



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms. T. Simonetti  
**Respondent:** N3 Results Ltd

**London Central Remote Hearing**

**19, 20 August 2021**

**Before:** Employment Judge Goodman  
Ms. G. Carpenter  
Mr. J. Carroll

## **Representation**

**Claimant:** in person  
**Respondent:** Ms. E. Banton, counsel

## **RESERVED JUDGMENT**

1. The sex discrimination claim fails.
2. The race discrimination claim fails.
3. The claim of discrimination in failing to make reasonable adjustments for disability fails.

## **REASONS**

1. The claimant was employed by the respondent from 18 September 2019 until 10 July 2020, when she was dismissed. She has brought claims of discrimination because of race and sex, and of failing to make reasonable adjustments for disability.
2. The respondent denies the claims on their merits, and asserts that anything that occurred before March 2020 is out of time.
3. It is admitted that the claimant is a disabled person by reason of anxiety and depression, but denied that the respondent knew this at any time before the claim was brought.

## Issues for the Tribunal to Decide

4. As defined at a preliminary hearing before employment Judge Grewal, the remaining issues are:

### *Disability*

4.1 whether the respondent applied a provision criterion or practice that the claimant continue reporting to Ms Sumbo after she complained of Ms Sumbo creating a hostile working environment

4.2 whether the provision put the claimant at a substantial disadvantage in comparison with people who were not disabled

4.3 whether the respondent knew or could reasonably have been expected to know that it put the claimant at that substantial disadvantage

4.4 if the duty to make reasonable adjustments arose, whether it failed to make reasonable adjustments, the claimant contending the discrimination

### *Direct sex discrimination*

4.4.a. Failing to change her manager on 22 June 2020. The claimant's case is that she was treated less favourably than AB, whose manager was changed b Ms Sumbo failing to take any action on the claimant's email of 27 May 2020 in which she complained about sex discrimination by SL at a meeting on 22 May 2020

c Ms Szabo dismissing her. The claimant's case is that men whose results were lower than hers (AF, JH and WT) were not dismissed

### *Direct race discrimination*

4.5 The claimant describes herself as white Italian and Ms Sumbo as black French. Whether Ms Sumbo discriminated against the claimant by:

- a. Calling her "weak" and "emotional".
- b. Saying she did not like her Italian communication (her being spontaneous, outgoing and direct)
- c. Cancelling her emails and by talking badly about her to her management and to her colleagues
- d. Showing the claimant as a failure to the respondent and Hitachi management in Germany
- e. Saying that the country manager of Hitachi Vantara had made a complaint against her; all the above occurred between November 2019 and March 2020
- f. After the start of lockdown in March 2020, by subjecting her to verbal abuse, threatening her, being aggressive and harassing her
- g. Dismissing her - the claimant relies on the same comparators as she does in the sex discrimination case in relation to the dismissal. The comparators are all black men.

## Evidence

- 5 The tribunal heard the following give evidence:

**Tiziana Simonetti**, the claimant  
**Olivia Sumbo**, her line manager  
**Hector Borja Serrano**, about a team meeting on 19 June 2020  
**Gurpal Singh**, Ms Sumbo's manager  
**John McGouran**, HR manager

- 6 There was a hearing bundle prepared by the respondent of 454 pages. The claimant had prepared her own, but there was difficulty opening them. She agreed that both bundles contained the same documents, but she had re-ordered and re-indexed them. It was agreed we use the respondent's bundle in the hearing.
- 7 There were also three audio files, of the meetings on 2 April 2020, the appeal meeting on 16 July 2020, and of an undated conversation in Italian between the claimant and her client SL, from which his contributions have been edited out. These recordings were all made without the knowledge of the other participants, and not made known to them until after these proceedings began. We listened to these so as to be able to judge whether the claimant's tone of communication was as objected to by the respondent.
- 8 In writing this decision, people who have not given evidence to the tribunal are identified by their initials, so as to preserve their privacy. The parties know who they are.

### **Conduct of the hearing**

- 9 The hearing was open to the public although in fact no one unconnected with the case attended to observe. The witnesses all had access to electronic copies of their statements and the hearing bundle. There were adjournments from time to time to assist the claimant with preparing the questions. At the conclusion of the evidence the tribunal read a short written submission made by the respondent, and later we heard an oral submission by the claimant, and an oral response by the respondent.
- 10 The claimant had not attended any court or tribunal hearing in the past, except the case management hearing in this case. She was given guidance on procedure. She has not had the benefit of legal advice, but stated that she had done much research on the law. The Citizens Advice Bureau had assisted her in preparing the schedule of loss.
- 11 After hearing evidence and submissions, judgment was reserved.

