Case Number: 2201726/2015

RESERVED

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr K Ahmed	**v**	**Arearose Limited**

Heard at: London Central
On: 15 and 14 December 2016

Before: Employment Judge Hodgson
Mrs M Brooks
Mr D Eggmore

Representation

For the Claimant: Mr A Khondoker, solicitor (day 1)
Mr R Ogilvy (day 2)

For the Respondents: Mr S Purnell, counsel

JUDGMENT

1. **The claimant's application of 14 December 2016 to add as a claim an allegation that the dismissal was an act of victimisation is refused.**
2. **All claims identified in claim number 2201726/2015 have been presented out of time.**
3. **The tribunal declines to exercise its discretion to extend time in relation to any claim, and declines jurisdiction to hear any claims in case 2201726/2015.**
4. **All claims are dismissed.**

RESERVED

RESERVED REASONS

Introduction

1. Our judgment was announced in tribunal and the reasons were reserved.

2. The claimant presented a claim to the London Central Employment Tribunal on 24 June 2015.

3. This claim has a difficult procedural history. At this stage, it is sufficient to note that the claim was originally rejected by Employment Judge Wade as she found a failure to comply with the conciliation procedure. We do not need to set out the detail. The matter went to the Employment Appeal Tribunal and was remitted.

4. Employment Judge Auerbach heard the remitted hearing. He accepted that the claim was validly presented on 24 June 2015. In reaching that decision, he accepted that there were claims of race discrimination brought prior to the Equality Act 2010, i.e., under the Race Relations Act 1976. In short, he accepted it should never have been rejected.

5. On day one of the hearing, we reviewed the issues as set out in the decision of Employment Judge Tayler from 10 August 2016. It was not possible to adequately identify the claims from those issues. It is clear that Employment Judge Tayler had identified that there were difficulties, as he had asked the claimant to provide further information.

6. Employment Judge Tayler's issues stated there was a claim of "failure to pay holiday pay" the basis of that is not set out. He refers to a refusal to permit the claimant to take holiday and a refusal to pay holiday. No particulars were set out, and the claimant was to provide more details on the schedule of loss.

7. The original issues also referred to a direct race discrimination case. It was said that not being promoted, not being permitted to attend at meetings, and the failure to pay holiday were acts of race discrimination. The detail was not given.

8. Finally, there was a claim of harassment. This claim referred to a failure to promote and being told that he must work or leave his job. No detail was given. There was also reference to a comment "I will strangle you." However, who said this, when, and in what circumstances is not addressed.

9. It is clear that the issues as set out were inadequate, and this was common ground before the tribunal.

10. We were concerned to ascertain the relevant factual basis of each general allegation made. In particular, we sought to identify the relevant dates for each allegation.

11. We considered the alleged refusal to allow holiday leave. The claimant was unable to identify any specific date on which he said he had been refused holiday leave. Eventually, he indicated there was a letter from 15 February 2015, which was in his possession, but which had not been brought to the tribunal. The claimant alleged that the letter was a request for holiday. The nature of the refusal was said to be an omission. No detail was given in his claim form, any schedule, or his witness statement.

12. The claimant abandoned his allegation that there been any failure to pay for holiday actually taken.

13. The claimant alleged that the refusal to allow him to take holiday was an act of race discrimination. The specific dates of any refusal either express or by omission, were not identified. They did not appear in any document. It was not addressed his witness statement.

14. The claimant alleged that he had not been promoted and this amounted to race discrimination. The specific occasions were not adequately identified. The most recent failure was said to be in 2010.

15. We considered the allegations of harassment. The claimant alleged that Mr Asemah had threatened to strangle the claimant. He confirmed that allegation went back to 2005.

16. He alleged that the humiliation experienced by not being promoted was also an allegation of harassment. This did not add materially to the allegation of race discrimination.

