

zd



EMPLOYMENT TRIBUNALS

Claimant

AND

Respondent

Mr D Knight

Hays Recruitment Specialists Plc

HELD AT: London Central

ON:

2 to 5 May 2017

EMPLOYMENT JUDGE: Miss A M Lewzey

MEMBERS:

Mr R Lucking
Ms J Collins

Representation

For Claimant: In Person

For Respondent: Mr M Humphreys of Counsel

JUDGMENT having been sent to the parties on 8 May 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Claimant, Mr D Knight, was employed by the Respondent from 30 September 2013 until 19 August 2016 when he resigned. He presented his claim to the Employment Tribunal on 10 October 2016 claiming constructive unfair dismissal, direct race discrimination, harassment, a claim for notice pay and a claim for failure to provide written statement of terms and conditions of employment.

Issues

2. The issues for determination by the Tribunal are as follows:

2.1. Constructive Unfair Dismissal

2.1.1. Did the Respondent commit a repudiatory breach of contract? (That is, did the Respondent show an intention, objectively judged, to abandon an altogether refuse to perform the contract).

2.1.2. If so, did the Claimant resign in response to that breach?

2.1.3. If the Tribunal finds the Claimant was constructively dismissed, was the dismissal unfair?

2.1.4. The acts relied on by the Claimant as constituting a repudiatory breach of contract are:

2.1.4.1. Each of the allegations relied upon by the Claimant to support his direct discrimination and harassment claims.

2.1.4.2. The absence of performance reviews with respect to the Claimant in the three years prior to July 2016.

2.1.5. The Respondent changing the Claimant's role, from January 2016, requiring him to travel nationally without adjusting his compensation. Deficiencies in the informal grievance process initiated in February 2016, including bias by the Respondent, not dealing with it in a satisfactory way and reaching an outcome the Claimant was unhappy with.

2.1.6. Investigation of a data protection breach by the Claimant without having properly dealt with the same with the ICO. Subjecting the Claimant to a warning/caution with respect to a data protection breach that all it ought not to have done. Not allowing the Claimant to appeal the warning/caution. The Respondent failing to follow the appropriate password encryption process. The Respondent monitoring the Claimant's computer.

2.2. Direct Race Discrimination

2.2.1. The Claimant relies on the following alleged acts of direct discrimination:

2.2.1.1. That the Respondent refused to allow the Claimant to book a hotel when working at the Leicester Office.

2.2.1.2. That the Claimant was accused of smelling of alcohol by Ms Banaszak and Mr Gledhill when in Leicester.

2.2.2. In respect of the allegation at paragraph 2.2.1.1 the Claimant relies as comparators on Ms Samantha Parker, Mr Samuel Gledhill and Ms Samantha Jeffries. In respect of the allegation at 2.2.1.2 the Claimant does not specify a comparator and is assumed to rely on a hypothetical comparator, being someone in the same position as the Claimant but of a different race.

2.2.3. In respect of each act relied upon by the Claimant:

2.2.3.1. did the Respondent do the alleged act to have been done as pleaded?

2.2.4. If so, does the act constitute less favourable treatment than the Respondent treated or would treat others?

2.2.5. If so, did the Respondent treat the Claimant less favourably because of the protected characteristic of race?

2.3. Harassment

2.3.1. The Claimant relies on the following alleged act of harassment:

2.3.1.1. Mr Day's alleged statement to the Claimant in January 2016 that he "... *Had a sad meaningless life as I have no children or wife and that I had been slacking in regards to my workload...*"

2.3.2. Did the Respondent do the act alleged to have been done as pleaded? If so, was this unwanted conduct related to a protected characteristic of race, being the protected characteristic relied on by the Claimant?

2.3.2.1. If so, did the conduct have the purpose or effect of: violating the Claimant's dignity, or

2.3.2.2. Creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

2.4. Notice Pay

2.4.1. Is the Claimant entitled to the payment of notice pay upon his resignation from the Respondent (which the Claimant seeks to characterise as constructive dismissal)?

