



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

AND

Mr M Warlinski

MGS Laboratories Ltd

WRITTEN REASONS FOR THE JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol ON 4th and 5th February 2021

EMPLOYMENT JUDGE A Richardson

Representation

For the Claimant: in person

For the Respondent: Mr Doughty, Counsel

REASONS

The following are written reasons requested by the claimant on 26th February 2021, notified to me on 5th March 2021. The judgment was promulgated on 8th February 2021.

Background and issues

1. This is a claim brought by Mr Warlinski against the respondent company for constructive unfair dismissal, direct race discrimination and racially motivated harassment. The claimant's protected characteristic is his Polish nationality.
2. The issues were set out in a case management order of 23rd January 2020.
 - a. instructing the claimant not to speak in Polish at all in the workplace;
 - b. requiring the claimant to attend a disciplinary meeting on 6 February 2019 in relation to an allegation that he had been speaking in Polish in the workplace, together with two other Polish Employees; and

- c. requiring the Claimant to attend a disciplinary meeting on 20 February 2019; in so far the above three complaints constitute acts of unlawful discrimination, discriminating against the claimant on the grounds of his Polish Nationality; and
- d. on 18th March 2019 presenting the claimant with a further disciplinary letter requiring the claimant to attend a disciplinary hearing on 22nd march 2019.

Evidence and proceedings

3. Although the claim relates to discrimination and would normally be heard by a full panel, the respondent and claimant both confirmed that they had been asked by the tribunal administration if they would agree to an employment judge alone hearing the case. They confirmed that both had given consent in writing to the tribunal. I did not see the correspondence but was satisfied that both parties, particularly the claimant, had given his consent, as they both confirmed it to be the case at the commencement of the hearing.

4. I heard evidence from the claimant who confirmed to me that he was fluent in English and that he would indicate if he had any problem in understanding any of the proceedings. The claimant did not raise a concern with me during the proceedings.

5. The respondent's witnesses were Mrs K Morwood, Technical Director of the respondent; Mrs T Morris, also a Director of the Respondent and Ms Ruth Peck, formerly Mrs Robinson, a microbiologist. As Mrs Peck's witness statement was drafted and signed in her maiden name, with her permission, we continued to address her as Ms Robinson.

6. All the witnesses were cross examined. I was provided with a file of documents which amounted to 172 pages in including the index. Any documents referred to in this judgment are references to the documents in that bundle, which I exhibit as R1. Mr Doughty had already provided a helpful statement of law to Mr Warlinski. I was also provided with a copy. The parties agreed also a chronology indicating in places where the claimant had no knowledge of an event occurring.

Findings of relevant facts

7. I make my findings of fact on the basis of the material before me taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts and documents.

8. My assessment of the witnesses is that there were no credibility issues in so far as each witness was honest and gave their evidence to the best of their ability. However inevitably where there are disputes of fact there are occasions when I have preferred one party's evidence over the others within my findings of fact.

9. I do not make findings of fact on every issue raised. My relevant findings of fact are as follows.

9.1 The claimant commenced employed on 23rd March 2015 as a senior microbiologist. The respondent is a microbiological contract testing laboratory serving the life sciences industry. They provide validation services and they analyse finished products. The respondent in this industry sector is highly regulated and holds ISO accreditation for European standard test methods and are approved by the Medicines and Healthcare Regulatory Agency for the testing of finished medicinal products.

9.2 The claimant's employment contract had the following clauses:

Clause 19 - equal opportunities: The company is committed to the principle of equal opportunities in employment. You have an obligation to report to management any act of discrimination known to you.

Clause 22 - Rules of Conduct: these included inter alia the following stipulations that the employee must: Use all personal protective equipment provided; Observe all company rules; and Follow employers work instructions at all times.

Clause 22 also set out examples of conduct leading to summary dismissal including use of bad language or aggressive behaviour on the employer's premises.

9.3 There was no copy of a disciplinary or grievance procedure in the bundle. There was no evidence that the respondent had any training in handling disciplinary or grievance procedure, for staff or management.