17. We confirmed that there were a number of difficulties with this case. First, despite the request of Employment Judge Tayler to clarify matters, the specific allegations were poorly identified and not set out. Second, to the extent the claims had been identified, the vast majority appeared to be significantly out of time. Third, the most recent allegation, which appeared to concern a possible refusal of a request for holiday made on 15 February 2015, was not set out, or pleaded anywhere, and it would require an amendment to the claim form. Further, the evidential basis had not been addressed: the letter had not been produced and there was no evidence in the claimant's statement. Fourth, despite the fact that it was clear that a number of these allegations must be old (in revoking Employment Judge Wade's decision, and accepting the claim, Employment Judge Auerbach had identified that there were claims brought under the Race Relations Act 1976). No explanation for the delay was given in the claimant's witness statement.

18. We indicated that if the claimant was to proceed with his claims, we may need to consider evidence explaining the reason for delay. That evidence should have been in his statement, and if he wished to rely on such

evidence, he should produce a statement, and apply for leave to rely on it. We indicated we would be unlikely to allow oral evidence in chief, as a statement could be produced by 10:00am on day two.

19. On day one, the claimant's representative sought to add further allegations of detrimental treatment. We noted that there were already a number of unparticularised and unclear allegations. We confirmed that if the claimant wished to rely on other allegations, he must make an application in writing. Any new factual matters should be identified and the claim form amended accordingly. We confirmed further allegations would require an amendment, and reminded the parties that amendment is discretionary.

20. On day two of the hearing, Mr R Ogilvy took over conduct of the claimant's case from Mr Khondoner. Mr Ogilvy represents parties through a charity, Fortitude Group. He confirmed that he was fully briefed on the claim and that he was not acting for profit. Mr Ogilvy has some legal training and has experience in presenting claims.

21. Mr Ogilvy produced a letter dated 27 February 2015 from the claimant to the respondent concerning holidays. He confirmed that he did not have a copy of the letter of 15 February 2015 which had been referred to the day before. He confirmed that the letter of 27 February 2015 was not of any relevance, and the claimant was not relying on it in relation to any allegation or claim. Mr Ogilvy made no application to include any allegation of refusal to grant holiday, whether stemming from any letter of 15 February 2015, or 27 February 2015, or otherwise.

22. We enquired whether there was any application to amend. Mr Ogilvy stated that he did seek to amend the claim form, but there was no specific written application to amend. He said the application existed in his skeleton argument. In particular, he referred to paragraph 2.8. He also referred to the claimant's statement, and he referred to paragraphs 6 to 10 inclusive. Having read those paragraphs, we discussed the nature of the application.

23. Mr Ogilvy confirmed that the only application to amend was to include an allegation that the subsequent dismissal on 18 May 2016 (nearly a year after the claim was filed) was an act of victimisation. The protected act was the filing of the original claim form. During the discussion, he initially suggested that there were other amendments contained in the witness statement. We considered in detail the second witness statement and the skeleton argument. Mr Ogilvy agreed that there was no other application to amend. The only application to amend was to include dismissal as an act of victimisation.

24. We identified what appeared to be the issues: should we allow the claim to be amended to include a claim of dismissal as victimisation; were all, or any, of the claims out of time; and if so, should time be extended.

25. The final potential claim identified in the original claim form was the respondent's refusal to grant holiday. However, the detail was not in the

claim form. The day previously, the claimant had referred to his letter of 15 February 2016. We had noted that it may be necessary to amend the claim in order to proceed with that allegation. The claimant was unable to identify the date by which any response should have been given to his request, but he did put it as an omission. We agreed that if the claim related to the letter of 15 February 2016 could not proceed, there was no claim identified prior to 2010.

26. We gave the parties a list of issues reflecting the discussion on day one. No party disputed its accuracy. That list appears as appendix 1.

27. The respondent did not take issue with the claimant filing a second statement. The claimant adopted that statement, and then was cross-examined. We do not need to make a separate finding of fact at this stage, the facts relevant to this matter can be incorporated in our conclusions.

