



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Ms F Oyegbesan

and

Respondent
UOP Limited

Heard at Reading on: 20, 21, 22, 25, 26, 27 January 2021
(hearing).
28, 29 January 2021 (in chambers).

All conducted by CVP remote video link.

Appearances:

For the Claimant Ms E Grace, counsel
For the Respondent Ms M Tutin, counsel

Employment Judge Vowles
Members Ms J Weaver
Mr C Juden

RESERVED UNANIMOUS JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Unfair Constructive Dismissal – sections 95(1)(c) and 98 Employment Rights Act 1996

2. The Claimant was not unfairly constructively dismissed. This complaint fails and is dismissed.

Direct Sex Discrimination – section 13 Equality Act 2010

3. The Claimant was not subjected to sex discrimination. This complaint fails and is dismissed.

Direct Race Discrimination – section 13 Equality Act 2010

4. The Claimant was not subjected to race discrimination. This complaint fails and is dismissed.

Reasons

5. This decision was reserved and written reasons are attached.

Public Access to Employment Tribunal Judgments

6. The parties are informed that all judgments and reasons for judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant and Respondent.

REASONS

Submissions and Claims

1. On 1 August 2019 the Claimant presented claims of Unfair Constructive Dismissal, Direct Sex Discrimination and Direct Race Discrimination to the Tribunal.
2. Claims of Equal Pay and Direct Age Discrimination were later withdrawn and dismissed.
3. On 30 September 2019 the Respondent responded and all claims were resisted.
4. The claims were clarified in an agreed list of issues following a case management order made at a preliminary hearing on 16 February 2020. The agreed list of issues was further clarified at the start of this hearing.

Evidence

5. The Tribunal heard evidence on oath from the Claimant, Ms Folasade Oyegbesan (Technology Specialist) and Ms Candice Carrington (Technical Sales Engineer).
6. The Tribunal also heard evidence on oath on behalf of the Respondent from Mr David Gledhill (Director Technical Services Europe, Africa and FSU), Mr Jonathan Young (Team Leader Service Managers North Europe), Ms Gabriella Gonzalez Lippke (Manager Technical Services Group), Mr Dharmesh Panchal (Manager Technical Services Group) and Mr Antony Hagger (Director Engineering and Equipment).
7. The Tribunal considered a bundle of documents containing 768 pages.
8. Both parties presented written and oral closing submissions.
9. From the evidence heard and read the Tribunal made the following findings of fact.

Findings of Fact

10. The Respondent is a UK subsidiary of Honeywell UOP which is a multi-national business operating in the petroleum and manufacturing industries. The Head Office is in Des Plaines in the USA.
11. The Claimant, who is of Nigerian origin, was employed at the Respondent's Guildford office from 3 September 2007. Having worked in Field Services she then moved to Technology Services in a Band 3 role as a Gasoline Technology Specialist. She resigned on 3 July 2019 and the effective date of termination was 28 August 2019.
12. All the Respondent's employees are subject to performance assessments and are given a rating known as a "block rating". The block rating score is for results and behaviour which combine to give an overall performance rating. A block rating of 1 means that both results and behaviour exceed expectations and is given to less than 5% of employees. A rating of 5 means that the employee meets expectations. A rating of 2 or 4 means that one or other of the results and behaviour exceeds expectations. Accordingly, a rating of 1, 2 or 4 means that an individual is in the "upper elbow" which means that they are a high performer. A rating of 3, 6, 7, 8 or 9 places an individual in the "lower elbow" which means that the employee is performing beneath expectations in one or both performance requirements and would usually be placed on a performance improvement plan.
13. The Respondent's organisation was highly structured regarding pay rises and progressions. Jobs were graded and banded and various job grades existed within each band. Progressions/promotions took place on an annual and sometime bi-annual cycle unless there was a need to fill a specific role. Within Technology Services, as in other departments, a single list of employees provided their ranking in order of priority for progression. That was then sent to the Head Quarters in Des Plaines and, if agreed, progressions would be awarded starting at the top of the list and working down until the budget for progressions expired. In a normal year around 75% of individuals on the progression list would be promoted. Not all employees nominated for progression would be promoted in the current progression cycle.
14. The Claimant's 2016 performance assessment was 5 which was a rating of satisfactory. Her 2017 performance assessment, however, had a block rating of 1 and she was assessed ready to promote. This was her first upper elbow rating and the first time she was assessed to be ready to promote since promotion to the Senior Technical Services band 3 role.
15. In early 2018 the role of Regional Services Manager (West Africa) became available. The incumbent, Tomi Osho, who was responsible for Africa, Middle East and Asia regions including Nigeria, decided to move across to sales and became the Regional Sales Manager for West Africa. The new Regional Services Manager (West Africa) role was intended to be based in the UK Guildford office for 1 or 2 years followed by a move to Nigeria once the Dangote Refinery Project in Nigeria had sufficiently progressed.

Dangote was one of the Respondent's largest and most high profile projects.