9.4 Following complaints from members of staff between November 2015 and January 2016 Mrs Morwood held a feedback meeting with the claimant on 24th February 2016 to discuss concerns about his performance. The concerns included productivity, time managements, delegation, or passing on work to others, his moodiness, and his inconsistent interaction with others. The issues were discussed and the claimant was informed that he was expected to take responsibility for his actions and lead by example; he was asked to demonstrate professionalism at all times and to improve communication with his peers and management.

9.5 Five months later the claimant was made one of three Team Leaders in the restructure of the laboratory, two of his colleagues also being promoted to the other two Team Leader positions.

9.6 Between February 2016 and March 2017 four further complaints about the claimant were received from members of staff, two during their exit interviews in which negative feedback had been given about the claimant's performance and interaction with staff.

9.7 The respondent therefore asked the claimant to attend a one to one feedback meeting. The meeting was held on 20th March 2017 with Mrs Morwood. Performance Improvement Plan was discussed with the claimant. The improvement objectives were: to step up to the team leader role; improved productivity; improve team work and general attitude. One of the success criteria was identified as "*improved and consistent communication with others (in English)*".

9.8 The claimant thought that there had been an earlier request, in 2016, that the claimant speak in English and not Polish in the work place although no further details were given. Mrs Morwood thought that the claimant had not felt the need to talk in his native language in the laboratory in the first two years of his employment.

9.9 The Respondent requested the claimant aim for other success criteria including leading by example, professional behaviour, staff training to be performed according to work instructions, not to defer work to other staff, being willing to help others, and for more consideration being given to others.

9.10 The respondent continued to receive complaints from laboratory staff about the claimant over the next six months. There was no evidence of these complaints in the hearing bundle and it was not established that the claimant knew of these complaints until he saw the hearing bundle. However, the claimant was invited in a letter dated 14th September 2017, to a disciplinary meeting on 20th September 2017.

9.11 The invitation letter set out two matters to be considered: - the claimant's performance and inappropriate behaviours. The potential consequences were also set out as (i) no further action being taken; (ii) being given a written warning; and (iii) being given a final written warning. The claimant was informed that he could be accompanied by a work colleague.

9.12 The disciplinary meeting was conducted by Mrs Morris and Mrs Morwood. No notes of that disciplinary meeting were included in the bundle. No action was taken immediately following the meeting – until a final written warning dated 8th February 2018, some 4 – 5 months after the disciplinary hearing had taken place was handed to the claimant.

9.13 The written warning described the claimant's unsatisfactory conduct as inadequate performance of PET testing; attitude; laziness; poor training of team members and inappropriate comments. The performance improvements expected were stated as:

*"a) team leader capabilities to be demonstrated over a 6 month period;
b) taking responsibility for your actions and leading by example;
c) demonstrating professionalism at all times; and
d) improving communication with peers, team leader group and management staff.*

9.14 The warning was to last for 12 months of which, it must be noted, six months had already passed without the claimant being aware of the required improvements. The claimant was warned that the likely consequence of further misconduct or insufficient improvement is dismissal. The claimant was given the right to appeal the decision. There was no appeal. The claimant said *"it was six months later and for me I just gave up."*

9.15 Between late September 2017 until early January 2019 there was no further evidence of complaints from staff about the claimant's conduct, or from the respondent about his performance, in the laboratory.

9.16 In early January 2019 one of the Team Leaders, Natalie, was promoted to Laboratory Manager. The claimant strongly disagreed with the choice of the new Laboratory Manager because he believed that she was not qualified to do the role. The respondent noticed a marked deterioration in the claimant's conduct and performance and that he and the other Team Leader, Ola, a Polish speaker, became uncooperative and disgruntled about the promotion of the new Laboratory Manager. Their conduct included talking in Polish whenever the new Laboratory Manager came into the laboratory which undermined her and caused other staff to feel uncomfortable. The behaviour affected the atmosphere in the laboratory and caused some of the other members of the laboratory to be uncomfortable and to have a conflict of loyalty.

