EMPLOYMENT TRIBUNALS

Claimant:		**Respondent:**
Mr A Djuke	**V**	Knauf UK GmbH

Heard at: Watford **On:** 18, 19 and 20 December 2017

Before: Employment Judge R Lewis
Members: Mrs K Charman and Mr C Surrey

Appearances
For the Claimant: In person
For the Respondent: Mr D Stevens (Solicitor)

JUDGMENT

1. All the claimant's claims, howsoever formulated, fail and are dismissed.

2. The claimant is ordered to pay to the respondent costs of £50.00

REASONS

1. These reasons were requested by the respondent after judgment had been given.

Procedural

2. This was the hearing listed at a preliminary hearing by Employment Judge Bedeau on 26 April 2017 (Order of 13 July) (26A). In the order, the Judge set out issues to be heard, which were complaints of race discrimination under the Equality Act 2010 and of detriment and dismissal on grounds of public interest disclosure.

3. The parties had exchanged witness statements and there was an agreed bundle of over 300 pages. At the start of the hearing, the claimant applied for further disclosure of CCTV footage and raised an issue as to the absence from the bundle of certain policy documents. Mr Stevens stated that the CCTV footage requested, whether reasonable or proportionate to request, was no longer available because it had been deleted. It was therefore explained to the claimant that no order could be made. As to the introduction of additional documents, the tribunal suggested that it "cross

that bridge when it came to it". The claimant sought to introduce a document to which Mr Stevens objected, which in the event we saw on 20 December, and which was a without prejudice letter.

4. After reading, the tribunal proposed and the parties agreed that this be a hearing confined to remedy only. The claimant had prepared no remedy evidence and given no remedy disclosure, and it did not seem right to direct him to prepare that case on the Monday evening for a hearing on Wednesday which might not materialise. The tribunal was shown about six minutes of CCTV footage, referred to below.

5. The claimant's evidence was heard first. No other witnesses were called on his behalf. The respondent called five witnesses. They were:-

    - Dr Conrad Corbyn, Manufacturing Manager, who had dismissed the claimant and made a number of other decisions of which the claimant complained;
    - Ms Christina Deverell, HR Partner, who had investigated the claimant's grievance;
    - Mr Barry O'Toole, who had been the claimant's supervisor from about May 2016;
    - Mr Paul Dawson, Site Engineer, who had taken part in management decisions involving the claimant;
    - Mr John Maude, formerly employed as Factory Manager, Sittingbourne, who had heard the claimant's appeal against dismissal and the appeal against rejection of his grievance.

    All witnesses adopted their statements and were cross-examined.

6. Dr Corbyn finished his evidence at the end of the first day, and Mr Stevens applied at the start of the second day to recall him, as further enquiry overnight had revealed two matters. They were the documents disclosed at 145V-X with which we deal below; and a disciplinary history with which we also deal below.

7. Mr Stevens had prepared a chronology and list of those involved, which were most helpful. After we had given judgment, the respondent made a brief costs application in the course of which we were shown without prejudice correspondence of 6 December 2017.

Summary

8. We hope that it will render this judgment easier to follow if we give the following introductory summary. The respondent is a manufacturer of plasterboard. It uses coils of metal in the manufacturing process. We were shown photographs. The coils perhaps look like giant roles of sellotape, three to four feet high and up to several inches thick. A coil may weigh between 1.5 and 2 tonnes. The process requires movement of the coils and transfer to four operating machines. The coil standing on its edge may appear to be stable and held in place by its own weight; but is clearly of a

weight which can cause serious injury or even death if it strikes an operative. The respondent's procedure therefore is that in any part of the process which requires a coil to be stood vertically, the coil must be placed in a supporting cradle to prevent it from falling. CCTV footage showed the claimant conducting the procedure correctly on 15 September 2016. Footage on 27 September 2016 showed the claimant twice conducting the procedure of operating a vertically upright coil without use of the cradle. Twice in evidence the claimant agreed that that was "a highly dangerous act". The claimant complained that his dismissal was an act of direct race discrimination and was automatically unfair for being on grounds of public interest disclosure. He also brought claims of detriments on grounds of race discrimination and public interest disclosure.

General comments

9. We preface our judgment with brief general observations.

10. In this case, as in so many others in the tribunal, we heard evidence about a wide range of matters, some of it in detail. Where we make no findings about evidence which we heard, or do so but not to the depth to which the parties went, that is not oversight or omission but a reflection of the extent to which the point was truly of assistance to us. While that is true of almost all our work, it was important in this case to confine our enquiry to the issues identified by Judge Bedeau and no further.

