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THE EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms C Angelloz-Nicoud **v** **TFW (London) Limited**

Heard at: London Central **On**: 22-24 November 2017

Before: Employment Judge Walker

Members: Mr R Pell
Ms L Simms

Representation:
Claimant: In Person
Respondent: Mr D Northall, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is as follows:

The Claimant's claims are all dismissed.

REASONS

1. This is a claim brought by Ms Angelloz-Nicoud against TFW (London) Limited alleging discrimination on the grounds of her race, namely her being French.

Evidence

2. The evidence to the Tribunal heard was from Ms Angelloz-Nicoud for herself and for the Respondent we heard from Ms Rogers, an HR Manager, Mr Aimar also a HR Manager and Mr Di Filippo, Head of Client Relationship

Team and one of the founders of the Respondent's business. The tribunal were given a bundle of documents and we were later supplied with additional appraisals and letters of promotion for two employees of the Respondent who the Claimant had named as her comparators. The Respondent had failed to supply any documents relating to these two employees in the course of disclosure and said this was because they were not in fact proper comparators. We explained to the Respondent that it was for the Tribunal to make a determination and some disclosure was necessary.

Issues

3. The issues were identified at a Preliminary Hearing for Case Management purposes held on 27 July 2017 before Judge Palca. At that hearing the Claimant was represented by Mr Lewis of Counsel. She is not represented at this hearing.

4. The issues that were identified were the following.

    1. Did the Respondent fail to retain the Claimant within the Respondent's Italian Team but require her in early 2017 to move to its French Team. It should be noted that the Respondent accepts there was a proposal to do this but points out that references to the Italian Team and French Team are effectively shorthand expressions for teams with clients who predominately had those first languages so the teams were themselves predominately Italian speaking or French speaking.

    2. The second question relates to the matter of less favourable treatment. Did that requirement or proposal (i.e. to move the Claimant to the French Team) deprive the Claimant of promotional opportunities. It is worth noting that in submissions the Claimant argued that it was also a demotion. While we heard a lot of evidence about the Claimant's view she had been demoted, this itself was not technically an issue before us.

3. Who was, or were, the proper comparator(s)? We note the Claimant says it should be both Sara Morelli and Marta Galiziolli, both Italians, working in similar roles to the Claimant. If not, the issues identified by Judge Palca include the possibility of a hypothetical comparator.

4. Has the Claimant provided primary facts from which the Tribunal could conclude her treatment was because of her French nationality.

5. If yes what is the Respondent's explanation and has it proved or can it prove a non discriminatory reason for any proven detriment.

Facts

5. The Claimant is a French National; she was employed by the Respondent with effect from the 24th October 2012. According to her CV she had beginners Italian and had been a Corporate Administrator between April 2011 and the date when she applied to the Respondent. Before that she had been a Business Development Assistant. Her qualifications including a Masters Degree in International Affairs and Strategic Information, with a specialism in International Management. The CV does not mention the Claimant's French language skills, although it lists a number of other languages, but does record her being a French citizen.

6. The Respondent is part of a group of companies that provide corporate trust and wealth management services to companies, private individuals and families. We are told their clients are non British and from the EU and other countries. The staff often spoke to clients in their own language but files are maintained in English. Initially we understand that they were mainly Italian clients, Mr Di Filippo himself being Italian. He started the firm with three colleagues in around 2002. The Respondent had between 27 and 30 staff members in London at the relevant times as well as an HR Management Team. The HR team included Ms Rogers, who was based in London and Mr Aimar who was based in Europe at the time but also came to London and was involved from time to time in this matter in an HR capacity.

7. The Respondent's handbook includes an equal opportunities policy, but we note that the Respondent had no training for its staff on equal opportunities and there was very little indication of any systems to ensure equal opportunities were applied in relation to either recruitment or in any process for promotion. There was also no training on the prevention of any bullying or harassment.

8. Mr Di Filippo told us he started in London developing a business advising people and companies who were non British and non US. Due to his own Italian background most of the clients were Italian, however, he said an Italian tax amnesty meant that the impetus which had led Italians to move to the UK dropped off. Mr Di Filippo looked at ways to develop other business lines which included marketing to French Nationals to Russians and specifically targeting trust work.

9. The trust initiative was dependent on a new employee who was recruited from Jersey who turned out not to be as effective as hoped and left. Efforts were made to market to Russians, but the Respondent did not achieve a reliable stream of this work. However, there was some degree of success in developing French clients and over time, this became was a stronger and larger team than the Italian speaking team.

