanation as to Ms Rodrigues' conduct. It has therefore not discharged the burden of proof, and this allegation is proven.

2. *To all the Claimants repeatedly throughout the course of their interactions with her? The Claimants' case is that whenever they raised complaints about Ms Rodrigues, she would say words to this effect to everyone at the end of their shifts:*

134. We have made a general finding that Ms Rodrigues did make comments of this nature when complaints were raised (paragraph 22 above).

2.1 the Claimants Mr Piamonte, Ms Gusque and Ms Yaguar Salinas raised complaints on or around 20 March 2018

135. The claimants have provided no evidence about this date, and we cannot find evidence of a complaint having been made around this time by Mr Acosta Piamonte, Ms Gusque and Ms Yaguar Salinas. This allegation is therefore not proven.

2.2 the Claimant Mr Piamonte raised complaints on 3 September 2016 and 15 Feb 2019

136. We have already concluded that we cannot find on balance that comments of this nature were made on or around 3 September 2016

(paragraph 22 above). This allegation is therefore not proven in respect of 3 September 2016.

137. As to 15 February 2019, we note that Mr Piamonte did raise a grievance on 23 February 2019. We find that it is more likely than not Ms Rodrigues did make comments of this nature around that time in relation to that grievance being brought.

138. Hostile comments of this nature are clearly a detriment.

139. The comments relate directly to Union membership, which gives rise to an arguable case that the sole or main purpose of making the comments was to penalise Mr Acosta Piamonte and the other claimants for their Union membership.

140. The respondent has not provided any evidence or explanation as to Ms Rodrigues' conduct. It has therefore not discharged the burden of proof, and this allegation is proven.

1.3 All the Claimants raised a group grievance on 8 March 2023

141. The claimants have provided no specific evidence about comments made on this date. If comments of this nature were made it is surprising this was not mentioned during the grievance process. This is the most recent grievance and we would expect the claimants' recollections to be the more clear in relation to what was said at the time. In the circumstances this allegation is not proven.

During the consultation process in November 2022, in which the Claimants accepted a reduction in their working hours, did Mr Justin Gray, Operations Director, promise to give the Claimant's first refusal of hours that became available if cleaning demands increased?

142. We have found this promise was made however this in itself is not a detriment and the claimants do not appear to contend the promise itself was a detriment.

Did the Respondent fail to offer the Claimants first right of refusal of any additional hours should they become available, as promised by Mr Gray? The Claimant's allege they lost up to 5 hours of work a week from March 2023 until present day

143. We have found it necessary to split up this allegation into three time periods:

(i) 8 March 2023 onwards when the afternoon shift from 3pm to 7pm became available;

(ii) 26 June 2023 onwards when the cleaning role from 6am to 9am became available on the resignation of Ms Maria Dos Santos;

(iii) 4 March 2024 onwards when a further cleaning role from 6am to 9am became available at the end of Ms Dos Santos Costa's employment.

144. In relation to March 2023, we have found that the claimants were not offered these hours. The role was not advertised to them and they were not given the first right of refusal (paragraphs 59 to 61 above).

145. We accept that the claimants could legitimately see the breach of the promise made to them as disadvantageous, such that it amounted to a detriment to them.

146. Given the comments made by Ms Rodrigues on the same day (paragraph 63 above and discussed further below) and her conduct previously as discussed above, there is an arguable case that the sole or main purpose of not offering the hours to the claimant was in order to penalise them for their union membership.

147. The respondent's explanation is that the role was offered to Ms Maria Dos Santos to avoid a redundancy. Have found this was a reasonable operational decision (paragraph 62 above) and accept this was a genuine reason and the offer to her did not have the sole or main purpose of seeking to penalise the claimants for their Union membership. The respondents have discharged the burden of proof and the allegation is not proven in respect of this period.

148. In relation to June 2023 onwards, we find that the Porter/Cleaner role was a sufficiently different role that it was reasonable for it to be advertised more generally. However the claimants were not offered the hours for the Cleaning Operative role to replace Ms Maria Dos Santos. There is no evidence of it being advertised to them and we have found that the piece of paper photographed was not posted in the cleaning cupboard. The claimants were asked informally about whether they might want an afternoon shift however there is no evidence they were ever told there would be morning hours available and there was no discussion about sharing these hours between them to raise their hours back towards previous levels, despite Ms Malone stating in email correspondence to Ms Rodrigues that it made sense for the additional hours to be offered amongst the existing team (paragraph 90 above). This breached the promise made to them to offer them right of first refusal in relation to available hours.