The application to amend

28. The claimant was dismissed in May 2016. The date of dismissal was not clear. It is not adequately addressed in the claimant's evidence. The claimant accepted that he was dismissed at least by 18 May 2016, when the respondent's response confirmed that his employment had been terminated. He confirmed that he understood he had been dismissed at that date. At that time, he had solicitors acting for him, and they have continued to act for him up to, and including, the hearing.

29. The claimant knew, at least by 2005, that he could bring claims against his employer. In relation to a number of claims, he had already sought informal advice from a solicitor friend.

30. The claimant consulted solicitors, PGA Solicitors LLP, during the first week of April 2015. The claimant did not waive privilege in relation to the advice.

31. It is apparent that he later instructed his current solicitors, but the claimant was unable to confirm the date. It is clear that the claimant has had continuous legal advice since April 2015. The claimant has given no evidence about the advice given, the instructions given, or his understanding of the limitation periods. He has not waived privilege; that is his right. The solicitors would, of course, have been under a duty to advise about his claims, and to advise about any limitation periods.

32. We have noted that the case was rejected as a result of failing to include a conciliation certificate number. After Employment Judge Auerbach revoked the decision to reject the claim, Employment Judge Tayler gave case management orders, and set out some issues, on 10 August 2016. He also identified that there was a need for further clarification. As noted, it was never envisaged that those issues would be sufficient or definitive; hence the need for clarification at the start of the hearing on day one.

33. It is common ground that the claimant confirmed on 10 August 2016 that there was no claim of victimisation. Although the claim form has the term victimisation recorded with in it, it is common ground that there was no specific claim of victimisation ever made. We have therefore proceeded on the express concession of both sides that there was never a withdrawal of any victimisation claim: no such claim was made.

34. During discussions on the first day, the claimant failed to allege that the dismissal was an act of victimisation. The first mention of the dismissal claim was on day two, when Mr Ogilvy referred to it in his skeleton argument, and the tribunal made explicit the implied application to amend.

35. The claimant failed to advance any clear or adequate explanation for the delay in proceeding with the application. He suggested that there may have been some confusion, particularly with regard to ACAS and the need for conciliation. That may be so, but it is difficult to see how there could be any confusion after Employment Judge Auerbach's judgment of 19 May 2016, which was sent to the parties on 23 May 2016. By that time, the claimant had been dismissed, he believed it was an act of victimisation, and he knew that his claim would proceed.

The application to amendment

36. In exercising the power of amendment the tribunal must have regard to the relevant principles. The leading authority is the case of **Selkent Bus Company Limited v Moore 1996 ICR 836**.

37. Under **Selkent** the tribunal must carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the relative hardship that will be caused to the parties by granting or refusing the amendment. The tribunal should consider the nature of the amendment. Is it a minor matter or is it a substantial alteration pleading a new cause of action? If a new cause of action is to be added by way of amendment then the tribunal should consider whether the claim is out of time and if so whether the time limit should be extended (although this is no more than a factor to be taken into account).

38. We should have regard to all the relevant factors in accordance with **Selkent**.

39. The tribunal can also have regard to other relevant factors such as: the steps taken to obtain advice; the explanation for the delay; the cogency of the evidence; and the question of cooperation.

40. When considering hardship the tribunal may consider whether there is absence of hardship to the claimant, for example, can the original claim proceed? The tribunal can consider whether there is a greater risk of hardship to the respondent, if the amendment were allowed. The tribunal can consider whether the hearing will be longer and whether there will be an increase in costs. However, no single factor is conclusive and it is important to undertake the balancing exercise.

41. We deal now with the application to include dismissal as a claim of victimisation. Mr Ogilvy submits that including dismissal as and act of victimisation is a minor amendment. We reject that submission. Dismissal is a new fact. The facts concerning dismissal are not set out in the claim form as it was filed nearly a year prior to the dismissal. Victimisation is a new claim. This is a new claim based on new facts.