11. We add also that although this case concerned a technical procedure, which we try to describe, the case did not turn on technical matters, but to a huge extent on sheer common sense.

12. We preface our findings further with some observations about general credibility. In so saying, we make every allowance for difficulties faced by the claimant. He did not have professional representation, and was dealing with an unfamiliar process in the tribunal, possibly under stress, and insufficiently informed about matters of law and procedure. That said, where the case required us to make a finding between the claimant's evidence and the oral evidence of a respondent witness, we reject the evidence of the claimant, whom we do not find to be a reliable witness. This is not a finding that the claimant sought deliberately to mislead the tribunal or indeed lie to it, but an assessment in the balance of the witnesses. We base this general finding on a number of points as follows.

13. As a matter of common sense, we note first that the claimant's claim was in part counter-intuitive. The claimant's claim invited us to assume that the respondent was hostile to, or unwilling to be told of, health and safety risks at the factory, and therefore penalised the claimant for having done so.

14. There may be workplaces where that is true. In this one, there was a serious accident in 2013 which we accept formed a part of collective memory; a serious accident would in all likelihood have halted production and therefore been not in the respondent's business interest; and it was a

small workplace where there were personal relationships between the top and bottom of the hierarchy. We could see no reason therefore why the respondent should be hostile to a health-related disclosure, and indeed our reading of the pro forma at page 168 was that the respondent positively invited reports from staff of any potential health and safety risks.

15. Secondly, as a matter of common sense, this case was about the movement of items weighing between 1.5 and 2 tonnes. We accept that accidents happen, even when individuals do their best to avoid them, and that those items were capable of causing serious injury or death.

16. Third, the claimant's analysis of chronology is part of the reason while the claim failed. He was generally vague about specifics. It was however common ground that Mr O'Toole became the claimant's line manager by the end of May 2016, and that the claimant made his protected disclosure by the end of June 2016. His allegation that the appointment of Mr O'Toole was in retaliation for the protected disclosure could never logically succeed, and the claimant's adherence to it undermined his credibility.

17. While we do not expect a member of the public to be capable of professional analysis of his own experience or emotions, it was notable that the claimant focused to the point of fixation on matters which concerned him but which were marginal to the tribunal. His repeated emphasis on the absent CCTV footage was a most striking example but not the only one.

18. Our general expectation next is that even working with the benefit of hindsight, we accept that people make mistakes at work and no-one works to a standard of perfection. A tribunal outcome where everybody accepts some responsibility for what has happened is not unusual. It was striking that in this case, the claimant repeatedly sought to shift responsibility for his actions to others: to those who had not trained him; to Mr O'Toole, who had upset him; to medication which he said he was taking on the day; and to Mr Dawson and Dr Corbyn. None of those matter helps explain the self-evidently dangerous act for which the claimant was dismissed, and the above matters had the appearance of a blame shifting approach.

19. In evidence and seemingly for the first time, the claimant alleged that Dr Corbyn had himself done the very thing for which the claimant had been dismissed, namely lifting and moving a coil without use of the cradle. It was to deal with that that Dr Corbyn was recalled and produced 145W to X. They were a documentary and photographic record of an event on 27 October 2015, which was a supervised, controlled risk assessment of a potential workaround of a broken hoist, conducted with several operatives and managers observing, and using the cradle. It was a wholly different event from that which led to dismissal, which was the claimant working alone, without authority, and cutting a corner. The claimant saw the risk assessment in October 2015; he agreed that he was shown in in one of the photographs. The claimant's argument was unfounded and his assertion of it was not to his credit.

20. Finally, the claimant failed to give any weight or consideration to the many points which plainly ran counter to his perception and approach. If the respondent were hostile to health and safety issues, it had no reason to offer external training from Didac. The claimant's complaint about Germany was based on common ground that nobody had been sent to Germany after the first two visitors. We accept Mr Dawson's evidence that when he held weekly meetings, not everybody could attend because of operational commitments and that sometimes, he told the claimant not to attend but sometimes he told others not to attend. The claimant did not weigh up any of these matters as potential evidence.

Findings of fact

21. We now turn to our findings of fact as follows.

22. We were concerned with a small factory in Greenford, which was a satellite of a base in Sittingbourne, Kent, which in turn was a satellite of a German parent company. About a dozen people worked there. There was a flat management structure, and as senior person on site, Dr Corbyn was a hands on, approachable manager in a workplace which seems to us collegiate.