9.17 On 29th January 2019 Ms Robinson, a microbiologist in the claimant's team, had been working late after being on site testing. She had returned to the office and had felt particularly upset about the negative atmosphere in the office. She was found crying in the toilets by Mrs Morris. They had a discussion in which Ms Robinson explained that she was upset about how the new Laboratory Manager was being treated by the others, and that the claimant and the other Polish speakers were speaking Polish about the new laboratory Manager. Ms Robinson told Mrs Morris that she would have to find another job if the behaviour of others towards the Laboratory Manager did not stop.

9.18 Mrs Morris reported the conversation to Mrs Morwood. On 31st January 2019 the claimant was given a letter requiring him to attend a disciplinary hearing

on 6th February 2019 to discuss concerns about his performance and inappropriate behaviours at work. He was informed of the possible consequences arising from the meeting which were that no further action could be taken; he could be given a written warning or a final written warning. He was informed he could be accompanied by another work colleague.

9.19 This invitation, like the previous invitation to a disciplinary hearing, did not give the claimant any warning about what the actual allegation of inappropriate behaviour and the concerns regarding performance were.

9.20 The claimant attended the disciplinary meeting on 6th February 2019. It was conducted by Mrs Morris with Natalie Morwood, the new Laboratory Manager, in attendance. The allegations relating to the Claimant's behaviour were recorded in the disciplinary meeting notes as:

"1 b/Malicious comments regarding NM promotion to Laboratory Manager. This is insulting to the integrity of the Management team, and to the 8 years hard work NM has contributed to MGS.

2b/ Continual moaning & complaining to other members of the team regarding NM promotion, has caused upset to others and lead to an atmosphere of negativity developing in the lab.

3b/ Continued to revert to polish when, together with AN you are obviously not discussing work, you have been asked not to do this in the laboratory."

9.21 The issues regarding his performance were

"1 p/ Inoculum training of CPB and RR, you took it upon yourself to cross through sessions 2 and 3 and sign as completed. When you were asked to correct this, you did not do so. This is an important part of the training module and demonstrates non-compliance to company procedures.

2p/ Still not taking on the Team Leader responsibilities, no improvement has been noted, despite previous discussions regarding this. Still not leading by example and performance generally lazy.

3p/ Lack of professionalism, as a team leader you should be showing support to your manager and not belittling her position in the team, this is unacceptable.

4p/ Not performing scheduled work and not telling anyone it wasn't done. Only came to light during following scheduling meeting (Contee Inc)

5p/ Further complaints from other team members regarding the lack of performance as a team leader. Will only do the bare minimum."

9.22 The claimant admitted that he had been one of the people saying that the new Laboratory Manager, Natalie Morwood “*only got the jobs because [she was] the boss's daughter*”.

9.23 With regard to speaking Polish in the office the claimant was informed that there was no reason for the claimant to speak Polish in the laboratory as his English was excellent and in [the respondent's] regulated environment it was extremely important that communications are clear and understood by everyone to ensure consistent performance and compliance.

9.24 The claimant's comments and responses were recorded in the meeting notes. The notes record that the claimant did not generally accept any of the criticism of his conduct - he regarded it as people snitching on him all the time and stated that “*this is all bullshit*”. In terms of performance he disputed the complaints and did not feel he had been adequately trained as a trainer. He had seen people doing less work than him and he did not accept that he had not completed work in a timely manner. He had been shown no evidence of not completing work in a timely manner. He complained that he never got any positive feedback.

9.25 At the end of the meeting it was agreed that there would be a 2 weekly review of the claimant's performance. The next meeting would be on 20th February 2019. The claimant was not provided with a copy of the notes of the meeting.

9.26 Following that meeting the claimant informed his work colleagues that he and the other Polish speakers had been banned from speaking Polish in the work place. This met with some sympathy from some of his work colleagues.

9.27 The claim that he had been banned from speaking Polish *in the work place* is not supported by the notes of the meeting which referred to the claimant being asked to not speak Polish *in the laboratory*. There was no reference in any of the documents to the claimant being directed not to speak Polish in the work place.

9.28 On 12th February 2019 one of the laboratory staff, EG, made a formal complaint about being made to feel uncomfortable about the way in which the claimant, her Team Leader, spoke to another member of staff, R who was Muslim. The complaint referred to inappropriate conversations in which the claimant had been offensive and unprofessional and were directed at R's religion. The complainant said that she considered it to be bullying and harassment on racial and religious grounds.