16. Mr Osho and Mr Gledhill discussed whether the Claimant might be interested in the new role and when approached by her manager, the Claimant said that she was interested. She was therefore "slated" for the role. She was also identified as a potential candidate for other Regional Services Manager roles based in the UK.
17. The Regional Services Manager (West Africa) role was advertised on the Respondent's internal job posting site. The Claimant applied for the role. She was interviewed by Mr Gledhill, Mr Baldovino (hiring manager) and Mr Miramontes (sales director for Africa) on 19 March 2018. The Claimant was the only candidate being considered. She did well at interview and the role was offered to her.
18. Mr Gledhill then began the process of assessing what remuneration package the Claimant would be entitled to expect and receive in the first 1-2 years of the role which would be based in Guildford. The role would involve progression for the Claimant from Band 3 to a Band 4 role. She would only be offered an ex-patriot remuneration package when the time came to move to Nigeria. The UK remuneration would be used as a starting point for later assessment of the ex-patriot package.
19. Mr Gledhill said he wanted to secure the best possible remuneration package in the UK for the Claimant. Although car allowances had stopped for Band 4 progressions, he obtained agreement for this to be rolled into the Claimant's base salary as part of the increase into the role of a Band 4.
20. On 16 April 2018 Mr Baldovino sent the Claimant an email confirming the offer for the new post working at the Guildford office including the car allowance, was a proposed base salary of £64,426. This was an increase of 33.6% on the Claimant's existing annual pay.
21. The Claimant rejected this offer. She said that her expectation was £86,295 consisting of base salary, car allowance and MIP. She said that her minimum base salary should be £72,000.
22. Mr Gledhill and Mr Baldovino and Mr Young asked the Claimant's line manager, Ms Lippke, to speak to the Claimant to get her to understand that her salary expectation was unrealistic and that the offer she had received was the maximum that the company would offer. Also to make clear to her that she would not be entitled to an ex-patriot package while she was still based in the UK.
23. Mr Baldovino reported to Mr Gledhill that the Claimant had said Ms Lippke had told her that she could get a salary of £65,000 per annum in her current role. Mr Gledhill was not impressed and considered that the Claimant was setting one manager up against another and had caused frustrations in the management team.
24. Ms Lippke spoke to the Claimant and told Mr Baldovino and Mr Gledhill that there had simply been a misunderstanding and the Claimant was not setting one manager against another.

25. On 24 April 2018 Mr Young and Mr Baldovino had a meeting with the Claimant to discuss the new role and the Claimant's expectations. Mr Young said the meeting had three main objectives. First, to confirm that the Claimant truly was interested in the role and that it matched her career ambitions. Second, to explain to her that the offer of remuneration was fair. Third, to try to guide and mentor her against making a career decision that she might look back on with regret as a missed opportunity.
26. Mr Young denied that he sought to pressurise the Claimant into accepting the role. In his evidence he said that the Claimant did not express any enthusiasm for the new role and she only wanted to talk about how much remuneration she was worth if she took on the new role. He said that by the end of the meeting he felt that the Claimant did not really want the Regional Services Manager (West Africa) role and that her interest had been purely financial. He concluded that in these circumstances she was not the right person for the role anyway and that the Respondent had a "*potentially narrow escape from a poor recruitment decision*".
27. Eventually, by 27 April 2018, the Respondent was unable to reach an agreement with the Claimant regarding the remuneration for the new Regional Services Manager (West Africa) role.
28. On 9 May 2018 another employee Mr Piyush Bhargava, who was not of Nigerian origin, and was also in a Band 3 role, was offered the Regional Services Manager (West Africa) role. He accepted it on the same terms that had been offered to the Claimant but which she had rejected.
29. Meanwhile, in March 2018 the Claimant had been included in a list of 19 nominees for progression at position 11. On 23 August 2018 the Head Office at Des Plaines explained that only 5 out of the 19 nominees for progression had been successful. Accordingly, the Claimant was not promoted in that cycle.
30. In early 2019 the Claimant was awarded a block rating of 2. Mr Gledhill said that the Claimant's assessment should contain a reference to the Claimant's behaviour during the discussions for the West Africa role as he considered that she had not handled this well and had shown poor judgement. Accordingly, in her 2018 performance assessment report under the heading "*describe behaviours an employee can improve*" the following comment was inserted - "*she disappointed senior management during Nigeria RS position interaction with her unrealistic expectations. The trust that the organisation was looking for in her was missing.*" The rest of the assessment, however, including the block rating, was left unchanged. Overall the assessment was positive about the Claimant's performance.
31. In early 2019 the Claimant's base salary was increased to £55,577 per annum and she was entitled to a Technical Incentive Plan bonus at 10% of her base salary over the next 2 years. She was also nominated for progression for a second time in Spring 2019. She now had two upper elbow block ratings to support her nomination and the progression was approved. It was not to Band 4, but to a new job grade that had been introduced at the top of Band 3 and accordingly she received a 7% pay rise

increasing her salary to £59,467. Also, the Claimant was included in a list of personnel to be offered a retention bonus if they stayed until August 2021 at 10% of base salary.