42. It follows as part of our consideration of the balance of hardship, we must have regard to the fact that the claim is out of time.

43. This is an application which has been made extremely late in the day. The application is poorly identified and inadequately pleaded. The factual circumstances on which the claimant relies are not set out properly or in detail. There is no reason why the application could not have been made at an earlier stage. There is no reason why the application could not have been set out properly and adequately within an amended particulars of claim.

44. The claimant had access to advice for over a year prior to the dismissal. He was clearly concerned about the dismissal; in his original claim form he seeks a "declaration not to terminate the applicant." He continued to receive legal advice at all material times. It must be assumed that his solicitor knew that bringing a claim of dismissal was subject to a limitation of three months. It must be assumed that his solicitor knew that either the claimant must file a new claim, or that he must seek to amend his original claim. Whether that advice was given, and how the claimant responded to it, we do not know because the claimant has not waived privilege. However, there can be no doubt that a solicitor advising competently would have addressed the issue.

45. The claimant has given no explanation for the delay, over and above some general points made in his witness evidence. He alleges that he was ignorant of the possibility of bringing a “continuing act” claim until April 2015. However, even if that were relevant, it must follow that he knew of the possibility at the time of dismissal. He alleges that he was fearful of bringing a claim in 2005 because he feared losing his job. Fear of losing a job cannot remain an active fear after dismissal. He also seeks to blame his solicitor for failure to bring all claims forward, despite being instructed in April 2015. It is not possible to consider that further as the claimant still asserts privilege. In any event, we cannot presume his solicitor was other than competent and we must presume that the solicitor advised concerning the dismissal application. Even if the solicitor did not advise, the claimant should have made enquiry. The matters relied on do nothing to explain the delay in applying to amend.

46. The fact that there was reference to victimisation in the case management discussion in August 2016 is relevant. It is for the claimant to explain why he specifically identified the possibility of a victimisation claim, but chose not to raise it. There is a possibility that he simply changed his mind. However, he has given no explanation.

47. We have considered where the balance of hardship lies. If the amendment were allowed, it would be necessary to ask the claimant to plead the case properly, and to give the relevant factual circumstances. Thereafter, the respondent would have to produce further evidence. Further time and expense would be expended. A new hearing would be listed. Had the claimant brought the matter earlier, the preparation would have been simpler and more economical.

48. The claimant is able to proceed with any claims that have been identified in the original claim.

49. We do recognise that there may be a reluctance for claimants to bring new claims, as that may incur a further fee. Whilst we recognise that possibility, it has not been a matter raised by the claimant. The potential problem of incurring a new fee is not insurmountable. It is possible to seek to amend an existing claim to include a subsequent matter (see **Prakash v Wolverhampton City Council EAT 140/06**). It is not an automatic right. We must not lose sight of the fact that in considering the balance of hardship we must have regard to the relevant limitation periods. If it would not be just and equitable to extend time for the presentation of a fresh claim, this is a factor which should weigh in our decision.

50. We have received no reason, or adequate explanation, for why the claimant has delayed until 14 December 2016 to make his application. Primary limitation expired no later than 17 August 2016. The claimant should have brought his claim by then. It is for the claimant to identify the reason for the failure to act earlier. He has failed to give any proper explanation.

51. In this case, the amendment is poorly defined. It lacks the most basic detail. There has been an unexplained and extensive delay in making the application. The claimant specifically stated in August that there was no claim of victimisation at all. No action of the respondent has inhibited the claimant's ability to bring his claim. The claimant had access to appropriate legal advice at all times. The respondent would have to start its preparation again and would be put to considerable expense. The failure to deal with the matter is entirely the fault of the claimant and any prejudice suffered is entirely of his own making. In the circumstances, we refuse the application to amend.