149. We accept that the claimants could legitimately see the breach of the promise made to them to restore their hours when available was disadvantageous, such that it amounted to a detriment to them.

150. In considering whether there is an arguable case that the respondents not offering the hours to the claimants had the sole or main purpose of penalising them for their Union membership we draw inferences from Ms Rodrigues' previous conduct as discussed above, and the fact that Ms Malone's suggestion that the additional hours should be offered amongst the existing team was not followed. We find that there is an arguable case.

151. The respondent's explanation, given for the first time during cross examination, is that the hours could only be worked from 6am to 9am as this had been stipulated by the client. We reject that explanation for the following reasons:

(i) The respondents have provided no documentary evidence at all in support of this contention;

(ii) If this was true we would expect such an important point to have been included in the respondent's pleaded case and witness evidence;

(iii) The email correspondence around this time suggests that there was some flexibility in the hours which could be worked;

(iv) There was a Porter/Cleaner working from 7.30am to 4pm from around the same date, which suggests that cleaning work could be done after 9am.

152. In the circumstances we find that the respondent has not discharged the burden of proof and this allegation is proven. We find that the 6 claimants who remained as employees could have been offered an extra 30 minutes each per day from 26 June 2023, i.e. two and a half hours each per week working either 5.30am to 9am or 6am to 9.30am.

153. In relation to March 2024 similar considerations apply. The claimants (without Ms Dos Santos Costa) were not given first right of refusal in relation to these hours and it was reasonable that they perceived this to be a detriment. For the same reasons as given in paragraph 150 we find that there is an arguable case.

154. The respondent has not provided any evidence or explanation in relation to this period. In so far as it might rely on an alleged stipulation that hours could only be worked from 6am to 9am, we reject that reason for the same reasons as set out in paragraph 151 above. The respondent has not discharged the burden of proof and this allegation is proven We find that the remaining 5 claimants could each have been offered an extra 3 hours per week each from 4 March 2024, spread throughout the week.

On or around 8 March 2023, did Ms Rodrigues inform the Claimants that the Respondent was 'proud to be bringing in new staff following new cleaning demands from the client.
On or around 8 March 2023, did the Claimants query why they had not been offered the hours? If so, in response, did Ms Rodrigues say, 'it was because she wanted new people working on the site'.

155. We have found these comments were made (paragraph 63 above).

156. We find that these comments were needlessly hostile. Ms Rodrigues could have just told the claimants that someone was being brought in to avoid a redundancy situation.

157. The fact that she made such comments rather than telling the claimants the truth and with no justifiable reason gives rise to an arguable case that this was a continuation of hostile previous behaviour by her towards union members. There is an arguable case that her sole or main purpose in doing so was to penalise the claimants for their Union membership.

158. The respondent accepts that Ms Rodrigues made comments of this nature, and by 'new' was referring to Ms Maria Dos Santos. That does not explain the full extent of the comments made by Ms Rodrigues, that she was proud this was happening and that it because she wanted new people on site that the claimants were not offered the hours. Even though there was a reasonable explanation why the job was being offered to someone else, this was needlessly antagonistic. The respondent has provided no evidence as to her motivation in doing this and therefore has not discharged the burden of proof.

Did the Respondent or any of its agents fail to properly investigate the grievance raised by the Claimants on 8th March 2023

Did the Respondent fail to uphold the Claimants grievance

159. We have considered these two related matters together.

160. We find that the grievance was not properly investigated. There were no interviews conducted of the claimants other than Ms Dos Santos Costa, who herself was not provided interpretation during the grievance hearing. Ms Davey took Ms Rodrigues' word over all of the claimants, without analysis or explanation and based on email questions rather than a formal interview. Similarly, Ms Davey took Ms Malone's word as to the background without seeking any corroboration in the form of documents. A different result may have been reached, at least in relation to comments alleged to have been made by Ms Rodrigues, had the grievance been properly investigated.

161. Not dealing with the grievance adequately is likely to have been perceived by the claimants as disadvantageous to them and therefore constitutes a detriment.

162. The claimants argue that the respondent was not minded to investigate complaints of trade union detriment. The grievance investigation was so poor, and there was no intervention by the respondent either in setting proper terms of reference or once report received to ensure a fair process had been followed, that it is arguable that the respondent had a fixed mindset and was going through the motions without a genuine desire to resolve the issues which had been raised, and that this may well have been because of the many grievances they had had to deal with from Union members previously. It is arguable therefore that the sole or main purpose of failing adequately to investigate the grievance or to uphold it was to penalise the claimants for their membership.