32. The Claimant went on sick leave on 20 March 2019 and did not return to work between then and the end of her employment on 28 August 2019. Her then line manager, Mr Panchal, made some attempts to contact the Claimant at home but she indicated that she would prefer to focus on her recovery and did not want to have any discussions until she was fit to return to work. The last communication from Mr Panchal to the Claimant was an e-mail on 29 April 2019 asking her to call him because he wanted her to know about her promotion.
33. On 29 May 2019 the Claimant's solicitor wrote to the Respondent setting out complaints on her behalf, including a statement that the Claimant could not continue her employment with the company and asked for a settlement package.
34. On 31 May 2019 the Respondent asked the Claimant's solicitor whether the complaints should be investigated in accordance with the Respondent's grievance policies. On 18 June 2019 the Claimant's solicitor confirmed that they wanted her complaints investigated but that she was not fit enough to participate in any investigation meeting. The Respondent confirmed on 1 July 2019 that an internal investigation had been commenced.
35. On 3 July 2019 the Claimant submitted her resignation to the Respondent as follows:

"As you are fully aware I have been engaged in an on-going dispute with you over my treatment whilst I have been employed with the company. I raised complaints on 29 May 2019 and provided further details of my complaints on 7 June 2019. I confirmed via my solicitor on 18 June 2019 that I wish for my complaints to be investigated via the company's formal grievance procedure. Indeed it should have been obvious on receipt of my complaints and the seriousness of them. My complaints were raised over 1 month ago. Since 18 June 2019 I have heard nothing from you regarding progress on my grievance. I have not been informed as to the time line, who has been assigned to investigate and who is being investigated. I have therefore no faith in the company to take my complaints seriously or to carry out a meaningful investigation of my serious complaints. It is with regret therefore that my employment is no longer tenable.

Please note I am also awaiting the information requested in my data subject access request submitted on 20 June 2019.

As you are aware I am currently off sick as a result of the treatment of me, I have engaged regularly with medical advisor and counsellors and have been advised that my continued employment with the company and its mishandling of my genuine complaints is hampering my recover. I have been advised to leave the company and I am taking that advice. I am therefore providing you with notice of

termination of my employment effective today. Please confirm by reply and the amount due to me.

For the avoidance of doubt I fully expect my grievance to be investigated as promised under the company's procedures and the DPAR complied with."

36. On 8 February 2019, before the Claimant went absent on sick leave, she applied for a position with a new employer, Zurich, as On-shore Risk Engineer. She was interviewed in April 2019 and offered the position on 4 June 2019 subject to references. She commenced her employment with Zurich on 9 September 2019, after the end of her employment with the Respondent.

37. The Claimant's grievance was investigated by Ms Pandey who interviewed several managers and employees regarding the Claimant's complaints. The outcome was sent to the Claimant's solicitors on 8 August 2019. The grievance was not upheld in respect of any of the Claimant's allegations which were:

Breach of duty of care and health and safety

Breach of the duty of implied trust and confidence

Equal pay concern

Disability discrimination

Sex discrimination

Age discrimination

Race discrimination

Promotion to senior TS2 specialist.

38. The Claimant appealed against the outcome of the grievance on 14 August 2019. The appeal was considered by Mr Hagger (Director of Engineering and Equipment). He considered the matters which had been raised by the Claimant and the grievance decision made by Miss Pandey. He had been unable to interview the Claimant because of her ill health though he had conducted some additional interviews as requested. He concluded that the original grievance investigation by Ms Pandey was fair and he agreed with her conclusions. The appeal was therefore unsuccessful. The outcome was sent to the Claimant's solicitors on 16 December 2019.

39. Those are the background facts.

Unfair Constructive Dismissal – sections 95(1)(c) and 98 Employment Rights Act 1996

40. Section 95 Employment Rights Act 1996 sets out the circumstances in which an employee is dismissed. Constructive dismissal is defined as follows:

(1) 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.*

41. Western Excavating (ECC) Ltd v Sharp [1978] IRLR 27 - An employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The employee in those circumstances is entitled to leave without notice or to give notice, but the conduct in either case must be sufficiently serious to entitle him to leave at once. ... He must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.
42. Hilton v Shiner Limited [2001] IRLR 727 - The implied term of trust and confidence is qualified by the requirement that the conduct of the employer about which complaint is made must be engaged in without reasonable and proper cause. Thus in order to determine whether there has been a breach of the implied term two matters have to be determined. The first is whether ignoring their cause there have been acts which are likely on their face to seriously damage or destroy the relationship of trust and confidence between employer and employee. The second is whether there is no reasonable and proper cause for those acts. For example, any employer who proposes to suspend or discipline an employee for lack of capability or misconduct is doing an act which is capable of seriously damaging or destroying the relationship of trust and confidence, yet it could never be argued that the employer was in breach of the term of trust and confidence if he had reasonable and proper cause for taking the disciplinary action.
43. London Borough of Waltham Forest v Omilaju [2005] IRLR 35 - In order to result in a breach of the implied term of trust and confidence, a "final straw", not itself a breach of contract, must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial. Thus, if an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence but the employee does not resign and affirms the contract, he cannot subsequently rely on those acts to justify a constructive dismissal if the final straw is entirely innocuous and not capable of contributing to that series of earlier acts. The final straw, viewed in isolation, need not be unreasonable or blameworthy conduct. Thus, the mere fact that the alleged final straw is reasonable conduct does not necessarily mean that it is not capable of being a final straw, although it will be an unusual case where conduct which has been judged objectively to be reasonable and justifiable satisfied the final straw test. Moreover, an entirely innocuous

act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective.