9.29 This resulted in the claimant being asked to attend a follow up meeting on 20th February 2019 to discuss the allegation. Mrs Morwood conducted the

meeting. She referred to another complaint on 15th February where the claimant and another Polish speaker had been in the corner of the laboratory talking Polish. She also referred to the complaint from EG on bullying and harassment of R on racial and religious grounds. A third issue was that the claimant had spoken to Ms Robinson about suspension testing and in that conversation had implied that she was not competent to undertake suspension testing, when that was not true. His comments had had a negative effect on Ms Robinson. The claimant was also reminded about wearing PPE in the laboratory.

9.30 The claimant's responses were recorded in the notes. He admitted that he and another Polish speaker were in the corner of the laboratory talking in Polish and that *"they were trying to get out of the habit"*.

9.31 The meeting notes record the claimant's response to the allegation of harassing R about his religion/belief was that *"only the people he was speaking to were affected by his comments and if they were ok with it, that's fine"*. He commented that other persons made lewd comments in the work place. He accepted that he had not worn his safety glasses but that he would assist the lab manager in enforcing this with others.

9.32 The claimant's second planned interview was cancelled because of the US FDA inspection of the respondent's premises on 4th and 5th March 2019.

9.33 On 15th March 2019 Ms Robinson wrote a formal grievance about the claimant's conduct. She alleged that she had been influenced by him to be wary of management including the new Laboratory Manager. However she had come to realise that the claimant appeared to have a vendetta against the Laboratory Manager and manipulated people into thinking they were not being supported by the Laboratory Manager which was not true.

9.34 Ms Robinson referred to there being many incidents when the claimant and others had been speaking in Polish so that other people who were laboratory could not understand what they were saying and that they had been seen huddled whispering in a corner.

9.35 Ms Robinson reported that there had been conversations between the claimant and a member of staff, RI, which had been not been politically correct on both sides. Although the conversations between them had seemed friendly a specific incident in the lab had concerned her. The claimant had referred to R as *"my little talib"* making references to R's Islamic faith. Although Ms Robinson had warned the claimant not to repeat the comment, he later showed her a post-it note on which he had drawn a bomb exploding and had written *"my little talib"* on the post-it note. Ms Robinson told the claimant to get rid of the post-it note and warned him that he was going too far. The claimant put the post-it note on R's desk.

9.36 Ms Robinson also referred to a conversation about some interviews that the claimant had lined up and that he had an interview with Wickham Labs. She reported that he said *"I really want to stick the knife in here"* and when she asked him what he meant, he replied, *"I want to f***k MGS up"*. This has not been the only time he had expressed a desire to cause trouble for the company as in a conversation with Jimmy and the claimant, she had jokingly said, *"Oh don't worry Marek's going to get himself fired the way he's going"* and the claimant had replied *"Good I want them to fire me so I can sue them"*.

9.37 Ms Robinson's evidence was not challenged by the claimant although he was informed at the beginning and during the course of cross examination that anything he did not agree with in a witness statement from the respondent, should be challenged otherwise it could be accepted by the Tribunal as true.

9.38 Ms Robinson's grievance resulted in the claimant being suspended from work on 18th March 2021 and being handed a letter inviting him to attend a disciplinary meeting on 22nd March 2019.

9.39 The suspension letter informed the claimant that he must attend a disciplinary hearing with regard to gross misconduct. Again no details were provided. The possible outcomes from the disciplinary hearing were listed as a written warning, a final written warning or dismissal. The claimant was informed that he could be accompanied by another work colleague.