2.4.2. If so, to what amount of notice pay is the Claimant entitled?

2.5. Jurisdiction

2.5.1. Does the Claimant have jurisdiction to hear the direct discrimination and harassment claims in the light of section 123 Equality Act 2010?

2.6. Written Statement of Terms and Conditions

2.6.1. Was the Claimant provided with a written statement of particulars in compliance with section 1 Employment Rights Act 1996?

2.6.2. Was the Respondent required to provide the Claimant with a Statement of Changes in compliance with section 4 Employment Rights Act 1996? If so, did the Respondent do so?

2.7. Remedy

2.7.1. To the extent that the Claimant succeeds in his claims, to what remedy is the Claimant entitled?

Evidence

3. We have heard evidence from Mr Knight, the Claimant, who gave evidence by means of a written witness statement.

4. We also heard from the following witnesses on behalf of the Respondent each of whom gave evidence by means of a written witness statement:

Ms N Halliday, Group Compliance and Audit Manager

Mr D Day, Group Contracts and Audit Team (Southern) AA Leader.

Mr G Crooks, Regional Head of HR for the Yorkshire and North East and North West regions.

Mr A Basu, Compliance and Customer Service Director.

Ms K Banaszak, Senior Group Compliance Auditor.

Mr S Gledhill, Education Compliance Manager.

Mr N Gray, Information Security Officer.

5. In addition we have an agreed bundle to which we refer by use of the relevant page number. We also have certain additional documents provided by Mr Knight from time-to-time including certain additional definition.

The Material Facts

6. On 30 September 2013 Mr Knight commenced his employment. There is a letter of offer (47-48) which attaches a schedule (49-50). In addition, there is a contract of employment (51-57) and a role profile (57a and b) which describe Mr Knight as a Compliance Administrator. Mr Knight's role was to provide compliance audits within the relevant contract framework. Initially he worked on the Non-Medical, Non-Clinical ("NMNC") framework agreement for roles within the NHS. Ms Halliday had recruited Mr Knight and was the manager in charge of his department throughout. Mr Day joined the Respondent and became Mr Knight's manager in July 2015. Mr Knight did not have an appraisal in 2015.

7. In December 2015 Mr Day was told that the NMNC audit work was to move from London to Leicester in mid-January 2016 to achieve economies of scale because another public sector contract was being handled in Leicester. In early December 2015 Mr Day communicated the change to the audit team

including Mr Knight. In January 2016 the NMNC contracts gradually moved to Leicester. From February 2016 the team of which Mr Knight was a member was auditing files for candidates going into a range of other contracts as part of the supply chain audit team.

8. On 20 January Jane Nodding, an HR Adviser, contacted Mr Crooks to tell him she had had a call from Mr Knight concerning his job title, changes to his role and salary. Mr Knight said that he wanted a new contract of employment and the level of pay and that he was a compliance auditor not a compliance administrator. On the evidence before us Mr Knight's job was one of compliance auditing throughout his employment. The change in his work was administrative in order to move the public sector work to the same location. Only Mr Knight and Audrey Canning had worked on NMNC work in London. Mr Crooks' evidence was that he spoke to Ms Halliday who explained that Mr Knight had been given the incorrect job title when he joined, but was always paid and fulfilled the duties of a compliance auditor. The core elements of the role for NMNC and other audits were the same.

9. In December 2015 the Respondent introduced travel restrictions to avoid unnecessary travel and hotel expenses. The decision was budgetary and affected all staff. It was a decision made for costs saving reasons. Mr Basu took up the role Compliance and Customer Service Director on 4 January 2016. He visited the London office on 6 January 2016 although his base was in Leicester. Mr Knight was asked to go to the Leicester office at the end of January to train colleagues to undertake NMNC audits. He was to attend on Monday 25, Tuesday 26 and Thursday 28 January 2016. Mr Knight asked Mr Day if he could book a hotel, but was told that he could not because of the travel restrictions. Mr Knight did not object time and was willing to go to Leicester for the three days to undertake the training with colleagues in Leicester. It is common ground that the first day on Monday 25 January was a success.