163. The respondent's explanation is that Ms Davey is external consultant and independent, and they relied on her expertise. We have not had any evidence from Ms Davey however she is a third party. While investigation report is poor there is nothing to suggest anything deliberate on her part to conduct the grievance in this way because it was a grievance about trade union detriment. We are just satisfied that the respondent has discharged the burden of proof that the sole or main purpose of Ms Davey conducting the investigation in this way was not because she was seeking to penalise the claimants. The respondent has therefore discharged the burden of proof and these allegations are not proven.

On 12th May 2023, did Ms Leigh Goldsmith, Senior HR Manager, say to the Claimants / their union representative that 'the contents of [their] letter [appeal letter] and note does not set out [their] grounds for appealing the decision,' to obstruct and delay hearing their grievance appeal

164. Appeal grounds as set out at paragraph 72 above are very detailed. In the last paragraph Mr Pal identifies clearly that what was necessary for the grievance to be properly considered was that the other claimants should also be interviewed.

165. Ms Goldsmith's email of 12 May 2023 reads as though only brief details of the appeal have been given. Ms Goldsmith ignores entirely Mr Pal's suggestion that the claimants need to be interviewed and puts the onus on Mr Pal to provide additional evidence.

166. It is not surprising that Mr Pal's response was that he was unsure which part of the appeal was not understood. He referred again 'the obvious existence of witness evidence' as a clear indication that the findings made were wrong.

167. Ms Goldsmith's response on 15 May is that the grievance can only consider the evidence submitted and that no further evidence had been submitted as part of the appeal. Given her self-professed experience of dealing with grievances and the usual industrial practice of interviewing those who have brought a grievance, and the clear issues raised in Mr Pal's original email detailing the appeal we find it surprising that she took the stance that it was not the responsibility of the investigator to look further and conduct an adequate investigation by holding such interviews, particularly where English was not the claimants' first language. This is not a case where it would have been disproportionate to interview the number of claimants involved in the collective grievance. Nor was her stance based on any written policy. The short grievance policy which the respondents used at that time simply stated that 'You will then be invited to a meeting at a reasonable time and location at which your grievance will be investigated fully.' There was no policy dealing with collective grievances.

168. When Mr Pal suggested in his response, for the second time, that Ms Goldsmith was making the process unnecessarily difficult and that the reason for this was trade union membership and the trade union complaint she did not correspond further.

169. We find that if Ms Goldsmith had taken a neutral and supportive stance she could easily have assisted in preparation for the appeal by helping to arrange interviews for the claimants, which was part of her role. We find on balance that Ms Goldsmith was being deliberately obstructive in dealing with the appeal.

170. This was a detriment. Employees are entitled to have their grievances dealt with properly and neutrally by their employer, and to take such a stance in preparation for the appeal was clearly disadvantageous to the claimants and a detriment.

171. The way Ms Goldsmith dealt with Mr Pal's correspondence displays animosity towards Mr Pal and the claimants in dealing with their serious complaints of trade union detriment and it is arguable that this was because the respondent was not minded to entertain or seriously investigate complaints of that nature. It is therefore arguable that the sole or main purpose in taking this stance was to penalise the claimants for their Union membership.

172. Ms Goldsmith's explanation in cross examination when put to her that it was necessary for the people bringing the grievance to be interviewed in person was, *"No, I would have expected the employee representative to bring statements."* She considered that it was the responsibility of the union representative to assist the claimants with any language difficulties. She denied she was trying to make life difficult for them. Given her experience and the clear suggestion made by Mr Pal that it was necessary to interview the claimants we do not accept Ms Goldsmith's explanation. We find that the respondent has not shifted the burden of proof and that therefore this allegation is proven.

Did the Respondent or any of its agents fail to properly engage with the points of the Claimant's grievance appeal?

173. We find that the grievance appeal was also dealt with inadequately. While Ms Keeling made some attempt to contact some of the claimants by email there is no explanation why she did not contact all of them, there was no attempt to interview them fully or to follow up on what they said in their emails, and while she notes what is said by them at one point in her report there is no attempt at all to evaluate that evidence. Rather, she took the same stance as Ms Goldsmith and found that it was for the claimants to produce statements and that the investigation into the alleged comments by M Rodrigues had been concluded. There is also no real basis for her conclusion that because Ms Rodrigues was herself a union member she could not have acted detrimentally towards the claimants because of their membership of a different union. She also relied on the original email comments provided by Ms Rodrigues to Ms Davey and did not interview her.