Time

52. Section 123 Equality Act 2010 sets out the time limits for bringing a claim.

> **(1) Subject to section 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of--**
>
> > **(*a*) the period of 3 months starting with the date of the act to which the complaint relates, or**
> > **(*b*) such other period as the employment tribunal thinks just and equitable.**

> **…**
> **(3) For the purposes of this section--**
>
> > **(*a*) conduct extending over a period is to be treated as done at the end of the period;**
> > **(*b*) failure to do something is to be treated as occurring when the person in question decided on it.**
>
> **(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something--**
>
> > **(*a*) when P does an act inconsistent with doing it, or**
> > **(*b*) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.**

53. It is for the claimant to convince the tribunal that it is just and equitable to extend the time limit. The tribunal has wide discretion, but there is no presumption that the tribunal should exercise its discretion to extend time (see **Robertson v Bexley Community Centre TA Leisure Link 2003 IRLR 434 CA**).

54. It is necessary to identify when the act complained of was done. Continuing acts are deemed done at the end of the act. Single acts are done on the date of the act. Specific consideration may need to be given to the timing of omissions. In any event, the relevant date must be identified.

55. The tribunal can take into account a wide rage of factors when considering whether it is just and equitable to extend time.

56. The tribunal notes the case of **Chohan v Derby Law Centre 2004 IRLR 685** in which it was held that the tribunal in exercising its discretion should have regard to the checklist under the Limitation Act 1980 as modified by the Employment Appeal Tribunal in **British Coal Corporation V Keeble and others 1997 IRLR 336**. A tribunal should consider the prejudice which each party would suffer as a result of the decision reached and should have regard to all the circumstances in the case particular: the reason for the delay; the length of the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued had cooperated with any request for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to a cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

57. This list is not exhaustive and is for guidance. The list need not be adhered to slavishly. In exercising discretion the tribunal may consider whether the claimant was professionally advised and whether there was a genuine mistake based on erroneous advice or information. We should have regard to what prejudice if any would be caused by allowing a claim to proceed.

58. We must first identify the most recent claim. We have already referred to this above.

59. The claimant has alleged there was a refusal to grant a holiday request made by a letter of 15 February 2015. That claim does not appear in the claim form. It does require an amendment. Albeit there is some general allegation that holiday requests were refused, this is a new allegation based on new facts. There is no application to amend, and it follows no amendment has been granted. However, as this possible allegation is the most recent allegation prior to any dismissal, we will first consider whether time should be extended on the assumption that there was an application for holiday on 15 February 2015 that was refused by an omission to respond.

60. For the purposes of this discussion, we are going to assume that no amendment is required.

61. We need to identify the date of the detriment. The claimant has failed to set out any specific date by which the respondent should have acted. We accept we received no evidence on the point; however, it is for the claimant to set out his pleaded case. It is for the claimant to say when the respondent should have granted his application, and why. We have proceeded on the assumption that a reasonable time to respond to a request for holiday would be no more than one week. This is a matter on which the lay members have been particularly helpful. We should note that it may be possible to argue that the employer could give counter notice under regulation 15 Working Time Regulations 1998, and this could may lead to a different date for an active refusal (it is not necessarily relevant to omission), but this is not a point advanced by the claimant. It is for the claimant to advance his case and identify the relevant date of any relevant omission. It is for the claimant to explain the basis for this and to apply to amend if needed. The claimant has failed to set out the case and the mere possibility of a different claim does not assist a claimant who fails to take the most basic steps to set out his own claim.

62. Assuming a reasonable period would be 1 week, this would give the date of omission as 22 February 2015. Primary limitation would therefore expire on 21 May 2015. In this case, there would be no extension of time relevant to the conciliation process.