10. On Tuesday 26 January Mr Knight met Ms Banaszak on his way into the Leicester office. Ms Banaszak exchanged information with him and she thought that Mr Knight smelled of alcohol. She told us that Mr Knight had shiny eyes and big pupils and slow speech. She was concerned about him and phoned Ms Halliday for guidance. Ms Halliday advised her to speak to Mr Knight in the presence of Mr Gledhill so that they saw Mr Knight together. Ms Banaszak asked Mr Knight to come and see her and Mr Gledhill to discuss training. In fact, at the meeting Mr Gledhill asked Mr Knight if he had been out the night before. Mr Knight said that he did not. He was told that some people thought that he smelled of alcohol. Mr Gledhill was quite happy that Mr Knight was fit to work and for the rest of the day Mr Knight carried on with his work professionally. When Mr Knight returned to his office in London he told his colleagues about the incident.

11. During January, on Mr Knight's evidence, Mr Day made a remark that Mr Knight had a sad and meaningless life because he had no wife and family and that he had been slacking. According to Mr Day's evidence, the latter remark was made at a time when Mr Knight had finished his task and was reading the "Daily Mail".

12. On 26 January 2016 Mr Crooks emailed Mr Knight about the concerns he has raised earlier (83) as follows:

“Job title - when you were sent your contract of employment in September 2013 the job title for the role at that time was Compliance Administrator. However, from joining the team your role has always been an auditor role - as opposed to Compliance checking administrative role whereby files are collated and passed to an Auditor for sign off.

.....

Your basic salary is in line with that of an auditor role and is consistent with that of other auditors across the team.

.....

..... your role has primarily been involved with auditing NMNC contracts. It has always been the intention to get too involved in auditing other Hays' contracts in order to develop your knowledge and experience.”

13. On 10 February 2016 a meeting took place between Mr Knight, Ms Halliday and Mr Crooks in order to discuss the HR queries raised by Mr Knight. At that meeting Mr Knight raised other matters including national travel, the lack of hotel accommodation and the comments made, according to him, by Mr Day, together with the incident in Leicester on 26 January involving Ms Banaszak and Mr Gledhill. At the end of the meeting it was decided that the matter should proceed by way of an informal grievance.

14. On 17 February 2016 Mr Crooks sent an email to Mr Knight dealing with the place of work and working week questions (88). He sent a further email on 24 February (94) dealing with a number of the other issues.

15. On 18 February 2016 the informal grievance meeting that had been scheduled did not take place. Mr Knight was in fact off sick from 18 February until 21 March. He had a phased return to work until 25 April when he resumed full-time work.

16. On 13 April 2016 the informal grievance meeting took place attended by Mr Knight with Ms Halliday and Mr Crooks, with Mr Day joining for the last point. The notes appear at pages 105-108. It was made clear to Mr Knight that his role was not national and the travelling long distance was voluntarily. Between October 2015 and the date of Mr Knight's resignation the evidence is that the audit team undertook 77 visits, of which 34 were in London within normal working hours, 37 in the North West undertaken by Ms Halliday because she was based in Manchester, and a further 6 trips out of London to Luton, Ilford and Hastings by other members of the team, and not by Mr Knight. Mr Knight had been asked to go to Leicester because it was felt that he was the best person to undertake the delivery of the training on the NMNC audits.

17. At the meeting the travel restrictions were explained. The meeting with Mr Gledhill and Ms Banaszak was discussed and that matter was never taken further. The meeting also dealt with the alleged comments by Mr Day. The remarks were discussed and Mr Day who was present for that part of the meeting accepted that he would have to learn not to use office banter as it was

inappropriate. The further matter that concerned peanut issue is not a detriment relied upon but Mr Knight accepts that he consumed Marta's peanuts and because Mr Day sat between him and Marta, Mr Day would from-to-time pass the peanuts. At the end of the meeting it is recorded (page 108) Dyon confirmed that he wanted time to reflect on the meeting before deciding what to do e.g. consider whether to raise a formal grievance. Mr Knight did not instigate formal grievance.