23. A serious accident took place in 2013 when a coil fell on an operative, who as a result suffered a lower leg amputation. We accept that that was a major event in the life of a factory, and that it entered the collective knowledge and understanding.

24. The factory was a huge space, with four operating machines, and very high noise levels; all staff were issued with ear protectors and required to use them. We deal below with evidence about training. We add that we attach weight to the template shown at page 168, which was a template to allow any operative to report a potential health and safety matter. It seemed to us a strong indication that the respondent encouraged potential whistleblowing rather than discouraged or penalised it.

25. The claimant worked for the respondent in the early part of 2015 as an agency worker. He returned to the agency when his assignment was complete. Dr Corbyn contacted the agency and asked for him to be returned. The claimant's evidence was that he did not know that this had happened, he was just told by the agency to return to the respondent. We accept Dr Corbyn's evidence and we add that it seems to us a powerful indicator against a claim of racial discrimination by Dr Corbyn against the claimant. Having met and worked with the claimant, and knowing that he was black African, Dr Corbyn recognised his positive qualities and wanted to re-employ him.

26. The claimant re-joined on 19 October 2015. In about the ten working weeks of 2015 remaining, he received training, some of it provided by an external facilitator (78 D to K). We were told of training provided by Didac,

including training in the safe use of the cradle described above. We also find that on or about 27 October 2015, the hoist on one of the machines broke. It was the main production machine, and Dr Corbyn and senior colleagues therefore devised a workaround to enable them to operate the machine without the hoist. Having devised the workaround, they then conducted a documented and photographed risk assessment of it (145 W to Z) in which the claimant took part. We confirm that the cradle was used in that risk assessment, and that the event on that occasion was not comparable with the event which led to the claimant's dismissal.

27. We accept that the claimant received on the job training from supervisors named to us as Nick and Gregg. The respondent's witnesses were very confident that this training was documented, and recorded to targets and dates and was signed off by trainer and trainee. There was no evidence of this in the bundle, in which pages 79 to 145 appeared to be blank templates. The claimant asserted that no training had been given because nothing was in writing but we do not think that follows. We accept that the claimant was shown the job. We accept that that can constitute training. We accept that it was not documented. As a matter of common sense, it was in the interests of the claimant's colleagues to be confident that the claimant was trained in safe working, because if he was not, there could be an accident which could affect anyone.

28. As said, the respondent is a subsidiary of a German parent. Dr Corbyn was concerned that the respondent's employees would benefit from training provided by German colleagues, and was concerned that the German engineers who came to the UK struggled to train in English language.

29. He therefore hit upon the idea of arranging for two workers to go to Germany to be trained there, and he told the operatives, including the claimant and Mr O'Toole, that two would go first, and that the same opportunity would be afforded to everyone else in time.

30. He selected as the first two to go: Robert, recently appointed as lead operator, and Sebastien, a machine operator with several years' experience. He selected them for operational reasons. He thought that a newly-appointed lead operator might bring fresh perspective to matters. His newness could be balanced by the experience of his long-serving colleague. There was a common sense means of overcoming the language barrier: Robert and Sebastien, and the counterpart in Germany who would lead in training them, were all Polish.

31. The two went to Germany and on their return reported to Dr Corbyn that the experience had been less satisfactory than anticipated, due to differences in process. As a result, Dr Corbyn felt there was no point in continuing with the procedure, and no other person of any race was sent to Germany for training.

32. As evidenced by his payslip, Mr O'Toole was promoted to Interim Lead Operator with effect from 1 January 2016, and at that point began to have supervisory authority.

33. On an unclarified date in the first half of 2016, there was a health and safety incident, as a result of which Dr Corbyn dismissed a driver and gave warnings to four other colleagues. All five were white. The claimant said that he did not know of this, an answer about which, given that this was a small workplace, this tribunal is sceptical. The point does not however matter because the issue of the claimant's knowledge is not the point. The point is that the respondent treated a health and safety infringement by white workers as grounds for disciplinary action and in one case, dismissal, irrespective of race.

34. The claimant had been supervised early in 2016 by Gregg. We accept Dr Corbyn's evidence, which was that s Gregg found that task difficult to deliver, Dr Corbyn took the decision with effect from May 2016 at the latest, that Mr O'Toole should take over as the claimant's supervisor. It was common ground that Mr O'Toole and the claimant, who were then on good terms, shook hands on Mr O'Toole's appointment. It was common ground that this took place before the protected disclosure of June 2016.