9.40 On 19th March 2019 Mrs Morwood had a staff briefing stating that discrimination of any kind would not be tolerated.

9.41 On 20th March 2019 the claimant wrote a letter Mrs Morwood stating

*Dear Kim,
I'd like to take this opportunity to notify you about my resignation from my position as a Team Leader at MGS Laboratories effective four weeks from today.
I am quite happy to take this four upcoming weeks as off sick/ remaining holidays or unpaid.
I don't feel emotionally and physically strong enough to defend myself again from any allegations regarding my work and personal behaviour.
I personally believe this is the best way for both of us to part our professional paths.
I wish you all the best in the future with your new premises and new staff I think it will be the best for me and you if I won't be a part of this anymore....."*

9.42 The claimant commenced early conciliation with ACAS, completed on 23rd May and filed his ET1 on 24th May 2019.

9.43 The claimant took up an offer of employment with Wickham Laboratories after leaving the respondent's employment.

Submissions

10. I heard oral submissions from both parties of which I have taken a full note. I have re-read the submissions and have taken them into account in my deliberations.

The Law

11. Section 13(1) of the Equality Act 2010 defines direct discrimination as follows:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.'

12. Section 136 of the Equality Act provides:
136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(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.'

13. Section 26 of the Equality Act 2010, provides (as relevant):
'(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic [in this case race], and

(b) the conduct has the purpose or effect of –

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

The alleged act must be related to a relevant protected characteristic.

14. In respect of the claim for constructive unfair dismissal the following principles apply (see most recently Kaur v Leeds Teaching Hospitals NHS Trust [2018] IRLR 833):

- (i) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?
- (ii) Has he affirmed the contract since that act?
- (iii) If not, was that act (or omission) by itself a repudiatory breach of contract?
- (iv) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the implied term of trust and confidence? (If it was, there is no need for any separate consideration of a possible previous affirmation).
- (v) Did the employee resign in response (or partly in response) to that breach?

Conclusions

15. I must apply the law to the facts. I do so in the reverse order of the list of issues in the case management order of 23rd January 2020.

16. Claimant's allegation no.1 is a claim of direct race discrimination because the respondent instructed the claimant not to speak Polish at all in the workplace. I have found that the claimant was incorrect in claiming that he had been instructed not to speak Polish at all in the work place. He was instructed not to speak Polish with other staff in the laboratory. He was required to speak English in the laboratory but he was not required to speak only English in the work place. There was no issue with speaking Polish with Polish work colleagues for example, in the staff room or car park – that is, *outside the laboratory*.

17. The specific reason for speaking English only in the laboratory was because the respondent was in a highly regulated sector and had professional standards to maintain as explained by Mrs Morwood. The respondent had to comply with professional standards in testing which included, from a technical and health & safety point of view, that everybody in the laboratory understood

the same instructions, the same paperwork and that there was no risk of confusion or lack of consistency.

18. The claimant held the view that this was unreasonable because his Polish work colleague, Rafa, did not speak English fluently and sometimes needed assistance in Polish with his work, particularly work instructions. The claimant said that it was easier to explain to Rafa in Polish what had to be done when working in the laboratory, not English. He said that this 'facility' had been removed from them when they were instructed to speak English only and implied that only being allowed to speak English had made it more dangerous to work in the laboratory.

19. I do not accept the claimant's explanation as a justification for not obeying a reasonable instruction from the claimant's employer. If a member of the claimant's team did not understand English, that should have been reported by the claimant to management to be dealt with as appropriate, for safety reasons and the integrity of work undertaken by that team member. In any event the claimant did not raise this as a defence in his meeting with the respondent on 6th February 2019 or at any other time.

20. The respondent's direction that the claimant should not speak Polish in the laboratory, had been first raised in the Performance Improvement Plan in 2016. That clear direction was repeated in March 2017. There was a genuine business reason for the request as I have stated above. The request applied to all staff. The appropriate comparator would be a foreign national speaking another language, such as French, German, or Russian. I find that a French national or a German national speaking their native language in the laboratory would have been also been asked to speak only in English in the laboratory. Apart from the professional reasons for the language in the laboratory being English, it is in any event courteous not to speak in front of others in a language they cannot understand.

21. I find that the instruction to speak English in the laboratory and not Polish, was not motivated by the claimant's nationality. It was motivated for proper professional reasons which included safety, integrity of work and also the promotion of harmony in the laboratory with non-Polish speaking staff. The first allegation is therefore not upheld. The respondent's conduct was not motivated by race.