18. On 29 June 2016 (179) Mr Knight was awarded a pay rise and bonus of £610, which was the maximum permissible. Mr Basu had introduced new career paths and promotion criteria in July 2016, which was the beginning of the financial year, having noted when he became director in January that there were none. Mr Knight had an appraisal with Mr Dale on 29 July (163(b) to (j)). Mr Knight was grateful for this appraisal. The appraisal looked at objectives for promotion to a senior auditor role.

19. On 2 August 2016 Mr Knight sent an email to a third party attaching in error confidential information about a different client (119 to 119(c)). At this time, Mr Knight was still being trained on the new work.

20. On 3 August 2016 Mr Day found the email with the personal details sent to the wrong client. He went to Mr Knight, who was surprised and sent an email of apology. Mr Day spoke to Ms Halliday who instructed him to speak to Cassie Berezai, Regional Compliance Manager (126). Ms Berezai spoke to the Information Commissioner's Office who said that, given the limited information on the attachments, they did not believe there was a need for the individuals to be informed.

21. On 4 August 2016 Mr Knight was invited to an informal investigation meeting with Mr Day to investigate the sending of the email to the third party. Mr Day was accompanied by Amy Hilton who was the note taker. The notes (129 – 130 at 129) record:

“DDCassie will be contacting the Information Commissioner's office and a letter has been sent to Eden Brown informing them of what has happened. This is a very serious incident. Do you want to tell me what happened?

DK What you said is how it happened? I sent an email to the wrong client. It was my error. My mistake.....

DD There is now a resolution in place to encrypt documents with the sequential password so that this does not happen again going forward.

.....

DK I also emailed them to clarify that the email had been deleted. I can only apologise.

.....

DK What happens now after this informal meeting?

DD We will now have to go through the process, so an investigation takes place to establish the facts which is sent to HR. This is then sent on to my manager to look at and decide on what further action, if any, needs to be taken.”

At this meeting Mr Knight was completely straightforward and honest about what had happened. Mr Knight did not sign the minutes because he thought that this would mean he was accepting a warning. In fact, the minutes do not constitute a warning. From 5 August, there was a process to encrypt documents with a sequential password to avoid this sort of incident happening again.

22. At or around this time Mr Knight discovered that he could only password protect spreadsheets on Excel using an eight digit password whereas others could use a four digit password. The evidence is that Mr Knight was using Excel 2013, whereas others were using earlier versions of Excel. The consequence was that Mr Knight had to pass his spreadsheets through Mr Day, a process with which he was not happy.

23. Between 8 and 9 August, Ms Halliday and Mr Day exchanged emails concerning the objectives which were needed to mirror the career path and promotion criteria forms to Mr Knight. The evidence is that Mr Knight was working towards promotion to senior auditor role.

24. On 9 August 2016 an IT technician visited the office and told Mr Knight that he was registered on two computers. On 9 August Mr Knight had a telephone conversation with Computercenter. He describes them as having symbiotic relationship, because they not only undertook the computer support but they were also a client (196-197). The individual at the call centre said that the request to register Mr Knight was made by Karen Hughes on 19 May. This caused Mr Knight considerable concern. He raised his concerns with Mr Day by the email (152) and said:

“I would like to discuss having my logins registered to another PC by the office” and explained how he came by this information.

25. On 10 August 2016 Mr Knight met Mr Basu for a meeting which took some 3½ hours, to discuss the issues that had been raised by Mr Knight. There are no notes of that meeting.

26. On 11 August 2016 Mr Basu emailed Mr Knight (152) as follows:

“As promised, I am writing to respond to your concerns over whether someone has been accessing your accounts without your knowledge. I can give 100% assurance that this is not the case. Any request made by anyone in my team to access someone’s accounts will always come to me for approval and I can guarantee you that no such request has come my way from Karen, or anyone else, with regards to your profile or accessing your personal IT account.