35. In June 2016, the claimant had a conversation with Mr Dawson about the safety of machinery which Mr Stevens conceded at the start of this hearing constituted a protected disclosure.

36. The position therefore by early September 2016 was that the claimant had been in post for nearly a year and was competent. He had had training, both formal and informal. But a number of supervisors and colleagues believed from their experience and observation that he was not a good listener, not good at following instructions, and not co-operative when advised or challenged about his work. As stated, it was a small and informal workplace, and Dr Corbyn was aware of their views.

37. On 15 September, as indicated on CCTV and shown to the tribunal, the claimant operated the procedure to move a coil correctly using the cradle, a matter on which the respondent subsequently relied as indicating that the claimant knew and could operate the correct procedure.

38. The index event in this case took place on 27 September. Mr O'Toole, who was working in the factory, noticed something untoward in the claimant's work. He completed a template called "Near miss/unsafe event form**"** (168). When asked why he had not intervened immediately to stop what he thought was an unsafe act, Mr O'Toole stated first that he was at a distance and was not sure of what he saw; secondly, that the incident would have been over by the time he was able to do so; and thirdly, that he knew that the claimant's general response to being challenged was not co-operative. He also knew that if he reported his concern, CCTV could be viewed so as to verify the event.

39. On 28 September, Mr Dawson and Dr Corbyn viewed the CCTV footage, which they identified as containing two incidents in which the claimant lifted a coil without use of the cradle procedure. Both responded strongly, both forming the view that this was a potentially life-threatening event. It seemed to us highly significant that three colleagues who saw footage of the event instantly responded in the same manner. Dr Corbyn asked Mr Dawson to suspend the claimant, which he did, and the claimant never returned to work except for disciplinary processes after that.

40. The claimant was interviewed by Mr Dawson the following day, 29 September (153). Mr Dawson was accompanied by Mr George Spanopoulos, Operations Cordinator, who made notes. The claimant asked for Mr O'Toole to be present, which he was, which the respondent took as an indication of trust existing at that point between the claimant and Mr O'Toole. The notes indicate that the claimant said he had been trained to use the equipment. He stated that he had not been trained on how to load coils. It seemed that he also said that the procedure he had followed was safe and that he did not need or wish to use the cradle. He also raised an issue of being required to work under pressure, and that he had not been well that day.

41. On 30 September, Dr Corbyn wrote to tell the claimant that he was suspended (149) pending an investigation.

42. The same day, the claimant wrote an email to Ms Pinder of HR (150), which although not clearly written, seemed to constitute a grievance against Mr O'Toole. It set out an account of a difficult history between them, and a more specific allegation that on the 26th and 27th he had been intimidated.

43. The grievance was assigned to Ms Deverell to investigate. She was relatively new to the company and was based at Sittingbourne, and therefore not working directly with any of those involved.

44. The steps taken by Ms Deverell were to arrange to meet the claimant in central London at a neutral venue (13 October – 175), and allow the claimant the facility to amend her notes of the meeting; and she then interviewed Dr Corbyn, Mr Dawson, and five other colleagues, none of whom verified the allegation that they had witnessed inappropriate or aggressive behaviour by Mr O'Toole towards the claimant. In the course of the procedure, an issue arose about CCTV footage. The claimant was concerned that CCTV footage would show Mr O'Toole behaving aggressively towards him. We share the respondent's scepticism about this. The footage is of good visual quality, but made without audio, and taken in a noisy working environment. By email of 20 October, Dr Corbyn reported to Ms Deverell that he had watched the footage of 26 and 27 September and seen nothing untoward other than the incidents in question in this case; that nothing else had been or could be saved; and that he had seen no signs of aggressive behaviour (203).

45. Ms Deverell chose not to interview Mr O'Toole. She was candid. She said to the tribunal that in many years' experience of investigations, she had never conducted one where an alleged bully or harasser had admitted the behaviour complained of and she could see no point therefore in interviewing Mr O'Toole.

46. On 26 October, Ms Deverell wrote to the claimant at some length to say what she had done and her reasons for rejecting the grievance. She attached an investigation report (224 to 227).

47. The following day, the respondent completed its disciplinary report, (229-233) written by Mr Spanopoulos, in which he recommended a disciplinary hearing.

48. By letter dated 20 October, Dr Corbyn invited the claimant to attend a disciplinary meeting in London at a neutral venue. He was advised of his right of accompaniment and the risk of dismissal. The letter enclosed the investigation report, statements, photographs, and appropriate procedure (234).