10. Mr Di Filippo described the relevant location in his office which was on a floor which included his own office and then two rooms for staff, other than himself. He eventually split the staff into two teams, one of Italian speakers and one of French speakers, each having their own room.

11. When the Claimant was recruited, the contract given to her referred to her job title as Client Relationship Coordinator. She was also given a job description for that role and a copy of the 2012 version of the Handbook. The Handbook produced to the Tribunal for the hearing was the 2016 version and we do not know what the differences were between those two versions or whether the Claimant was given an updated version.

12. The Claimant had a performance review 3 months after her start date in around about 24th January 2013 and that review recorded her job title as Client Relationship Coordinator. The review was generally positive but the Claimant's comments indicate that she was still learning. While Mr Di Filippo was dismissive of the manager who gave that review, we only have his comments made with hindsight for that view. What is clear is that within a relatively short time there were disputes arising between the Claimant and the Respondent Company.

13. In November 2013, when the Claimant was given a 10% salary increase, she wrote to complain that she understood she would get a 10% bonus for the first year as well as a salary increase in March. Around about November 2013, the first Line Manager who was called Arabella left and the Claimant was put under the supervision of Andrea La Magra and Laurence Lassalle. Andrea La Magra was more senior to Ms Lassalle. Ms Lassalle was the immediate Line Manager with Mr La Magra being in a more general senior role.

14. In around March/April 2014, another appraisal took place and that appraisal was contributed to by Laurence Lassalle, and the appraisal meeting itself was conducted by Mr Di Filippo. The appraisal document records the Claimant's title as Corporate Administrator. No one has suggested that title was actually used and it is our understanding that the Claimant remained at that time a Client Relationship Coordinator.

15. The Claimant wrote to Mr Di Filippo complaining about the contents of the appraisal and her pay, and Mr Di Filippo replied at some length setting out his response.

16. In August 2014, the Claimant was given another salary increase to £34,000. In January 2015, Laurence Lassalle who had been off for a period on maternity leave returned. Emails show that the Claimant was unhappy that on her return, Ms Lassalle was supervising her work. The Claimant did not

like the thought of an extra layer of supervision being reintegrated at that stage. The Claimant complained to both Mr Di Filippo and Andrea La Magra about that.

17. Around about 21 January 2015, emails clearly show that Mr Di Filippo was unhappy about the tone and wording of the Claimant's email to him and the result was that a disciplinary process was initiated. The Claimant was given a letter commencing the disciplinary process at a meeting which took place in a kitchen on the 2nd February 2015, which convened disciplinary meeting on the 4th February. The Claimant responded with a formal grievance on the 4th February regarding the manner in which the disciplinary process was instituted, but she apologised for having upset Mr Di Filippo and she said she had not been informed that Laurence Lassalle was her Line Manager and she regarded her Line Manager as Andrea La Magra.

18. The Disciplinary Hearing was suspended pending the grievance being processed. There was then a grievance hearing on 12th February, but that was delayed at the Claimant's request to the 13th February. The Claimant also sought and was given clarification of the allegation of insubordination which had been levelled against her.

19. On 2nd March 2015 there was an outcome letter to the grievance, which stated that it was partially upheld and the Respondent accepted there was a failure to inform the Claimant of the change of Line Manager, but no comment was made on other aspects of her grievance. However, the suspended Disciplinary Hearing was withdrawn. Meanwhile on the 27th February 2015, the Claimant emailed to complain that her pens, staple remover and other objects had been moved on her desk.

20. The Claimant's response to the grievance outcome letter dated 2 March was to request the meeting minutes and results of the investigation by a letter dated 9th March 2015. These were sent to her on 30th March. The right to appeal and the time period for appeal had been highlighted in the outcome

letter. The Claimant did not appeal, even after receipt of the documents she had requested.

21. In March 2015, there was another appraisal and in April 2015, the Claimant got a bonus of £3,000. This prompted a dispute when the Claimant complained about the amount of the bonus and she refused to sign an acknowledgment letter which she been asked to sign about that bonus.

22. By a letter dated 5 May 2015, the Claimant notified the Respondent that she was taking maternity leave from 19th October 2015, which she did. Her maternity leave ended when she returned to work on 4th July 2016. Before the Claimant left for her maternity leave, there were clearly issues between her and the Respondent Company. Her partner wrote a letter dated 23 June 2015 complaining about the way in which she had been treated by Laurence Lassalle and saying the Claimant felt very stressed by HR.