I am honestly baffled by what you have been told by the Computercenter team. However, I repeat that what I said yesterday in that the ability to log on to the Hays systems is in no way tied to any specific base unit and therefore the process for requesting access to any particular users profile/account is similarly divorced from any particular base unit.....”

He goes on that he asked for someone to contact the Computercenter and records the only request that they can see for Mr Knight was the one made by Karen in September 2013 and was to initially set Mr Knight up as a user of Hays systems when he first joined.

27. On 11 August 2016 Ms Halliday wrote to Mr Knight advising him that there would be no disciplinary action in relation to 2 August error (158). The letter does not contain any warning – informal or otherwise. It is a notification that nothing further will happen. On 15 August Mr Knight emailed Ms Halliday saying:

“Thank you for your response. As I have been issued with an informal warning I believe I have the right to appeal the process and present my own evidence.”

28. On 19 August 2016 Mr Knight again telephoned the Computercenter Helpdesk concerning the use of 8 and 4 digit passwords.

29. On 22 August 2016 an email was sent from Ms Halliday to Mr Knight in which she says (171):

“I would like to assure that you were not issued with an “informal warning”. The letter you received was intended to acknowledge an error and to confirm the matter would not be escalated to the company’s formal disciplinary procedure.”

30. In the meantime, Mr Knight had written his resignation letter and dated it 19 August (167). It reads:

“It is with regret that I tender my resignation as Compliance Auditor with immediate effect. This follows my correspondence with Adrian and Nicki Halliday and not receiving any response to my request for an appeal (sent on 12 August 2016) or any correspondence in regards to the request.

May I take this opportunity to thank you for all your own valuable help, advice and encouragement that you have given me during my three years at Hays. The majority of my time with Hays has been very productive and pleasant.

The reason why I would like to resign is due to constructive dismissal with bullying and harassment.”

The resignation letter is dated 19 August, which was a Friday, but Mr Knight went to the office on the Monday 22 August to tender his resignation and to collect his belongings and ask about holidays. He also sent an email saying that he wanted his resignation to start on 19 August. This was confirmed by Ms Halliday on 24 August (172) in which she says:

“Following your written resignation dated 19 August I accept your resignation on behalf of the company in accordance with our discussions I have agreed to waive your full contractual notice period of four weeks and as a result your employment will terminate on Friday 19 August.

You will continue to receive your basic salary and benefits subject to adherence to the terms of your contract of employment until your date of leaving. Your final salary will be paid directly into your bank account on Friday 2 September 2016.”

Submissions

31. We have the benefit of written skeleton arguments from both parties which they have supplemented orally. We have taken these submissions fully into account in reaching our conclusions and refer to them as appropriate in our conclusions.

Constructive Unfair Dismissal

32. We deal first with the claim of constructive unfair dismissal. This is a claim under section 95(1)(c) of the Employment Rights Act 1996 which provides:

“For the purposes of this Part an employee is dismissed by his employer if.....

.....

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”

33. In any compliant of constructive unfair dismissal the guidance in **Western Excavating (ECC) Limited -v- Sharp [1978] ICR 221** applies. It must be shown that there is a breach of a term on the contract of employment, that that breach is fundamental so that the Claimant may treat the contract as repudiated by the Respondent. Mr Knight resigned in response to the breach and without delay and must do nothing to affirm the contract.

34. The breaches in this case are set out at paragraph 2.1.4 above. What is relied upon is a breach of the implied term of mutual trust and confidence as evidenced by the eight matters concerned. We take into account the decision of Maurice Kay LJ in **Tullett Prebon v BGC Brokers LLP [2011] IRLR 420** that it must be clearly shown that there is an intention to abandon and altogether refuse to perform the contract.