### **Findings of Fact**

- 12 The respondent is an outsourcing company which supplies sales teams to customers for particular projects. It is based in London, though part of a global group based in the US.
- 13 The claimant is white Italian. She was taken on to work as an Inside Sales Account Manager, at £30,000 per annum, plus a monthly bonus related to the area sales figures, and a small stakeholder pension. Her team worked with Hitachi Ventura which sought customers for their software products.

- 14 Gurpal Singh managed the Europe team, which was divided by grouping countries into north, managed by Simona Melone, who is Italian, central, managed by S. Kroeger, and south, managed by Olivia Sumbo, who is French, and black. The claimant, as an Italian speaker, was assigned to south team to deal with customers in Italy.
- 15 South team in November 2019 comprised 9 people, 6 men and three women, with 3 white people, 4 black, and 2 others, said by the respondent to be Arab and by the claimant to be Asian. (The difference in identifying their ethnicity could perhaps be explained if they had brown skins and Muslim names, but nothing turns on the distinction).
- 16 The claimant has a history of depression and anxiety stemming from a traumatic event in 2007. She was initially diagnosed with bipolar disorder, later amended to depression. She took, and takes, antidepressants. For several years she was self employed and could control the amount of working time. September 2019 was the first time for some years she had worked full-time.
- 17 She completed a diversity questionnaire when she started. She was asked if she had a disability or health condition, with “yes”, “no” and “prefer not to say” as possible answers. She chose no.
- 18 The initial 3 month fixed term contract was renewed in December 2019. From November her manager was Olivia Sumbo, identified as black and French.

Probation Review – first extension

- 19 The claimant was subject to a probation period. At the beginning of March managers were asked to carry out probation reviews for 17 new hires, including the claimant, and a man on the Spanish team called AB. Olivia Sumbo decided to extend the probation of both these two because of “quality of relationship with the client”.
- 20 Early in the year Olivia Sumbo had heard from several Hitachi staff in meetings that the claimant’s emails were aggressive, as was her verbal communication, especially with, SL, an Italian man employed by the Hitachi, the customer. She arranged to listen to the claimant’s calls with clients, and to be copied in to emails, so she could guide the claimant on the tone she adopted. She noted some improvement, but did not think it was enough. The claimant asserts in her claim that Ms Sumbo blocked her emails and misrepresented her ability to Hitachi head office, but we had no evidence of this in the witness statement or documents, and Ms Sumbo was not questioned about it.
- 21 On 31 March there was a probation review meeting. The claimant listened quietly to the criticism, but as John Mc Gouran noted, she was “visibly taken aback”. John McGouran then wrote to the claimant stating that her probation was to be extended by one month. He mentioned it was: “pleasing to read that your communication is becoming more diplomatic”. This comment indicates that the tone she adopted with clients was the cause for concern that led to the extension.

- 22 The claimant responded combatively in writing that she had already taken on board Ms Sumbo's advice, and it was not necessary to extend her probation. The criticism was without merit; Olivia Sumbo had told her she was immature. She wanted her calls with the client to be recorded, and she wanted details of the client complaints made against her.
- 23 Ms Sumbo and the claimant discussed this on 2 April. The claimant secretly recorded most of the conversation. We have read the transcript and listened to the recording. The claimant can be heard interrupting, speaking over her, and raising her voice when her manager, after listening to her account, started to state what needed improvement. Ms Sumbo explained to the claimant it was not just about the client complaining, it was also the way she would not accept a leadership decision following discussion of the decision at a meeting. The claimant responded she got emotional when harassed, as when falsely accused, in other words, that she considered the client complaint a false accusation. She was told Ms Sumbo would continue her support for one month.
- 24 It was on the following day that the claimant recorded a telephone conversation with SL, which has been edited by her. It was intended, we concluded, to show that her communication with SL was not aggressive or unprofessional, but was never used until these proceedings.

#### Probation Review – second extension

- 25 On 23 April there was a team meeting to review pipeline (i.e. prospective orders they were working on). The claimant had not prepared. Ms Sumbo said she would discuss pipeline with her later, but the claimant nevertheless insisted, and became loud and difficult, complaining of injustice and poor feedback. Ms Sumbo wrote to her after the meeting complaining of her disruption, stating that her "attitude was difficult to tolerate". In turn the claimant blamed Olivia Sumbo for lack of support, for denigrating her in front of the team, and for aggressive criticism. At the request of Adam Shaw, Vice-President, John McGouran of HR was asked to arrange a mediation meeting between the claimant and Ms Sumbo. This took place on 27 April, with John McGouran mediating. Afterwards he confirmed that she would get feedback 1:1, Ms Sumbo would try to start meetings on time, the claimant must be more moderate in replies, not direct or defensive, she must listen, and take feedback as meant to be helpful. John McGouran told the claimant he appreciated the improvement in relations with the client, and now he needed to "see the same commitment to improve the relationship with Olivia".
- 26 Her probation was extended by another month. The additional time could be used to continue to provide her with "the opportunity to continue to build strong relationships with the client and with Olivia that will enable you to be successful in your role". The reason for extending probation a second time therefore was not just relationships with the client, but the relationship with her manager
- 27 The probation period expired on 29 May 2020. There does not seem to have been a formal review at this stage, and the claimant continued in employment.