23. Between late April and early July 2015 there were emails sent between Massyl Nait-Ladjemil and the Claimant about a proposal for a French and UK team of staff, which we understand again to be a reference to a team focussing on French speaking clients. The Claimant told the Tribunal that there had been a prospect raised by Mr Di Filippo for some considerable time, possibly since March 2014, that he wanted a French speaking team.

24. The emails from Massyl Nait-Ladjemil referred to it not being “official”, but clearly, at that stage, the concept of a French speaking team was definitely a proposal. The Claimant’s response was to say that she would cooperate with Massyl, but not work under his management without a formal written agreement from the Respondent. She started her email “Coucou Massyl” and said “I am not to be working under your management without any formal written agreement issued from the company. However, as a goodwill and being a team member, I agree to assist you due to your current workload and due to the fact that French language is required for these specific clients. As such, I believe we can together provide better services which would benefit the clients and the company. Furthermore and due to our good professional

relationship, I remain a helping hand at anytime for when you are too busy yourself." The Claimant clearly spoke French with clients on occasions as emails show that in January 2015 she was asked by Mr Di Filippo to contact a client in French by email and fix a meeting, which she did

25. Emails in the bundle show the Claimant had a fractious relationship with Laurence Lassalle. There is nothing in the evidence which suggests that Laurence Lassalle was acting inappropriately at the time but it is clear the Claimant did raise a grievance about her working arrangements with Laurence Lassalle and there was then an investigation carried out. We have in the bundle the investigation notes which were made at the time, which refer to the history of the Claimant's working relationship with Laurence Lassalle and various colleagues' comments about it. They show that immediately prior to the Claimant's maternity leave, a decision was taken to separate Laurence Lassalle from the Claimant. This was because it was thought the relationship between the two was stressing the Claimant who was by then heavily pregnant, but nevertheless Laurence Lassalle was still intended to be her Line Manager overall.

26. On the 16th November 2015, the Claimant was sent an outcome letter responding to her grievance. This was after she commenced her maternity leave. That outcome letter referred to one aspect of the grievance which was that in addition to complaining about the working relationship the Claimant also complained subsequently that Laurence Lassalle had shouted at her. The outcome letter stated that grievance was not upheld, but it concluded that there was a disparity between the Claimant's working style and her manager and in order to prevent any distress to her during the later stages of her pregnancy the Respondent had changed her reporting line.

27. The Claimant did not appeal the outcome as such but requested the notes of the investigation. The Respondent had concerns about the confidentiality of the information that it collected and eventually Mr Aimar produced a new version of the investigation report in which he effectively combined together

the comments into general comments and gave no details of what individuals had said.

28. As we have noted, the Claimant was on maternity leave until 4 July 2016. The Claimant complains that during her maternity leave, two other members of staff, one called Sara Morelli and another called Marta Galiziolli, were both promoted.

29. The Tribunal found that Sara Morelli was appointed a Client Relationship Coordinator effectively from the 1st May 2014. There is no documentation to show that Sara Morelli became a Client Relationship Manager during the Claimant's maternity leave. In evidence, Mr Di Filippo said she might be promoted to Junior Manager now, i.e. at the time of this hearing, but this was because she had been doing courses for the last 2 years.

30. In relation to Marta Galiziolli, the Respondent agrees that she was also appointed Client Relationship Coordinator, but it admits it had failed to document that promotion and so there was no formal record of it. However, once again the Respondent rejects the assertion that Ms Galiziolli was promoted beyond that. Rather the Respondent says she left and went back to Switzerland from which she had originally come because she had been offered a higher paid job there.

31. We know that Marta Galiziolli had been an assistant in the Swiss Office for the Respondent group. We were told she wanted to move to London and, rather than lose her, the Respondent had offered her a role as Mr Di Filippo's assistant. We were told that she had always done some client relationship work and continued to do some while she was assisting Mr Di Filippo. After one year of that role, she moved into a full time client relationship role leaving him to recruit another PA.

32. Sara Morelli also joined the Respondent in a more junior role, as a receptionist, but the Respondent decided that she should become Mr Di Filippo's PA. We were told she again did some client relationship work and

having studied for 2 years (she was doing a tax and accounting degree), she was also regarded as a strong candidate within the Client Relationship team.