44. Kaur v Leeds Teaching Hospital NHS Trust [2018] CA – The point being made in Omilaju was that if the conduct in question is continued by a further act or acts, in response to which the employee does resign, he or she can still rely on the totality of the conduct in order to establish a breach of the implied term. To hold otherwise would mean that, by failing to object at the first moment that the conduct reached the threshold for breaching the implied term of trust and confidence, the employee lost the right ever to rely on all conduct up to that point. Such a situation would be both unfair and unworkable. Underhill LJ disagreed with the view expressed by HHJ Hand QC in Vairea: provided the last straw forms part of the series (as explained in Omilaju) it does not 'land in an empty scale'. He recommended that Tribunals put Vairea to one side and continue to draw from the pure well of the Omilaju judgment, which contains all that they are likely to need.
45. The claim of Unfair Constructive Dismissal was set out in the list of issues as follows.
46. **Was the Claimant dismissed i.e. did the Claimant resign because of an act or omission or a series of acts or omissions by the Respondent?**
 - (a) **Was the conduct listed at 4 below, cumulatively or otherwise, a fundamental breach of the contract of employment and/or did the Respondent breach the so called trust and confidence term i.e. did it, without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously to damage the relationship of trust and confidence between it and the Claimant?**
 - (b) **Was the conduct listed at 4 below a fundamental breach of an implied term that the Respondent would take reasonable care of the Claimant's health and safety?**
 - (c) **Was the conduct listed at 4 below a fundamental breach of an implied term that the Respondent would take reasonable steps to provide a suitable working environment?**
 - (d) **If a fundamental breach of contract is established did the Claimant affirm the contract of employment before resigning?**
 - (e) **If the Claimant did not affirm the contract before resigning did the Claimant resign in response to the Respondent's conduct (to put it another way, was it a reason for the Claimant's resignation – it need not be the reason for the resignation)?**
- 4 **The conduct which the Claimant relies on as a fundamental breach of contract is**
 - (a) **The Respondent putting pressure on the Claimant to return early from periods of sick leave. In the further particulars of claim the Claimant's states this allegation relates to:**

- (i) Her line manager emailing her during her sickness absence in March 2019 with an offer of support to help her to return to work; and
- (ii) Her line manager emailing her during sickness absence in March 2019 to ask for permission to telephone her; and
- (iii) That the relevant background to this is previous pressure placed on the Claimant to return early from sick leave in 2011 as set out in the further and better particulars at 10(f)(iii).

47. The Respondent's sickness absence policy includes the following:

"Managing long-term absence (exceeding 4 weeks)"

Employees must keep their managers regularly updated about the on-going absence; regular contact by the manager is intended to be supportive and will be kept to a reasonable level.

If an employee is likely to be absent for 4 weeks or more with no predictable return date an informal meeting will be arranged with his/her manager and/or HR to discuss the on-going absence.

...during prolonged sickness absence HR and the manager will discuss with the employee and other appropriate parties (e.g. occupational health) any adjustments which could be made to help return to work.

...it is a reasonable expectation that employees will engage fully in all absence processes including interaction with third parties such as occupational health and benefit providers regarding rehabilitation. Failure to do so may affect eligibility for company sick pay."

48. In his evidence the Claimant's line manager at the time, Mr Panchal, said that during the Claimant's absence from work he e-mailed her on a few occasions. This was consistent with the Respondent's sickness absence policy referred to above. He said that the Claimant communicated very little with him other than passing on her medical certificates, otherwise she refused contact. He said he e-mailed the Claimant on 15 March 2019 to ask if he could call her. The Claimant refused. He e-mailed her again on 20 March 2019 to propose a referral to occupational health. The Claimant turned down this proposal. He e-mailed the Claimant on 25 April 2019 to pass on information about the consultation about the move of the office from Guildford to Bracknell. He e-mailed the Claimant on 29 April 2019 to let her know about her promotion.
49. He said that he wanted to show the Claimant support during her absence and wanted to help her.
50. The Tribunal found that Mr Panchal's contact with the Claimant did not amount to pressure to return to work early from sick leave. The calls were genuine attempts to keep in touch, offer support and provide information. The contact had reasonable and proper cause and did not amount to a breach of trust and confidence.

(b) The negotiations between the Claimant and the Respondent regarding the Claimant taking up a new role in Nigeria being tainted with discrimination (details of which are set out below in relation to the Claimant's claims of discrimination).

51. The Tribunal has found below that the negotiations regarding the new role in Nigeria were not tainted with discrimination. Nor did they amount to a breach of trust and confidence. The Claimant had expressed an interest in the Regional Services Manager (West Africa) role, had applied for the role, had been interviewed and was offered the job. It was unsurprising that there should then follow discussions regarding the remuneration package both when working in the UK and in anticipation of an ex-patriot package if she re-located to Nigeria. There was no discrimination or breach of trust and confidence.
52. **(c) The Respondent acting in a hostile manner towards the Claimant following negotiations, subjecting the Claimant to aggressive bullying and harassment and blaming the Claimant for the failed negotiations. In the further particulars of claim the Claimant states that this allegation relates to the comments made to her at the meeting on 24 April 2018 by Jonathan Young of the Respondent.**
53. There is no formal record of this meeting.
54. In her evidence the Claimant said

"I met with both Jonathan Young and Danilo Baldovino in their office and was directed to a meeting room..."

Tomi Osho had previously provided me with extracts of his ex-pat package on 4 April 2018 to ensure I could have fair discussions. Jonathan Young then told me "We can't do anything remotely close to what you have provided, there would be a pay disparity within the group the most I can offer you is 1-1.5k (59.5k based salary 10% bonus and car allowance). I responded stating it was ok and that I understood the decision but unfortunately I would not be able to take the position.