35. We have considered the breaches in turn. The first is each of the allegations relied upon by the Claimant to support his direct discrimination and harassment claims. The first of those matters concerns the refusal to allow the Claimant to book a hotel. At the end of January 2016 costs saving travel restrictions were in force. There has been some laxity of terminology in the use of the terms ‘restriction’ and ‘ban’. However, there was a restriction on non-essential travel. This was a matter of business management and applied to all staff. The examples that Mr Knight relies upon namely, Ms Samantha Parker, Mr Samuel Gledhill and Ms Samantha Jeffries all travelled prior to the travel restrictions being brought into force. Mr Knight agrees that that is the case. He has not demonstrated a breach of his contract of employment.

36. The second matter is the alcohol allegation in Leicester. The way in which this was dealt with was a matter of business management by an inexperienced manager who had a genuine concern. Ms Banaszak sought the support of Mr Gledhill who did not think that there was an alcohol smell and Mr Knight went back to work. The training days concluded satisfactorily and we are not satisfied that there was any repudiatory breach of Mr Knight's contract.

37. The third matter is the matter which is set out in harassment section that Mr Day is alleged to have said in January of Mr Knight that he had a sad meaningless life as he had no children or wife and that he had been slacking in regards to his workload. Mr Day did not recall of this although he recalled that there had been some banter and reference to slacking. He was given advice for the future by Ms Halliday and there has been no repetition. We are not satisfied that this amounted to a repudiatory breach.

38. The next matter relied upon is the absence of performance reviews with respect to the Claimant in the three years prior to July 2016. There was an absence of performance reviews across the board. This was a management omission. When Mr Basu took over as Director at the beginning of January 2016 he took the view that there was no career progression plan and introduced one with effect from the beginning of July. Mr Knight was appraised by Mr Day in July 2016, for which he was grateful, and objectives were set, designed to work towards promotion which Mr Knight acknowledged at the time. We are not satisfied that this amounts to a repudiatory breach.

39. The next potential breach relied on is the Respondent changing the Claimant's role from January 2016 requiring him to travel nationally without adjusting his compensation. The job title was originally incorrect but Mr Knight had been performing the role of compliance auditor throughout his employment. The evidence is that his pay and bonuses reflect that. When he raised the issue of a new contract it was because the NMNC work had moved to Leicester and Mr Knight was to be involved with third party work. Although he would be talking to external parties, the purpose and activities of his role were exactly the same. In relation to the travel matter Mr Knight was not required to travel nationally. Travel was voluntary and not compulsory. In the event he had only been to Leicester for three days and that was on training matters which he agreed to do. We are not satisfied that he has demonstrated a repudiatory breach.

40. The next matter is deficiencies in the informal grievance process initiated in February 2016 including bias by the Respondent, not dealing with it in a satisfactory way, and reaching an outcome the Claimant was unhappy with. We have heard much evidence concerning this. We are not satisfied that there were any deficiencies in the process. It would have been open to Mr Knight to take out a formal grievance, but he did not do so. He was reminded that he had that right. We are not satisfied that he has demonstrated a repudiatory breach.

41. The next matter is investigation of a data protection breach by the Claimant without having properly dealt with the same with the ICO. It was entirely right for there to be an investigation. There had been a breach which potentially could have been serious. However, the ICO said it was not necessary for the matter to be reported. That view by the ICO does not exonerate the Respondent from carrying out an investigation internally. In any event, no disciplinary action was taken against Mr Knight. This was management action and investigation and does not demonstrate any repudiatory breach.

42. The next matter is subjecting the Claimant to a warning/caution with respect to a data protection breach it ought not to have done not allowing the Claimant to appeal the warning/caution. On the evidence before us there was no warning or caution. Accordingly, there could be no appeal. There was nothing to appeal against.

43. The next matter is the Respondent failing to follow the appropriate password inscription process. The evidence is that Mr Knight was on Excel 2013 which had an eight digit password and some others were on the earlier versions of Excel which had a four digit password. We are not satisfied that this can amount to a

repudiatory breach of Mr Knight's contract of employment. It does not show an intention to abandon the contract.

44. The final matter is the Respondent monitoring the Claimant's computer. On the evidence before us the Respondent was not monitoring the Claimant's computer. There is no evidence of monitoring of his home computer which Mr Knight also mentioned. Mr Basu looked into the matter and was baffled by the 19 May date given by Computercenter and the reference to Karen Hughes. We are not satisfied that this can amount to a breach.