33. These findings were largely based on the evidence given by Mr Di Fillipo. We accept his evidence. We found him to be generally a credible witness. He spoke quickly, talking a great deal about matters in a manner which did not show that he took any time to think about it. His manner gave us confidence that what he was saying was genuine and truly his view of matters. His explanations of matters that had been discussed at the covertly recorded meetings tallied with what he said at those meetings showing that he was consistent.

34. On the 20th January 2017, the Claimant sent Andrea Aimar an email saying that they had not discussed issues regarding her return to work since the 20th July 2016 and she wanted him to schedule a meeting. We deduce from that, that after the Claimant's return on 4th July there was one meeting on 20th July and then there was a long period of time where there was no particular discussion about the Claimant's career progression. We also know that at that time the Claimant was assisting a gentleman called Luca Perozzo in the Italian Team.

35. On 23rd January 2017, Deborah Rogers replied saying she was responsible for the Respondent's HR matters and she therefore took over responsibility for responding to the request for a meeting which the Claimant had addressed to Andrea Aimar. Ms Rogers suggested a meeting on 26th January.

36. The Claimant replied to Ms Rogers stating that she did not want Ms Rogers to be involved. She also said "you took the position of CEO of the Group ad interim in making decisions on the Group's behalf and joined forces with Mrs Lassalle to deny my rights as an employee". That was treated as a complaint against Ms Rogers.

37. Meanwhile, on 25th January 2017 Mr Di Filippo met with the Claimant and discussed the position briefly as well as another complaint which the Claimant had raised about being allocated holiday as the reason for a day's absence when she had not been able to come to work due to a tube strike. Mr Di Fillipo proceeded to offer the Claimant a position with Massyl Nait-Ladjemil, who was then a Senior Manager in the French Team, which would have resulted in her client list being changed.

38. On 3rd February the proposal that the Claimant move to the French Team was discussed at a meeting between Mr Di Filippo, Luca Perozzo and the Claimant. The Claimant has produced notes which show that the proposal was put forward as being more relevant on the basis that it would fulfil two conditions being Mr Perozzo's need for an Italian assistant and the Claimant's need to be given more responsibilities in her duties. The Claimant's notes show her stating that her only requirement was to be at the same level of management as the position she used to hold prior to her leaving for maternity leave. This we understand to represent the Claimant's view that she held a more senior role, which she referred to as "acting manager" at that time.

39. There was then a further meeting on 24th February attended by the Claimant, Mr Di Filippo and Mr Aimar. The Claimant recorded this meeting and we were given transcripts. These show clearly a lengthy discussion about the Claimant's role and in particular the fact that her concern was to get back to the level of responsibility she had before she went away. Mr Di Filippo disagreed with her analysis of both her own level of seniority in the past and also that of Sara Morelli and Marta Galiziolli. He explained at some length the responsibility levels of various staff including Suresh, who was another employee who was in client relationship coordination, who was older and had considerable experience. The Claimant also complained that she did not believe she had received responses to previous emails complaining about various issues from the past.

40. On 28th February, there was a team meeting which was attended by Massyl Nait-Ladjemil, who was the employee in the French speaking team which it had been suggested that the Claimant assist, as well as Marta Galiziolli, Luca Perozzo and the Claimant. Again this meeting was covertly recorded by the Claimant and we have a transcript. The discussion related to file handovers and the transcript shows that Marta Galiziolli was leaving shortly. We can see from the transcript that there was clearly a general expectation that the Claimant would be moving to work with Massyl and that she would phase out of the Italian Team by April. The transcript also includes a discussion about the downturn in the Italian business. When the Claimant enquired why that was, the transcript shows that she was told in comparison with a year ago, there was much less work to do. Two main reasons were given by her colleagues, firstly being that there being no Swiss Team anymore and secondly that nobody wanted to move to the UK so happily and quickly as before. There was a brief reference to Brexit and there was also a reference to the matter of leaving which may well have been another reference to Brexit.

41. On 1st March 2017 there was a further meeting to discuss the changes which was attended by Mr Di Filippo, Mr Aimar and the Claimant. Again we have a transcript as a result of the Claimant having covertly recorded that meeting. The transcript shows that the Claimant insisted on being given written documents from the Respondent about their proposals, which eventually prompted a letter. That was a letter sent by Mr Aimar dated 1st March as a follow up to the meeting and set out a list of client files which were to be assigned to the Claimant under the supervision of Mr Massyl Nait-Ladjemil.