174. The way in which the appeal was dealt with was disadvantageous to the claimants and is therefore a detriment.

175. In the same way as the grievance this lack of rigour and lack of intervention by the respondent to ensure a fair process may well be the result of fixed mind set and the respondent going through the motions without a genuine desire to resolve the issues, and it can be inferred that this was arguably penalising the claimants for their union membership.

176. The respondent again relies on the fact that Ms Keeling was an independent third party and relied on her expertise. In the same way as Ms Davey, while the report was inadequate there is no direct evidence to suggest that Ms Keeling was not independent or the way in which she conducted the appeal was deliberate in order to penalise the claimants for their union activity. In the circumstances we find that the respondent has discharged the burden of proof, therefore this allegation is not proven.

Did the Respondent, in its grievance appeal outcome on 30 June 2023, falsely accuse the Claimant Ms Dos Santos Costa of asking for Ms Rodrigues's dismissal and reprimand her for doing so?

177. The respondent has not pointed to any evidence of Ms Dos Santos Costa asking for Ms Rodrigues' dismissal. This was Mr Pal's suggestion in the grievance hearing. The 'reprimand' referred to appears to be paragraph 77 of Ms Keeling's report, and does not appear to have been actioned by the respondent.

178. We find that Ms Keeling's suggestion that Ms Dos Santos Costa had sought Ms Rodrigues' dismissal, which was incorrect, and her suggestion that this might amount to improper behaviour, was likely to be perceived by Ms Dos Santos Costa as a detriment to her.

179. For the same reasons as set out in paragraph 175, there is an arguable case that the reason for this passage was to penalise Ms Dos Santos Costa for her Union membership. However, for the same reasons as set out in paragraph 176, we find that Ms Keeling was independent of the respondent and there is no direct evidence that her inclusion of this passage was deliberately to penalise Ms Dos Santos Costa for her Union membership. In the circumstances we find that the respondent has discharged the burden of proof, therefore this allegation is not proven.

Summary in relation to detriments

180. We therefore find proven the following allegations in the List of Issues:

(i) 3.1.1, 3.1.3, 3.1.4, 3.1.5 and 3.1.6 in relation to Ms Gusque;
(ii) 3.1.8 in relation to Mr Acosta Piamonte;
(iii) 3.1.9 in relation to Ms Dos Santos Costa;
(iv) 3.2 in relation to all claimants;
(v) 3.3.1 in relation to Ms Dos Santos Costa;
(vi) 3.3.2.2 in relation to all claimants, in respect of February 2019 only;
(vii) 3.5 in relation to all claimants in respect of the period 26 June 2023 onwards and in relation to all claimants except for Ms Dos Santos Costa in respect of the period 4 March 2024 onwards;
(viii) 3.6 in relation to all claimants;
(ix) 3.7 in relation to all claimants;
(x) 3.10 in relation to all claimants.

Time Limits

181. Acts from 1 March 2023 in are within the primary time limits set out in section 147 with extensions for ACAS early conciliation. This includes allegations 3.5 (to the extent proven), 3.6, 3.7 and 3.10.

182. We next have to consider whether there is a series of similar acts or failures to those matters which are in time, taking into account he guidance in **Arthur**, **Agnew** and **Jhuti**. This is a finding of fact for us to make taking all the evidence and our findings in the round. With the exception of the

allegation against Ms Goldsmith (3.10), the allegations found proven all involve the same perpetrator, Ms Rodrigues, and the same cohort of employees. We have found that the behaviour of Ms Rodrigues was to do with membership of the Union and Ms Rodrigues' stance on that. While we were concerned that there are large gaps in time between allegations, particularly when the allegations found proven for each claimant are considered on an individual basis, it has been conceded by the respondent that there is a series of acts in this case. In the circumstances we are persuaded that there was a series of similar acts or failures such that all allegations have been brought in time. There is therefore jurisdiction for the Tribunal to consider all the allegations found proven and we do not need to go on to consider the question of reasonable practicability.

Remedy

183. A remedy hearing will be held on 16 January 2025. A fresh notice of hearing will be sent out in due course.

Employment Judge Keogh

Date 17 October 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

24 October 2024

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FOR THE TRIBUNAL OFFICE