22. Allegation no. 2 is that the respondent required the claimant to attend a disciplinary hearing on 6th February 2019 in relation to the allegation that he had been speaking Polish in the workplace with two other Polish employees. The claimant admitted that he had been speaking with Polish colleagues in Polish in the laboratory and was "trying to get out of the habit".

23. However, the issues discussed at the disciplinary hearing on 6th February were not solely related to speaking Polish in the workplace. The claimant's performance as a Team Leader and his productivity were also in question. These matters were also discussed with him. There is sufficient evidence in the chronology of events set out above that issues with the claimant's work performance had commenced in his first year of employment in 2015. Performance and conduct related issues were raised with him February 2016, March and September 2017 prior to the disciplinary hearing on 6th February 2018.

24. Allegation no. 3 is that the claimant was required to attend a disciplinary meeting on 20th February 2019. It was accepted at the Hearing by the claimant that was a review meeting, *not* a disciplinary hearing.

25. The claimant did not accept the respondent had any cause to raise the various issues of conduct and performance with him as he was not presented with the evidence of investigations into the allegations put to him. That does not mean that the allegations were not valid. As stated above, there was documentary evidence of the claimant being put on notice in the past about concerns relating to his productivity, performance as team leader and speaking Polish in the laboratory.

26. Stepping back to look at the initial burden of proof on the claimant and the respondent's reason for their conduct, I find that the claimant has not come close to discharging the burden of proof that the respondent's motivation for its conduct with regard to allegations 1, 2 and 3, was his nationality: **Igen v Wong**. The respondent has provided a legitimate reason for calling the claimant to two disciplinary hearings and a review meeting. They had a legitimate reason for directing he spoke only English in the laboratory with his work colleagues. His claims of race discrimination on the basis of S13 direct discrimination fails. The allegation of racial harassment under S26 raises the question of whether the conduct of the respondent created a hostile degrading humiliating or offensive environment but on the same grounds set out above - that allegation also fails. The respondent's conduct had nothing to do with his nationality, it was concerned with his behaviour.

27. I then turn to the question of constructive unfair dismissal. The allegation was that on 18 March 2019 the Respondent presented the Claimant with a further disciplinary invitation requiring the Claimant to attend a disciplinary hearing on 22 March 2019.

28. With regard to adherence to good practice and the ACAS COP I find that the respondent has failed to follow good practice in that it has failed to adequately investigate allegations, failed to provide the claimant with sufficient information about the disciplinary and performance allegations that he faced and failed to provide him with notes subsequently. There was additionally an

unacceptably long delay between the disciplinary hearing on 17th September 2017 and being given the outcome – the warning in February 2018. If the respondent was following its own disciplinary procedure it was an inadequate procedure. There was in any event, no copy of it in the bundle. There was no evidence of equality and diversity training given to staff which could have avoided the issues concerning the claimant's treatment of R and the comments or jokes made about his Islamic faith.

29. It was the respondent's responsibility to ensure that its staff had equality and diversity training and had access to explicit policies and guidance to ensure this type of conduct displayed by the claimant did not take place. None of this was available in the bundle and I therefore can only assume that it did not exist at the relevant time because if it did, it would have been relied on by the respondent

30. The last incident which triggered the claimant's resignation was the suspension and invitation letter of 18th March requiring him to the disciplinary hearing on 22nd March 2019. Was that the last in a series of events which caused the claimant to resign? I find that it cannot be because the three previous allegations were not racially motivated.

31. The claimant was invited to this disciplinary hearing on 22nd March 2019 because of allegations of racial harassment of one of the claimant's subordinates. The reason for requiring the claimant to attend the meeting, namely the complaints of Ms Thompson in her letter of 15th March, was not unreasonable on the part of the respondent, or for that matter for any other reasonable employer in similar circumstances as the respondent, following the ACAS code of practice on disciplinary and grievance procedures. It is not unreasonable to have suspended an employee accused of conduct amounting to discrimination for race and religious belief reasons. The respondent had a legitimate reason to invite the claimant to a disciplinary hearing.

32. However the claimant did not know what the purpose of the hearing on 22nd March was. The invitation letter of 18th March 2019 did not explain to him what the allegation or allegations of unacceptable conduct were. He would have been effectively ambushed had he attended the hearing. The conduct of the respondent in organising this meeting which followed the pattern of the two previous disciplinary meetings, is a course of conduct. The respondent's procedure was inadequate and not in accordance with the ACAS Code of Practice.