Over the next couple of hours I was repeatedly asked why I would not take the offer stating they are giving me an immediate salary increase. Jonathan Young threatened me stating that "you may not get this in your current role". I repeatedly stated it wasn't right and it wasn't fair. I tried to explain the hardship, toll and sacrifices I would be making to relocate to Nigeria alone. I stated the current market rates/salary ranges for my expertise upon speaking with external recruiters was 75k base with higher company pension contributions, bonuses etc within the UK and that I have not been provided an ex-pat salary for this role. Jonathan Young responded in a condescending manner stating "that is if you can get those kind of positions outside". I responded that that was fair enough but I had to rationalise this to the point of what it would take for me to do this....

Jonathan Young mentioned that my belief in myself was "quite admirable". As a young woman of Nigerian heritage I was in shock and didn't fully know how to react to this. I have never had anyone spoken to me in that manner and couldn't understand why it was worth being specifically mentioned by Jonathan Young as though this was unusual to see from a young black woman. I had to end the discussions by stating that I had to go home as it was the end of the day with no negotiation discussion from the start and forcefully being spoken to for hours to take on the role. Right at the end of the discussion on everybody getting up to leave the meeting room, Jonathan Young looked at Danilo Baldovino and said "I guess we have to go to plan B". He then looked at me and stated "I hope you don't regret this decision". I responded stating that I hoped I wouldn't and Danilo Baldovino pointed out that I was still young so it was ok to make mistakes. I left the offices at around 5:00pm."

55. Mr Young's account of the meeting included the following

"I had three main objectives in meeting with the Claimant: firstly to confirm that she truly was interested in the role and that it matched her career ambitions; secondly to explain to her that the offer was fair; and thirdly to guide and mentor her against making a career decision that she might look back on with regret as a missed opportunity..."

Danilo and I both met with the Claimant. My recollection is that the meeting lasted between 1 hour and 1 hour 15 minutes. The Claimant has said that we bullied her at the meeting and talked forcefully to her for hours. I deny that. The tone of the meeting was cordial and, as I have already said, all I wanted was to get the right outcome whatever that was by the end of the meeting.... I also wanted the Claimant to realise that UOP was not playing any games with the offer. This wasn't a negotiation process. It was a take it or leave it situation but it was important the Claimant understood that the offer was for the role when based in the UK and that further package discussions would need to be held closer to the time of relocation so there was expectation of further uplift at that time. By the end of the meeting I felt that the Claimant didn't really want the regional service manager Nigeria role.... It appeared that the Claimant's main interest in the regional service manager Nigeria role had been financial reward and that therefore she wasn't really the right person for the role anyway.... I deny trying to pressurise the Claimant into accepting the regional service manager Nigeria role and I deny any behaviour towards her that could reasonably be described as bullying."

56. The Tribunal found that the decision to hold the meeting was a reasonable one in the circumstances. Even on the Claimant's account of the meeting, it did not amount to a breach of trust and confidence or to race discrimination. It was reasonable and proper to question the Claimant about her reasons for applying for the role but then refusing a remuneration package which had been offered and which the Respondent considered to be reasonable. There was nothing in the Claimant's account of the meeting or in Mr

Young's account of the meeting which was surprising or unreasonable in the circumstances. Mr Young was clarifying that the remuneration package offered was the maximum that could be achieved and also to understand the Claimant's reasons for refusing the package. None of this appeared to the Tribunal to be untoward, bullying or hostile. It was not a breach of the implied term of trust and confidence.

(d) Gonzales the Claimant's line manager on or around the 24 April 2018 informing the Claimant higher management were upset that the Claimant had lied about what she was being offered during negotiations.

57. Ms Lippke (Gonzales) did not accept that she accused the Claimant of lying but accepted that she told the Claimant that management were frustrated with her conduct. She said there was a misunderstanding regarding what she had told the Claimant and what the Claimant had repeated about what she had been told. In her evidence Miss Lippke said:

"I spoke to the Claimant on her return on 24 April 2018 I asked her about what Danilo had reported. I do not think I suggested that she had lied or that anyone was upset with her but I wanted to understand what had been said.

The Claimant explained to me that it had just been a misunderstanding and I was satisfied with this. Danilo has spoken to the Claimant by telephone and English is not his first language so I could see how it would have been possible for him to misinterpret what the Claimant said to him about her salary in Technology Services.

I knew that Dave Gledhill was annoyed about the suggestion that the Claimant had been deliberately setting managers up against each other but I spoke to him and convinced him that the Claimant had not been deliberately been misleading or trying to cause any trouble."

58. The Tribunal found that this was in fact a misunderstanding which was corrected and eventually accepted by Mr Gledhill. It was not a breach of the implied term of trust and confidence.

(e) A member of the Respondent's senior management team asking the Claimant why she would not accept the role in Nigeria and stating that he hoped she would not regret her decision – in the further particulars of claim the Claimant states that this allegation relates to comments made to her in a meeting on 24 April 2018 by Jonathan Young of the Respondent.

59. Mr Young accepted that he did say that the Claimant might look back with regret on a missed opportunity.

60. The Tribunal found in this comment that did not amount to a breach of trust and confidence. It was not an inappropriate comment in the circumstances.

(f) The Respondent ostracising the Claimant following failed negotiations. In the further particulars of claim the Claimant states that this allegation relates to:

(i) The following failing to provide her with any feedback in relation to its decision not to award her the Band 4 TS promotion.