49. On 2 November, the claimant appealed against the outcome of his grievance (236) and the following day, attended a disciplinary hearing. He was accompanied by Mr Vargas, an external Unite representative. Dr Corbyn was the decision-maker, supported by Ms Pinder. We accept the detailed notes as accurate, noting that the claimant was offered the opportunity to amend them (242-254). The claimant was told of his dismissal at the end of the meeting, confirmed by letter dated 10 November (275). The claimant appealed (272).

50. The respondent arranged for the appeal to be heard by Mr John Maude, who had many years' service with the company and was based in Sittingbourne. It paid for the claimant's travel by rail and taxi to attend. The claimant attended accompanied by an external Unite representative. The purpose of the meeting was for Mr Maude to hear the claimant's appeal against dismissal and his appeal against rejection of the grievance. Mr Maude's outcome on both matters was sent on 13 December 2016 (315-317).

Legal framework

51. The legal framework may be shortly stated. It was agreed that the claimant made a protected disclosure. After doing so, he had the protections afforded by s.47B and 103A of the Employment Rights Act 1996. S 47B provides that,

'A worker has the right not to be subjected to any detriment … on the ground that the worker has made a protected disclosure ..'

S 103A provides that a dismissal is unfair 'if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.'

52. The claimant also brought claims of direct discrimination on ground of race.

53. Section 13 of the Equality Act 2010 defines direct discrimination as occurring where "A discriminates against B if because of a protected characteristic, A treats B less favourably than A treats or would treat others". Section 23 provides that "On a comparison of cases for the purposes of section 13, 14 or 19, there must be no material difference between the circumstances relating to each case." Section 136 sets out the burden of proof provisions. Section 136(2) provides: "If there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred."

54. In both instances, the tribunal must consider the reason for the treatment complained of in light of all the circumstances and evidence. The tribunal found, in relation to all complaints under both legal provisions, that the protected matter played no part whatsoever in the decision complained of.

Discussion

55. Day A was 16 January 2017 and Day B 23 January 2017. The claim was received on 23 January 2017.

56. We now turn to our discussions. We do so with reference to the issues identified by Judge Bedeau.

57. The first issue raised by Mr Stevens was limitation. He submitted that while the complaints of dismissal were in time, the other matters relied upon as freestanding claims were out of time and there was no evidence before the tribunal on which the tribunal could extend time.

58. As Day A was 16 January 2017, we are of the view that on the face of it, any event occurring on or before 17 October 2016 is out of time.

59. However, we accept that such matters (e.g. most notably the Germany trip) could be capable of forming relevant background, and we have heard evidence on the merits. We have therefore thought it in the interests of justice to give our adjudication on the merits. However, our overarching finding is that if and to the extent that the individual events occurring on or before 17 October 2016 were relied upon, each was out of time and it has not been shown that it was either just and equitable to extend time to bring the claims of racial discrimination, or that it was not reasonably practicable to bring within time the claims of detriment.

Public interest disclosure claims

60. We turn first to our discussion of the allegations in relation to public interest disclosure, which are issues 8.4 and 8.5 (26C).

61. We remind ourselves of what we have said above about the counter-intuitive element in this case. The respondent had no interest in discouraging reports of health and safety infringements, and its use of the template at 168 was evidence that on the contrary it did encourage reports of health and safety issues. Mr O'Toole's evidence was clear evidence that the template was understood and used in practice.

62. The first complaint (issue 8.4.1) is that Mr O'Toole was promoted to be the claimant's supervisor, where the claimant was placed under Mr O'Toole's supervision, as a detriment because the claimant had made a protected disclosure. That claim fails because we find on the undisputed evidence that the chronology was the reverse: Mr O'Toole became the claimant's supervisor in May 2016 at the latest; the earliest protected disclosure was made in June.

63. We read 8.4 and 8.4.1 as a raft of complaints about Mr O'Toole's behaviour towards the claimant, which were general shouting and aggression; and aggressive behaviour on 26 September 2016, including instructing the claimant to work faster; and allocating the claimant to machine B.

64. As to the shouting, we accept that in a noisy environment, where ear protection was always in use, and communication issues had arisen, shouting was the norm. Nothing turns on it and nothing was shown to be related to a protected disclosure.

65. We do not find that the claimant has made out a specific event of aggressive behaviour. We accept that Dr Corbyn at least saw the CCTV footage for 26 and 27 September (203) and saw nothing out of the ordinary. The claim fails because it is not made out.