42. The meeting on 1st March 2017 was, as we have said, one in which the Claimant insisted on having a letter with a list of clients in it. There was a discussion about whether that was feasible or not. Eventually after some demurring, the Respondent agreed to write the letter which we as we have noted they did, but the meeting was ended by the Claimant walking out. We understand that the Claimant went home saying she was ill and she has not returned to work since. She has been on sick leave since that date.

43. The initial report of the Claimant being too unwell to work in March, came from her husband who sent an email to Mr Perozzo which requested Mr Perozzo to give a message to Mr Di Filippo. The email from the Claimant's husband, who we understand is a journalist, was overtly rude, referring to Mr Di Filippo in derogatory terms and threatening to make him famous around the world. The email listed a large number of news publications around the world and the clear message was that the Claimant's husband could get references to Mr Di Filippo into those publications and the comments would be unfavourable.

44. On 8th March 2017, the Claimant sent the Respondent a Doctor's Certificate in response to a written query from Mr Aimer about why she had walked out. She said she objected to the meeting of 1st March being organised on the spot and said she felt trapped, intimidated and her character, integrity and intellect insulted. When the Claimant had been on sick leave for a while, efforts were made by the Respondent to organise an Occupational Health appointment for the Claimant to be assessed. Those efforts failed. Initially an appointment was made for her with a Doctor Ryan. The Claimant did not communicate that she would attend, so the Respondent cancelled the meeting, but the Claimant did attend. By this time Dr Ryan was no longer expecting her and there was apparently an incident at his workplace over this. That was followed up by a second effort by the Respondent, which resulted in the Claimant attending an appointment with a different Doctor, but then she refused permission for the release of her medical report to the Respondent.

45. Meanwhile, on 10th March 2017, the Claimant wrote to Mr Aimar responding to the client list. She objected to the Italian Team and she said her level of Italian language had significantly improved since she was at the firm. Her primary response in her letter of 10th March was that she wanted the same level of responsibility she previously had and she referred to being an acting manager and she thought that being an assistant would reduce her opportunities and her turnover.

46. On 23rd March 2017, Mr Aimar notified the Claimant they were opening an investigation into recent events, in particular the Claimant walking out, her unauthorised absence on 16th March and the email from the Claimant's husband to Mr Perozzo which I referred to above, which the Respondent suggested might contain threats of blackmail.

47. The Claimant was invited to a Disciplinary Hearing. She did not attend and claimed to be unaware of it, so she was then sent a list of questions. On 22nd May 2017 the Claimant replied with no specific answers as such but rather references to past emails. She suggested, in relation to the questions about the email from her husband, that the Respondent should speak to him and Mr Perozzo directly.

48. On 6th July 2017, the Claimant filed a grievance regarding the Company's communication regarding her attendance and behaviour with Dr Ryan.

49. As we have noted, eventually the Claimant brought these proceedings.

50. There was one factual matter which was significant which we consider necessary to look into, and that was the dispute about the level of the Claimant's role prior to her going on maternity leave.

51. A constant theme of the Claimant's evidence was that she believed that while Laurence Lassalle was on maternity leave, the Claimant had reported directly to Andrea La Magra and had not been supervised, so she considered herself an "acting manager". She did not suggest the Respondent ever asked her to hold a title of acting manager, or that she had been officially promoted. She took that description from the nature of the work that she did and the lack of supervision from someone between her and Andrea La Magra.

52. When Laurence Lassalle returned from maternity leave, Ms Lassalle resumed her previous role, which included supervising the Claimant. The

Claimant became distressed as we have noted above, and the Respondent removed Laurence Lassalle from direct supervision of the Claimant. The reason for this, we found was that the Respondent believed this was causing the Claimant stress and she was in the later stages of her pregnancy. In the original notes to the investigation we refer to the decision which was taken for a period of time to separate the Claimant from Ms Lassalle.

53. When the Claimant returned from her own maternity leave, she was supervised by Luca Perozzo.

54. We heard a lot of evidence from Mr Di Filippo about the nature of the various roles and the difference between a client manager and a client relationship coordinator. The nature of the evidence he gave the Tribunal reflected what he said to the Claimant in the meetings which she had covertly recorded. Essentially, what he described was that a client manager had to have sufficient technical expertise to be able to meet clients on their own and recommend structures for them which included tax planning, legal structures and other similar arrangements.

55. Once these plans had been decided upon, the work the Respondent carried out involved assisting the client by forming the legal structures and continuing to run and operate them. This was not active management in terms of their physical activity such as running a shop but rather the Respondent did company secretarial work, filing forms, preparing documents, tax returns and the like. This work could frequently be done by a client relationship coordinator with minimal supervision, if the coordinator had sufficient experience and ability.