45. Even if the eight matters referred to are taken together, they do not form enough to amount to a repudiatory breach. They do not demonstrate an intention to abandon the contract. We accept that the last straw does not have to be repudiatory, it merely has to add something. The data protection breach was potentially serious, but no action was taken and Mr Knight's explanation was accepted.

46. For all these reasons it is our unanimous judgment that the claim of constructive unfair dismissal fails.

Direct Race Discrimination

47. The next matter is the claim of direct race discrimination which is claim under section 13(1) of the Equality Act 2010 which provides:

“A person (A) discriminates against another (B) if because of a protected character A treats B less favourably than A treats or would treat others.”

Section 23(1) of the Equality Act which provides:

“On a comparison of cases for the purposes of sections 13, 14 and 19 there must be no material difference between the circumstances relating to each case.”

The burden of proof provision is contained at section 136 of the Equality Act which provides:

“(2) If there are facts from which the court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

48. In any complain of discrimination for any protected characteristic the Tribunal must take into account the guidance given in **Igen v Wong [2005] ICR 931** and in **Madarassy v Nomura International plc [2007] IRLR 246**. There must be a finding of detriment and a difference in race in order for the Tribunal to consider whether there is anything from which the Tribunal can infer discrimination in order for the burden to pass to the Respondent. The Claimant must show a difference in treatment and a difference in race and there must be something from which the Tribunal can infer that the treatment was because of Mr Knight's race.

49. The matters that are complained of are firstly, that the Respondent refused to allow the Claimant to book a hotel when working at the Leicester office. This was because of the travel restrictions that had come into force at the end of December 2015 which applied to all staff. Mr Knight compares himself with Samantha Parker, Samuel Gledhill and Samantha Jeffries. Mr Gledhill's evidence was that his trip to London were very rare and his last trip was in 2013 and he did not stay overnight. In addition Mr Knight has accepted in evidence that the comparators travelled prior to the restrictions coming in. In these circumstances the comparators were not in materially the same circumstances and according the claim in respect of this detriment must fail.

50. The other claim of direct discrimination relates to the alcohol allegations. There is no named comparator and therefore the comparator must be a hypothetical comparator. Ms Banazak's evidence was that she would treat anyone else in the same way. We have no reason not to believe her. In the Leicester office there are a range of different ethnicities. Mr Knight has not demonstrated anything from which the Tribunal could infer that calling him to the meeting and making the allegation was because of his race.

51. In those circumstances it is our unanimous judgment that the claim of direct race discrimination fails.

Harassment

52. As far as the claim of harassment is concerned in cross-examination Mr Knight said that he was not pursuing a claim under section 26 of the Equality Act but the complaint merely related to his constructive dismissal complaint which we have already dealt with. He has said that he did not think that Mr Day's comments related to his race. There is no claim of harassment.

Notice Pay

53. In relation to the notice pay claim, Mr Knight resigned. It was he who insisted that his resignation should be with effect from 19 August and he was paid up to 19 August. He was not entitled to any further pay. In any event, he has not demonstrated that there has been any shortfall in his pay. In those circumstances, it is our unanimous judgment that the claim for notice pay fails.

Jurisdiction

54. It is unnecessary for us to consider the jurisdictional issues in the light of our earlier decisions.

Failure to Provide Written Terms and Conditions

55. The final matter is the claim in respect of the written statement of terms and conditions of employment. This is based on the job title and the alleged imposition of term requiring national travel. In relation to the job title the Respondent gave the wrong job title, although Mr Knight worked as a compliance auditor. As far as the second part of this claim is concerned, there was no term requiring national travel. In any event, we have made no award of compensation for unfair dismissal or for direct discrimination and therefore there can be no remedy under the provisions of section 38 of the Employment Act 2002. In those circumstances the claim fails.

**Employment Judge Lewzey
2 June 2017**