33. So did failure in procedural steps entitle the claimant to resign? I have found that the respondent had reason to admonish the claimant and request improvement in his performance and conduct. The claimant however had no time whatsoever for the complaints against him which he dismissed as "*bullshit*" which was based on "*tittle tattle*", on what he said/she said.

34. I find that the claimant did not accept any of the respondent's observations on conduct or performance at any time. He thought it all unfair and unjustified. He did not pay regard to what was discussed on 17th September 2017 or 6th February 2019 as his behaviour was repeated despite the respondent admonishing him for it.

35. The claimant did not raise a grievance about the lack of information about the allegations he faced at the disciplinary hearing on 22nd March although it became obvious in his submissions during the course of the Hearing that he was aware that he could have raised a grievance. In respect of the two previous disciplinary hearings, the claimant did not raise any complaint about the conduct of the disciplinary process and he did not appeal any outcome despite being told that he could.

36. I have found that the requests to attend a disciplinary meeting on 17th September 2017 and 6th February 2019 were to address legitimate concerns and neither was a breach of contract. The meeting on 20th February was a review meeting and not a disciplinary meeting.

37. The claimant said that the prospect of further disciplinary proceedings on 22nd March 2019 was the last straw for him. He said couldn't take any more emotionally. The claimant believed that he would be dismissed this time. He did not want a dismissal on his career record, he had been offered a vacancy by a competitor of the respondent. He had filed his CV on line in early 2018 and had attended an interview with another laboratory in mid 2018 although for reasons that I do not need to go into in this judgment, that did not work out. The claimant left his CV uploaded with recruiters from 2018 although he was not actively pursuing another post throughout that time. By the time he received the 18th March invitation he had been offered another job. The claimant's resignation letter makes no reference to him believing he had been innocent of the complaints about him in the past and had been unfairly treated by the respondent.

38. Stepping back and looking at the conduct of the respondent in conducting the disciplinary proceedings from 6th February 2019 until 18th March 2019, I find that in matters so serious as potential dismissal, even though they had proper cause to instigate disciplinary hearings in both cases, the respondent's failure to follow an adequate disciplinary process including sufficient investigation and setting out the charges to the claimant in advance was *potentially* a fundamental breach of contract. But that was not the claimant's complaint. His complaint was that the requirement not to speak Polish in the laboratory and his nationality were the reasons for being disciplined. I have found that those complaints are not upheld.

39. The claimant had never genuinely accepted criticism of him as having any validity; he never properly engaged with the respondent in its concerns about his conduct or performance and he did not intend to engage with the respondent in this third disciplinary hearing. Even at this Hearing, the claimant failed to grasp that it was not relevant that the subject of his jokes, (R) , did not protest about his race/religion motivated comments or conduct; those jokes were nevertheless discriminatory and were unacceptable behaviour which could (and did) cause offence to anyone who observed it, even if the claimant thought R was not offended. The respondent had proper cause to invite the claimant to another disciplinary on 22nd March which had nothing to do with the claimant's nationality. Whilst the respondent's breaches of procedure were serious, I find that even if the disciplinary hearing invitation letter had set out the allegations made by Ms Robinson in her letter on 15th March, the claimant would have not accepted the complaints as being a valid basis for a disciplinary hearing as even in this final Hearing of his claims, he did not believe he had done anything wrong, especially in regard to his 'banter' with R on the subject of R's religion.

40. The allegations of race discrimination and harassment on the grounds of Polish nationality have failed.. With regard to constructive dismissal, the claimant would have resigned in any event even if he had been provided with the allegations made by Ms Robinson, not only because on past history he would not accept the allegation as having any basis, but also to avoid a disciplinary mark on his career record and because he had another job to go to, irrespective of whether the respondent had followed good procedure.

41. The claimant's claims are dismissed.

Employment Judge A Richardson
Date: 22 March 2021

Reasons sent to the parties: 24 March
2021

FOR THE TRIBUNAL OFFICE