63. Should time be extended? The allegation appears to be advanced both as a breach of regulation 13 Working Time Regulations 1998 (the claimant has failed to confirm the exact regulations relied on) and as an act of direct discrimination. In relation to the former, the test is one of reasonable practicability. In relation to the latter, it is a just and equitable test. If it were not reasonably practicable to present the claim, it is difficult to see how it would not also be just and equitable to extend. It is uncontentious that the just and equitable test is wider than the reasonably practicable test and the discretion is greater.

64. There is no argument that it was not reasonably practicable to bring the claim. There has been no suggestion in any evidence or any submissions that the claim could not have been brought at the relevant time. The submissions proceeded entirely on the basis of the just and equitable point.

65. It is for the claimant to set out his reason. We can take account of all relevant factors. We should consider the prejudice each party would suffer as a result a decision reached and we should have regard to all circumstances.

66. The claimant has failed to set out a proper reason for the delay. The claimant cites three reasons which we have referred to above.

67. First, he alleges that he was ignorant of any right to claim a "continuing act" prior to April 2015. That may be right, but it does nothing to explain the delay between the first week of April 2015 and the presentation of the claim on 24 June 2015.

68. Second, the claimant may have been afraid to bringing a claim at an earlier date; however, by April 2015, it is clear that he had resolved to bring that claim. It does nothing to explain the further delay.

69. Third, the claimant alleges that any failure was that of the solicitors. It is implicit in what he says that he suggests that all claims were brought to the attention of the solicitor. That would undermine any assertion in relation to a lack of knowledge of the importance of continuing act; however, there is no evidence on which we could find that any solicitor was at fault in failing to identify any specific claim. Moreover, it does nothing at all to explain why the claimant has failed to clarify the claims that he has brought and failed to particularise them.

70. Employment Judge Tayler identified that there were difficulties and asked for further particulars. On the first day of the hearing, considerable time was spent in explaining the need to identify the specific allegations. The height of the claimant's case now (albeit he has not applied to include this allegation) is that the respondent ignored some letter on 15 February 2015 that requested holiday, and that omission was an act of discrimination. The claimant has that letter. He has failed to produce it. It may be that the letter does not request holiday. It may be that there was no case to bring on this point. However, we simply do not know.

71. The delay itself is significant. Even if the request was on 15 February 2015, the primary liability would have expired on around 21 May 2015, and the delay thereafter was significant.

72. There is nothing that the respondent has done which prevented the claimant bringing his claim within time.

73. The claimant did obtain advice and has given no explanation as to why he failed to act on it earlier.

74. We have no evidence that there was any form of genuine mistake any erroneous advice.

75. We have no direct submissions on any diminution in the cogency of evidence.

76. Having regard to all these matters, we do not consider it just and equitable to extend time in relation to any allegations stemming from a request on 15 February 2015, even had it been included as an allegation.

77. In any event, as we have noted that alleged request has difficulties. First it requires an application for amendment. No such application has been made. It follows that the earliest allegation identified prior to the tentatively advanced action of 15 February 2015, goes back to 2010.

78. We would also note that had a formal application been made to include the allegation related to 15 February 2015, and had we allowed that application, there would have been a question as to whether this specific allegation should be struck out. The claimant does not address it in his witness statement. He has not produced the relevant letter, despite confirming it is in his possession. That matter would have been relevant to the question of his prospect of success. It would also have been relevant to any breach of order: there is a material failure, on the face of the claimant's admission, to produce a material document.

79. It follows that the final potential allegation raised as part of a continuing course of conduct, being the letter of 15 February 2015 and the subsequent omission, is not a matter which is in the claim form, and there is a possibility that if it were allowed as an amendment it would have no reasonable prospect of success. If we had been minded to consider extending time, it would have been necessary to consider whether that allegation could proceed at all.

80. The next allegation goes back to 2010. The exact nature of that allegation remains unclear as we have set out in the issues. There is no further information, or explanation, given by the claimant which would materially change our analysis in relation to extension of time. It is not just and equitable to extend the claims dating back to 2010 and beyond.