66. The claimant has not made out that he was required to work speedily even at the risk of working unsafely. We find that Mr O'Toole may well have encouraged him to work more efficiently but no more turns on the point. It has not been shown that this related to the claimant's protected disclosure.

67. Finally, we accept that the claimant did on 26 September work mostly on machine B (as observed by Dr Corbyn, 203) but we do not find that this was a detriment, or that it related in any respect to a protected disclosure.

68. At the end of the claimant's evidence, the judge explained to him, in lay language, what is required to make out a claim under section 103A, and asked the claimant to tell the tribunal whether his case was that the protected disclosure was the only reason for his dismissal or the main reason. The claimant after a little thought plainly said that it was his case

that it was not the only or main reason, but that it was "a reason". We accept Mr Stevens' submission that in light of that evidence the claim could not proceed. We add that our finding is in any event that the protected disclosure was in no respect part of the reason for his dismissal.

Racial discrimination claims

69. The first of the race discrimination issues (7.1.1, 26B) related to the selection of two workers to go to Germany. We find that the original selection of Robert and Sebastien was made for operational reasons, and in good faith with the intention that their experience would be replicated. The claimant had no legitimate expectation or right to priority over any other person in the selection. We accept and find that the experiment was not continued after Robert and Sebastien returned, and that thereafter, the claimant has not been treated differently from any white colleague – nobody went to Germany.

70. Issue 7.1.2 was that "The respondent failed to deal with the claimant's grievance submitted on 28 September 2016 properly or at all". In fact, the grievance was submitted on 30 September (171) and the claimant slightly muddled this part of the case by referring in evidence repeatedly to the investigation meeting on 29 September.

71. We find that the claimant has put before us two complaints about Ms Deverell's grievance process. The first was as to failure to keep the CCTV footage. Mr Maude upheld this part of the claimant's grievance, but the question for us is whether or not the failure to retain and investigate CCTV was on grounds of race. We reject that allegation. We accept Dr Corbyn's summary at 203: he viewed the material and deleted a large part of it, or did not seek to save it from deletion, on grounds of relevance. That may have been imprudent, but it was not an act of race discrimination.

72. The second limb of this claim was the failure to interview Mr O'Toole. Ms Deverell gave her reason for it: she thought it would be futile. We have limited sympathy with that point. On the contrary, interviewing Mr O'Toole, even at the end of process, would have enabled him as a matter of fairness to reply to the allegations against him; have conveyed to the claimant and anyone else that the respondent takes its grievance processes seriously; and explored any possible learning points quite apart from whether the grievance failed or succeeded. We accept that race was not part of Ms Deverell's decision, and therefore that this claim fails.

73. The third complaint of race discrimination related to dismissal. We find that the sole reason for dismissal was that the claimant undertook a highly dangerous act. There was no other reason. Considerations of any protected characteristic played no part whatsoever in the decision. A white person in the identical circumstances would have been dismissed.

Costs

74. After we have given judgment, Mr Stevens made a very short application for costs. He submitted that the claimant had brought and conducted the proceedings unreasonably. He submitted that in a number of respects, the proceedings had no reasonable prospect of success. He drew to our attention that on 6 December 2017, he had written to the claimant, without prejudice save as to costs, alerting him to the weaknesses in his case, and making a commercial settlement offer of £2,000.00, which the claimant had rejected the same evening. He told us that the costs of defending the proceedings had been several thousand pounds, and asked the tribunal to make a costs award of £50.00, not as a matter of financial enforcement, but in order to create a judicial record that the claim had been brought unreasonably.

75. The claimant in reply stated that he had brought the proceedings legitimately to place before a judge for adjudication of the evidence which he wished to have considered.

76. At the first stage, we consider whether we find that the claimant has conducted the case unreasonably and we find that he has. We make three findings. The claimant should have understood that his complaint about the promotion of Mr O'Toole was unsustainable because of the chronology; the claimant advanced a section 103A claim which was contrary to his own evidence and understanding of what had happened to him; and the claimant twice in evidence agreed that the act which he did was highly dangerous, from which he can have had no reasonable basis to consider that his race was a factor in his treatment.

77. In the exercise of our discretion, it seems to us in the interests of justice to make an award of costs. We set it at the level requested. The claimant confirmed that he has the ability to pay £50.00.

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Employment Judge R Lewis

Date: 25/1/2018

Judgment and Reasons

Sent to the parties on: .....

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For the Tribunal Office