56. We were told that the staff who operated as client relationship co-ordinators had differing skills in different areas and different levels of ability. Mr Di Filippo referred to them all as “assistants”. He said the title of Client Relationship Coordinator came from HR. He told the Tribunal that sometime previously staff had taken to using different titles and the HR Team had suggested that they should be given a specific title which was not that of

Manager. Hence they came up with Client Relationship Coordinator. Mr Di Filippo saw the role as flexible. We note that there is a flexibility clause in the employment contract, in terms of duties and responsibilities. In short, the role of client relationship co-ordinator could encompass a range of skills and differing levels of supervision depending on the exact work being undertaken, but only a client manager would give advice on strategic legal and tax structuring.

57. The Tribunal concluded that the Claimant was never a Client Manager. We are satisfied that she was always a Client Relationship Coordinator. The Claimant did not challenge the description of the roles given by Mr Di Filippo but we note that she was unrepresented so she may not have realised the assistance this would have given us had she done so.

58. Importantly, there was no evidence at all that the Claimant actually gave the level of advice that a client manager would give, namely actual advice recommending structures of the nature of tax planning or legal structures or similar arrangements. We do understand that the Claimant may well have done implementation of those structures and on occasions she may have been more autonomous in the way she carried out that role, but she was always a Client Relationship Coordinator and always subject to being supervised and under someone else's authority. To be absolutely clear, we accept that while Laurence Lassalle was on maternity leave, the Claimant had less supervision and she reported to Andrea La Magra without an intermediary manager supervising her work, but there was no promotion to a client management role. When Ms Lasalle returned from maternity leave she took up her previous role which was between Mr La Magra and the Claimant. When the Claimant was heavily pregnant and stressed by her relationship with Ms Lasalle, she was, for a temporary period, removed from Ms Lasalle's supervision, but this did not amount to a promotion.

Submissions

59. We heard submissions from both parties. In essence the Respondent's submissions are as follows. The Respondent urged the Tribunal to focus on the issues and pointed out that we had heard a volume of evidence which they thought was not relevant, but the Respondent accepted there was a proposal for the Claimant to be placed within a French client facing team with other French speakers. The Respondent rejected the argument that this denied the Claimant promotional opportunities, arguing that there were better opportunities for the Claimant within the French speaking team as she would have more direct client contact. The Respondent also said the work in the Italian Team was declining which would mean less opportunity for her. The Claimant's language skills had only been described by her as a beginner in Italian and clients tended to prefer speaking to a fluent Italian speaker even if they could easily converse in English.

60. The Respondent argued that the proper comparator was someone occupying the Claimant's role, reporting as she did then to Mr Perozzo who could speak fluent French but was not a French National. The Respondent said that such a person would also have been moved to the French speaking team. The Respondent said that both Sara Morelli and Marta Galiziolli were both Italian speakers and it was not sensible to move Italian speakers to the French Team.

61. The Respondent said there was a proven non discriminatory explanation and it was that firstly an employee was leaving, freeing up a job that needed doing. Secondly the move gave the Claimant greater opportunity for professional development which she wanted. Thirdly the Claimant could speak French. The Respondent argued that you do not have to be French to speak fluent French and pointed to other members of the French Team who were British or British/Algerian or Mauritian.

62. The Claimant's submission were as follows. The Claimant said the reason she could speak French was because she was a French National and it was part of her identity. She had never informed the Company of her French speaking skills, although she accepted that they knew of that. The Claimant

said that the proposal, as the Respondent called it, was in fact a requirement and that it was discriminatory as no other positions were available to her, so her expectations were not considered at all. The Claimant believed an alternative position could have been provided to her. She also considered Sara Morelli and Marta Galiziolli were relevant and comparators as they used to work in her role and they did the same work in the same team and the Claimant argued that they had been promoted.

63. On discussing the issues we had identified, the Claimant said the proposal was a requirement as there was no other option available to her. She regarded it as a demotion and there was a lack of promotional opportunities. Her colleagues in the Italian Team had been promoted and they were proper comparators at the time, both had been promoted very quickly so by the time she came back from her maternity leave they were both represented to her as managers, but things at the Respondent were informal and difficult to prove.