61. The Tribunal found that the Claimant did not ask for feedback in relation to the decision not to award her a promotion. There was no evidence that any failure to provide feedback was done because of failed negotiations. It did not amount to a breach of trust and confidence.

(ii) Dave Gledhill of the Respondent letting it be known within the business that the Claimant was a candidate for the role of regional services manager for Nigeria such that she was uncomfortable answering questions posed by colleagues when she subsequently declined the role.

62. This relates to a training course in March 2018. Mr Gledhill said that it was appropriate to invite the Claimant to attend this training event. It was not going to be repeated and it would have been a lost opportunity to upskill the Claimant for the future role she had applied for as the Respondent was expecting her to join the Regional Services team. He explained that the training would have also been relevant for the Claimant's existing role in Technical Services so it was appropriate for her to participate in the training. The Tribunal found that this was nothing other than a proper training opportunity offered to, and accepted by, the Claimant. There was no evidence that it was done to ostracise the Claimant. It did not amount to a breach of trust and confidence.

(iii) The Respondent failing to provide her with a response to a concern she expressed to her manager about her pay being lower than that of a male colleagues.

63. Ms Lippke confirmed that the Claimant regularly complained about her pay and could recall checking the Claimant's salary after one of her complaints and finding that as of April 2018 the Claimant had the highest comparative ratio in her group in the UK. She then reassured the Claimant that she was not underpaid compared to appropriate comparators in the group. The Tribunal found this allegation not factually proved. It did not amount to a breach of trust and confidence.

(iv) The Respondent commenting in the Claimant's 2018 performance assessment that it had been disappointed by the Claimant's behaviour in relation to negotiations about the regional service manager for Nigeria role.

64. The comment in the Claimant's 2018 performance assessment is quoted above in the findings of fact. Although clearly this was unwelcome for the Claimant, the Tribunal found that there was a reasonable and proper cause for Mr Gledhill insisting that reference be made to it. It was one sentence only and none of the other contents of the performance review form were altered or affected. Overall the performance review was a very positive one. The Tribunal found that this did not amount to a breach of trust and confidence.

(g) The Respondent failing to investigate the Claimant's grievance in a reasonable period and in a genuine manner. This matter is said to have been the "last straw" and the further and better particulars of claim summarises the significant events that led up to the last straw.

65. The Tribunal found this allegation not proved. The letter dated 29 May 2019 from the Claimant's solicitors contained several complaints regarding breach of duty of care and health and safety, breach of the implied trust and confidence, equal pay concern, disability discrimination, sex discrimination, age discrimination, race discrimination, breach of statutory and contractual rights. It concluded with the heading "*Next steps*" which stated that the Claimant was in a position where it was clear that she could not continue her employment at the company and that she was willing to sever her employment relationship under the terms of a settlement agreement.
66. Two days later, on 31 May 2019, the Respondent responded to the letter and said that it was the first notification of the Claimant's complaints and asked for confirmation that the solicitors wished the matters to be investigated. It was not until 18 June 2019 that the Claimant's solicitor confirmed that the Claimant did want her complaints to be investigated. It also indicated that she was not fit to participate in any such investigation.
67. On 1 July 2019 the Respondent confirmed to the Claimant's solicitor that an internal investigation had been commenced. Two days later on 3 July 2019 the Claimant submitted her resignation.
68. The Tribunal found that, given the extent of the complaints made by the Claimant in the letter of 29 May 2019, and the fact that her solicitor had stated that she could not continue her employment, it was reasonable for the Respondent to ask if the Claimant wanted the complaints to be investigated. Given the proximity of the dates referred to above, the Respondent acted reasonably and properly, within a reasonable period, and in a genuine manner. The Tribunal found that the conduct of the Respondent in its response during this period to the Claimant's solicitor's complaints did not amount to a breach of trust and confidence. Indeed it was, the Tribunal found, an entirely innocuous event which could not amount to a last straw as envisaged in the case of *Omilaju* referred to above.
69. In summary, the Tribunal did not find any conduct on the part of the Respondent or its managers which amounted to a breach of trust and confidence amounting to a fundamental breach of contract which would have entitled the Claimant to resign without notice. On the contrary, during the period in question, she had been offered a new role, promoted and her salary had been significantly increased. The Tribunal concluded that there was no constructive dismissal and the complaint of unfair constructive dismissal therefore fails.
70. Additionally, the Tribunal found that the principal reason for the Claimant's resignation on 3 July 2019 was in order to take up new employment because she had become dissatisfied with her employment with the

Respondent. She had been offered the new employment on 4 June 2019 subject to references and she had accepted the offer on the same date. It included a more generous remuneration package than her employment with the Respondent and flexible working arrangements. She commenced the new employment on 9 September 2019.

Direct Sex Discrimination – section 13 Equality Act 2010

71. Section 13

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

72. The protected characteristic in this claim is the Claimant's gender.

73. In the decision of the Court of Appeal in the leading case of Madarassy v Nomura International Plc [2007] the court said:

“The Court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the Respondent could have committed an unlawful act of discrimination. They are facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not without more sufficient material from which a Tribunal could conclude that on the balance of possibilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination, a difference in status, a difference in treatment and the reason for the differential treatment.”