81. It may be that the claimant was at some point fearful for his job and inhibited. However, that is not a position which extended throughout his employment and it was certainly not something which continued beyond April 2015.

82. It was reasonably practicable to bring any Working Time Regulations 1998 claims. There was no proper reason why the claimant could not have brought his claim earlier. It follows that we do not need to consider if the claim was presented in such further time as was reasonable.

83. It is not just and equitable to extend time for any discrimination claims.

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84. We have considered the relevant claims in the claim form. All the claims and potential claims identified are out of time. We decline to exercise any discretion to extend time. It follows that all those claims must be dismissed.

85. We note that Mr Ogilvy made further specific reference to continuing acts after we had announced out judgement. He was critical of our not hearing evidence and suggested we must hear the whole case before reaching any decisions on any allegation of a continuing course of conduct. We do not agree.

86. We identified the final possible act in any potential series of continuing conduct. That omission is clearly out of time it is not necessary to hear the entirety of the case in order to determine whether any other act relied on was continuous with it. Even if we found that there was some form of continuing act leading up to the final omission, that would not change our analysis as to whether it is just and equitable to extend time.

Employment Judge Hodgson
16 February 2017

RESERVED

APPENDIX 1

2201726/2015 – Ahmed
Draft Issues 01 – 13 December 2016

The Issues

Direct discrimination - section 13 Equality Act 2010

2.1 Did the respondent treat the claimant less favourably than it treats or would treat others?

2.2 If so, was such treatment because of a protected characteristic?

2.3 The protected characteristic relied on is race.

2.4 The allegations of detriment relied on are:

2.4.1 allegation 1: by the respondent refusing to permit the claimant to take holiday that he had requested. It was said that the most recent request was by letter on 15 February 2015 by letter and the refusal was an omission .[1]

2.4.2 allegation 2: by the respondent refusing to pay the claimant for holiday he had taken.[2]

2.4.3 allegation 3: by failing to promote the claimant. It was the claimant's case that there had been a number of express refusals by Mr Maurice Asemah and that this had occurred since the start of his employment. He referred specifically to paragraph 7, 17, 18 and 28 of his witness statement. The most recent occasion being 2010. He said that omission is to promote him started in 2004. No date was identified after 2010.

2.5 allegation 4: by not permitting the claimant to attend annual and monthly staff meetings. The claimant could identify no date of any meeting from which he was excluded. He made a general reference to a meeting in February or March 2015. No date was given. No such meeting was identified in the claim form, any further schedule, or the claimant's witness statement. His case was that in 2004 there was a deliberate act by Mr Asemah to set the meetings at a time when the claimant could not attend because of the shift

[1] On day one the claimant agreed that there is no specific refusal identified in his claim form, in any schedule of loss, or in his statement. He was unable to identify the nature of the refusal, and indicated that the refusal occurred by omission.
[2] The claimant conceded on day one that he had received payment for all holiday taken. This allegation was withdrawn.

patterns. It is said that this was a deliberate act of race discrimination and that the consequences thereafter continued throughout the claimant's employment.

Harassment - section 26 Equality Act 2010

2.6 Did the respondent engage in unwanted conduct which had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.7 If so was it related to a relevant protected characteristic?

2.8 The protected characteristic relied on is race.

2.9 The following specific allegations of harassment are relied on:

2.9.1 allegation 1: in 2005 by Mr Asemah raising his finger towards the claimant's throat and saying "I will strangle you."
2.9.2 allegation 2: by being humiliated by not being promoted. The only dates relied on are those set out above.
2.9.3 Allegation 3: By being told that he must work or leave his job on dates unspecified.[3]

Holidays Working Time Regulations 1998

2.10 It was the claimant's case that the respondent had refused to permit him to take holiday. On day one, the tribunal sought to ascertain when the refusals took place. The position is as described in the allegation of direct discrimination.

[3] No specific occasions were identified in the claimant's claim form, statement or any other document.