64. In relation to the Respondent's points regarding the explanation for the change, she agreed an employee was leaving and she knew some of the clients which that person had handled, so it was an obvious choice for her, but those clients were handed to Suresh. She was being asked to assist Massyl and she did not have a prospect of clients, she would handle independently like others in the French Team. In relation to the greater promotional opportunities, she did not agree. There was a need for an assistant, at the moment. The promotion had not materialised and the Claimant could not see that happening.

65. In relation to her French speaking skills, the Claimant made it clear that she had not offered the Respondent her skills as a French speaker, but she recognised that in practice she could speak French and some clients might be happier to talk in French.

The Law

66. Section 13 of the Equality Act 2010 states a person discriminates against another if because of a protected characteristic A, (i.e. the Respondent) treats B, (i.e. the Claimant) less favourably than it treats or would treat others.

67. Section 39 (2)(b) and (d) make it clear that the employer must not discriminate by not affording an employee access to opportunities for promotion or by subjecting an employee to any other detriment.

68. Race is clearly a protected characteristic and Section 9 of the Equality Act states that it includes nationality and ethnic or national origins.

69. Section 136 of the Equality Act addresses the burden of proof and provides that 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 contravention occurred. However that does not apply if the Respondent shows it did not contravene the provision.

70. The case of Dzieddziak v Future Electronics Ltd UKEAT/0270/11/ZT is authority dealing with a Polish national who was required to speak English at work. In that case the EAT found that the Tribunal's determination was effectively that the Claimant was discriminated against by something that was intrinsically part of her nationality and that it was capable of being a detriment on the facts of that case. However it was noted that there could have been an explanation which would have satisfied the Tribunal that this instruction was not on racial grounds, but there was no such explanation provided.

71. The case of Kelly v Covance Laboratories Ltd UKEAT/0186/15/LA is authority for the fact that an instruction not to use the Claimant's own language at work will not necessarily amount to discrimination. In that case the Tribunal found that such an instruction would have been given to any

other employee speaking some language other than English in circumstances which gave the employer cause for concern. It was stated by the EAT that the ET's decision, which was upheld, was made on the basis of a correctly constructed hypothetical comparator. The case of Dzieddziak was distinguished but it was noted that that case only went so far as to shift the burden of proof and the EAT had allowed that there might be some explanation other than race.

Conclusions

72. Did the Respondent fail to retain the Claimant within the Respondent's Italian Team but require her in early 2017 to move to its French Team. The Tribunal considered that there was a requirement for the Claimant to move to the French speaking team. We note that the handover meeting notes make it clear that the Italian Team expected her to phase out her involvement and the letter of 1st March from Mr Aimar was a clear instruction. In the circumstances, our view is that there was a requirement.

73. Did that requirement (i.e. to move the Claimant to the French Team) deprive the Claimant of promotional opportunities, thereby amounting to less favourable treatment. We considered whether this requirement deprived the Claimant of promotional opportunities. The evidence suggested that the move to the French Team would give the Claimant more direct client contact and that Team was growing, in contrast to the Italian Team, where the Team's own meeting notes taken by the Claimant as a result of her recording it, show that it had less work.

74. The Tribunal concluded that promotion from client relationship coordinator to client manager, would require the Claimant to have skills and training in technical areas as well as a business need. While we bear in mind that it would be crystal gazing for us to begin to establish what promotional opportunities might in practice have arisen in either team, what was absolutely clear to us was there was no evidence that the move deprived the Claimant of promotional opportunities. Indeed, it is more likely that it would

have increased her promotional opportunities because, as we have noted, that team was growing and she would have more direct client contact.

75. Who was, or were, the proper comparator(s)? On the question of who were the proper comparators. We considered the Claimant's submission that her language speaking skills were inextricably part of her French identity as a French National. However, we note that the French speaking team included people with Algerian and Mauritian backgrounds. In fact there was no one else in that team who was a French National. We bore in mind the case of Kelly v Covance and the importance of a correct comparator.

76. It was clear that the Respondent considered language skills rather than nationality. This was further borne out by the Italian Team, two of whom were Italian, but one was Ukrainian who spoke Italian, English and Russian. We therefore concluded that the proper comparator was someone in the Claimant's position who spoke fluent French but was not a French National. In other words, that could be somebody who was either Algerian, Mauritian or indeed even a British person who had fluent French. We reject the suggestion that Sara Morelli and Marta Galiziolli are proper comparators. Our conclusion is the proper comparator is a hypothetical comparator with the qualities we described of being a fluent French speaker, but someone who was not actually French.

77. How would that person have been treated? We are satisfied that person would have been treated exactly the same way the Respondent treated the Claimant. There were good business reasons for such a move. The Respondent needed an additional French speaking person in that team.