74. The allegations of direct sex discrimination were as follows.

(a) In or around September 2018 the Respondent failed to promote the Claimant to a Band 4 role although she had more experience than her male colleague Lewis Kenyan when he was promoted to such a role.

75. In the solicitor's letter dated 29 May 2019 it was stated:

“Our client reports that throughout her employment she has gone above and beyond the expectations of her in performance of her role. She has worked at a much higher level than that of her grade and has stepped up when her colleague Candice Carrington went on maternity leave to take on challenging customer accounts on top of her already heavy and highly demanding workload.

Despite this, since become a technical specialist in 2013, our client reported it took 3 years for her first promotion. More recently, in September 2018 she was denied promotion to a Band 4 role. However, reports that a male colleague, Lewis Kenyan, who

commenced employment after she did, and has less overall relevant qualifying experience, had been promoted in 2016 to a Band 4 role and received a further promotion in 2018 in to new technology... Our client has concluded therefore that in the absence of any reasonable explanation she has been subjected to discrimination on the grounds of her sex..."

76. The Claimant produced no additional evidence regarding the circumstances of Lewis Kenyan. The Tribunal concluded that his circumstances were materially different from those of the Claimant.
77. Mr Gledhill confirmed that whereas the Claimant's performance history was inconsistent, Mr Kenyan had consistently been one of the top performers. His performance was more consistent and higher than the Claimants who had only received one upper elbow rating in her role before she was nominated for progression.
78. Additionally, there was no evidence that any difference in treatment between the Claimant and Mr Kenyan was because of sex. There was no reason to doubt Mr Gledhill's account of Mr Kenyan's performance and the reasons for his promotion being based upon performance not sex.
79. The Tribunal found that this allegation not factually proved.
 - (b) Failed to provide the Claimant with any response to the Claimant's oral queries in September 2018, February 2019 and March 2019 as to the reasons behind the decision not to promote her.**
80. As referred to above the Claimant made no request for feedback from her line manager Mr Panchal in September 2018.
81. Additionally, there was no evidence that any comparator would have been treated any differently. There was no evidence of any provision not to provide feedback because of sex.
 - (c) Failed to investigate and generally engage with the Claimant's complaint about her treatment and grievance.**
82. This has been dealt with above. The Tribunal found that the Respondent did genuinely engage with the Claimant's complaints in the solicitor's letter of the 29 May 2019. The Claimant resigned before the Respondent had a reasonable opportunity to investigate and reach an outcome. In the event, the complaints were investigated and an outcome was provided in writing and in detail. An appeal was conducted and that also was properly investigated and the outcome was provided in writing and in detail.
83. The Claimant disagreed with the outcome of the grievance investigation and the appeal investigation but the Tribunal found as a fact that the Respondent did investigate and genuinely engage with the complaints. Additionally, there was no evidence that the Respondent's response to the Claimant's complaints was motivated on the grounds of sex or that any comparator would have been treated any differently. The Tribunal found this allegation not factually proved.

84. In summary the Tribunal did not find any of the Claimant's complaints of sex discrimination to be well-founded. There was no evidence of any animosity towards the Claimant's sex at any stage. There was no evidence whatsoever on which the Tribunal could find or infer any gender based motive in the conduct of the Respondent. On the contrary, the Tribunal found plausible non-discriminatory reasons for the way in which the Claimant was treated.
85. This claim is not well-founded and fails.

Direct Race Discrimination – section 13 Equality Act 2010

86. The protected characteristic in this claim is the Claimant's race. The claims were as follows.

(a) Making stereo-typical assumptions that the Claimant would be willing to relocate to Nigeria due to her Nigerian heritage and using these assumptions to offer the Claimant below market rate. In the further particulars of claim the Claimant states that this allegation relates to

- (i) The hiring manager in taking meeting notes (22 February 2018) and**
- (ii) Mr Gledhill of the Respondent letting it be known within the business that the Claimant was a candidate for the role of regional services manager for Nigeria by inviting the Claimant to RS group training events in anticipation for the new position in March 2018 and putting pressure on the Claimant to attend and the training involving dealing with a Nigerian client.**

87. The Tribunal found that the Claimant was approached for her interest in the Regional Services Manager role and she was recommended by Tomi Osho who suggested that he believed she might be interested. Indeed, he was proved to be right because in 2017 the Claimant's line manager asked her if she would be interested in the Dangote service manager role and she said that she was interested. As a result, she was "slated" for the role as recorded in her 2017 mid-year update review report as follows:

"In terms of future role, Sade remains interested in pursuing an RS position in Lagos if/when the position becomes open."

88. In early 2018 the role became a live vacancy and was advertised on the internal job board. The Claimant applied for the role. She was interviewed and offered the role and then she entered into discussions regarding the remuneration package. Clearly, the Claimant's Nigerian origin would have been an advantage in the role. However, it was not the case that she was being pressured to express an interest, apply for the role or be interviewed for it. All of that was voluntarily undertaken by the Claimant.
89. So far as the training was concerned, that has been referred to above. She made no complaint about the training at the time. The Tribunal found it difficult to understand how being offered training opportunities which would

have benefited the Claimant in a new role in which she had expressed interest and applied for and would also have benefited her in her present role could amount to an act of discrimination. During the course of the interview for the role relocation to Nigeria was discussed. The Claimant had indicated that she was prepared to relocate as part of the new role.

(b) Subjecting the Claimant to negative treatment including negative comments in the Claimant's performance review on 4 March 2019 as a result of being upset that the Claimant rejected the role in Nigeria when the Respondent had assumed that she would have no problem moving there.

90. As referred to above, the Tribunal found that the comments inserted into the Claimant's performance review form by Mr Gledhill had reasonable and proper cause and did not amount to breach of trust and confidence and was not an act of discrimination. It was proper feedback, albeit unwelcome by the Claimant.

91. There was no evidence that there was any racial motivation in the fact of inserting these words into the review form or in terms of the content. The Tribunal found that this was not an act of race discrimination.

(c) Assuming that the Claimant would accept less money for the role on the premise that her personal life would be less disrupted by a move abroad. In the further particulars of claim the Claimant states that this allegation relates to

(i) In April 2018 Danilo Baldovino in a telephone discussion with the Claimant to discuss the job offer told the Claimant "Sade the money is too much"

(ii) On 24 April 2018 Danilo Baldovino having printed the email correspondence regarding the Claimant's salary expectations and presented it to the Claimant saying "have a look" and

(iii) On 24 April 2018 Gabriella Gonzales (Miss Lippke) telling the Claimant "I have seen what you are asking for it is too much consider the offer they have given to you".

92. The Tribunal found that these matters were factually proved but they did not amount to acts of race discrimination. There was no evidence of less favourable treatment compared to a comparator of a different race or of any racial motive. The discussions regarding the Claimant's remuneration package if she were to accept the new role were well documented. There was reasonable and proper cause for the Respondent to set an upper limit on the remuneration package. There was no evidence whatsoever that the remuneration package was set at a level because of the Claimant's race. Such evidence simply did not exist. There were plausible non-discriminatory reasons for the Respondent's position on the remuneration package offered in the discussions with the Claimant.

(d) Acting in a hostile manner towards the Claimant following the negotiations, subjecting the Claimant to aggressive bullying and

harassment and blaming the Claimant for the failed negotiations. In the further particulars of claim the Claimant states that this allegation relates to

- (i) Comments made to her at a meeting on 24 April 2018 by Jonathan Young of the Respondent and**
- (ii) Comments presented to the Claimant on 4 March 2019 the end of year performance review meeting with Darmesh Panchal that the Respondent had been disappointed by the Claimant's behaviour in relation to negotiations about the regional services manager for Nigeria role and Darmesh Panchal's comment to the Claimant that she had wasted senior managements time.**

93. The meeting on 24 April 2018 has been dealt with above. There was no record of the meeting other than in the evidence provided by the Claimant and by Mr Young. The Tribunal has found above that there was no bullying or harassment and the Claimant made no complaint at the time. There was no evidence of any racial motive in the way in which Mr Young and Mr Baldovino conducted the meeting. There was nothing upon which the Tribunal could find or infer that the Claimant had been treated less favourably on the grounds of her race by Mr Baldovino, Mr Young or by Ms Lippke.

(e) Subjecting the Claimant to unfair and unfavourable treatment since the failure of the negotiations for the role in Nigeria such that the Claimant now suffers from depression and anxiety. In the further particulars of claim the Claimant states that this allegation relates to

- (i) The Respondent not awarding the Claimant the Band 4 TS promotion.**

94. The Tribunal found **(i)** factually proved but there was no evidence of any racial motive.

- (ii) Not responding formally to the Claimant's application for the Band 4 TS promotion until 4 March 2019.**

95. The Tribunal found **(ii)** factually proved but there was no evidence of any racial motive.

- (iii) The Respondent failing to provide her with a response to a concern she expressed to her manager about her pay being lower than that of male colleagues and**

96. This has been dealt with above. The Tribunal found **(iii)** not factually proved. Ms Lippke did provide her with a response to her concerns that her pay was lower than male colleagues.

- (iv) The Respondent commenting in the Claimant's 2018 performance assessment that it had been disappointed by the Claimant's behaviour in relation to negotiations about the regional services manager for Nigeria role.**

97. This has been dealt with above. The Tribunal found **(iv)** factually proved but did not find any racial motive for Mr Gledhill inserting the comments into the Claimant's performance assessment.

(v) Failed to investigate and genuinely engage with the Claimant's complaint about her treatment.

98. The Tribunal has dealt with this matter above and found it not factually proved. The Respondent did investigate and then genuinely engage with the Claimant's complaints set out in the solicitor's letter dated 26 May 2019.

99. In summary the Tribunal did not find any of the Claimant's complaints of race discrimination to be well-founded. There was no evidence of any animosity towards the Claimant's race at any stage. There was no evidence whatsoever on which the Tribunal could find or infer a racial motive in the conduct of the Respondent. On the contrary the Tribunal found plausible non-discriminatory reasons for the way in which the Claimant was treated. The heart of the Claimant's claim involved the new role of Regional Services Manager (West Africa). The Claimant expressed interest in the role when she was approached, formally applied for the role when it was advertised and attended an interview at which she performed sufficiently well to be offered the role. Subsequent discussions on remuneration were unsuccessful. The Tribunal found nothing that amounted to race discrimination.

100. This claim is not well-founded and fails.

I confirm that this is the Reserved Unanimous Judgment in the case of Ms F Oyegbesan v UOP Limited case no. 3321078/2019 and that I have dated and signed by electronic signature.

Employment Judge Vowles
Date: 4 April 2021

Sent to the parties on:

27 April 2021

For the Tribunals Office