78. Has the Claimant proved primary facts on which the Tribunal could conclude the treatment was because of her French nationality? We considered the burden of proof carefully. That provides that if the Claimant demonstrates facts from which a court could decide, in the absence of any other explanation, that there was a contravention, we should consider the question of the Respondent's explanation. It was our view that the Claimant had

failed to reach the threshold of demonstrating primary facts from which the Tribunal could conclude there may have been a contravention of the Equality Act and the treatment was because of her French nationality. All the evidence points to her treatment by the Respondent being due to her language skills and the business need. We do not consider that in this case the Claimant's French language skills are intrinsically connected with her nationality, even though they arise by virtue of her having been born and brought up as a French citizen. The other staff members on the French team were from other countries which use French as their national language. The nature of the work involved dealing with people who were moving to the UK from other jurisdictions and they were serviced by the Respondent's staff who all tended to be highly educated employees who had various language skills.

79. <u>What is the Respondent's explanation and has it proved or can it prove a non discriminatory reason for any proven detriment.</u> Despite concluding that the Claimant had not reached the threshold necessary to move the burden of proof, in order to make sure we have covered every aspect of this claim, and because the case of Dzieddziak suggests that the question of language can be intrinsically linked to the Claimant's nationality, we considered the Respondent's explanation.

80. There is evidence showing that another employee had left and she was French speaking and had been working on the French Team. The Claimant agreed that had happened and there was a need also for someone to assist Massyl Nait-Ladjemil.

81. The Claimant had asked for something better which would allow her career progression and our view was the Respondent had a genuine belief that the move to the French team offered the Claimant this opportunity. The Respondent says the Claimant could speak French and clearly she could. The evidence showed there were French clients and that was a growing team.

82. Mr Di Filippo had been looking at ways to develop other business lines which included marketing to French nationals, to Russians and targeting trust work. By the time the requirement arose for the Claimant to move to the French speaking team, this team was a stronger and larger team than the Italian speaking team. This to a large extent is reflected in the team meeting transcript, which refers to a drop off in Italian clients, although in the conversation, the other staff seems to regard the explanation as due rather more to Brexit than to any Italian tax amnesty.

83. The Claimant confirmed that Mr Di Filippo talked about having a French client team for some years. It is clear that this was finalised around the early part of 2017 and it also clear that clients clearly preferred talking their mother tongue even if they were fairly proficient, or indeed fluent, in English. Therefore, the Claimant was always restricted in the Italian team as the clients tended to go back to speaking with Luca Perozzo with whom she worked, whereas if she dealt with French clients she could speak to them fluently and easily. The Claimant mentioned in one of her letters to the Respondent that she had become more proficient in Italian and we have no doubt that over time she would have become more fluent, but it was not suggested by her that her Italian was close to fluent, whereas her French clearly was totally fluent.

84. We accepted the evidence that was given by the Respondent about the initiative for the French speaking team and the reasons for it, and the fact that the French language skills were significant to them for business reasons.

85. We considered the Claimant's submission that she did not offer French language skills as a skill when she applied to the Respondent and we accept that her CV did not actually list French under her language skills, but it did say she was a French national and therefore it would always seem likely that she spoke French. Indeed when she went to the interview it would have been obvious that she was able to speak French. Moreover, she spoke French in some of her work because there are emails in the bundle which show that she was actually conversing with one client in French and indeed

she also used terminology with Mr Massyl which indicated that the two of them probably spoke some French directly between themselves. The fact that the Claimant says that the Respondent should not have taken her French language skills into account is simply impractical and unrealistic. The Respondent knew her language ability and that she could speak French. She had used her French language at work as I have mentioned, and she did not really object to working with Massyl Nait-Ladjemil. Her main concern was to be in a role which had more seniority and more promotional opportunities.

86. Had this been a case where the opposite had occurred, that is to say where the Respondent had failed to take the Claimant's French language skills into account, she would most certainly have had reason to contest the Respondent's conduct as unfair, but we utterly reject her submission that the Respondent was wrong to take her language skills into account merely because she had not formally offered them to the Respondent in her application to them initially. That simply does not reflect the way in which any employer or business would operate, or be expected to operate.

87. In the circumstances, we are satisfied that the Respondent has shown a non-discriminatory reason for the Claimant's treatment. Accordingly, the Claimant's claims are dismissed.

Employment Judge Walker on 6 December 2017