#### Complaint about client SL

28 On 29 May, the expiry of the probation review, the claimant emailed Olivia Sumbo about a recent meeting with SL at Hitachi (the client who had complained about her) saying he had denigrated her technical knowledge, and had said she was lucky to get his attention, because she was a woman. Olivia Sumbo replied asking if the claimant wanted her to raise it with Adam Shaw. The claimant does not seem to have replied, and as far as we can tell the complaint was not investigated.

#### Events Leading to Dismissal

- 29 In a team meeting on 19 June 2020 the claimant loudly attacked Ms Sumbo, asking colleagues to agree with her that she did not support the team, and then arguing with colleagues who tried to intervene to calm her down. Mr Serrano's evidence was that when his colleague Abubacar tried to intervene, she continued shouting, "shut up, you are Olivia's friend and your opinion doesn't count", cutting off his sentence. Mr Serrano comments that he had never seen anything like it in his 17 year career. The claimant denies she behaved badly – in an email to Gurbal Singh later that morning she said: "I didn't raise the voice, I just talked to explain my issues and you don't make me talk about". We have several contemporary emails, and the witness evidence of Hector Serrano and Ms Sumbo, on what happened, and we conclude she was out of control.
- 30 As the dispute in the meeting escalated, Ms Sumbo sent a message to Gurbal Singh asking him to intervene one-to-one. He then joined the meeting, sent the others away, and spoke to the claimant. He then emailed her to say they should meet to discuss, saying: "it is important that everyone are respectful of each other and that everyone is given the opportunity to speak. What I do NOT expect from everyone is: speaking over each other; point the blame or finger at each other; raising voices".
- 31 The claimant then emailed Adam Shaw and John McGouran complaining of an "aggressive written communication" from Olivia Sumbo. Mr McGouran replied expressing: "my deep frustration and disappointment that despite all of my previous efforts, issues continue to arise. I will arrange some time for final discussion on this matter".
- 32 Over the weekend the claimant responded to John McGouran that her issues with Olivia Sumbo: "come from this understanding for different cultures", and she asked to be moved to North team, working with Simona Melone, because she knew "Italian culture, Italian language and Italian economic scenario and territory". John McGouran replied next day: "I'm afraid I don't agree it is Italian culture. I have worked with many Italians, and have not experienced such issues. There will be no change of manager in this instance".
- 33 The claimant was asked to meet Olivia Sumbo, Gurbal Singh and John McGouran on 23 June to discuss the situation. The claimant was agitated and did not let others speak. There are no notes, and the claimant disputes the meeting took place.

- 34 Mr Singh concluded her behaviour was unprofessional and they could no longer work with her. There was a pause, apparently because John McGouran was very busy.
- 35 At the end of the month, target figures are published, related to bonus. There was some correspondence with Olivia Sumbo about what had been included. The claimant did not discuss this in her evidence. It was explained by Gurpal Singh that the first quarter's targets for a project are about building pipeline, and move in the next quarter to revenue from closing deals, with a shifting balance in performance in one to the other over time to maintain the incentive effect of a bonus payment. On the May figures the claimant was doing at least as well as the others.
- 36 Ahead of a planned dismissal meeting on 10 July, Ms Sumbo sent a short report to John McGouran about the claimant: she had not yet closed any deals that she had not inherited from others, but it was not suggested others had done better. There had been five 'escalations' from Hitachi (we understand this meant complaints). Internally, she was talking over everyone, and raising her voice to her managers and the team, leading to several complaints in the team about her behaviour and tone during team meetings.
- 37 At a meeting on 10 July 2020 attended by the claimant, John McGouran, Gurpal Singh and Olivia Sumbo, the claimant was dismissed. The letter of the same date said "the decision has been taken to end your probation". She was to be paid four weeks in lieu of notice and her outstanding holiday pay. Mr McGouran conceded her probation had not been extended after the end of May, and that the real reason was her conduct to colleagues and managers.
- 38 The letter referred to ending her probation, but this cannot have been right, as Mr McGouran acknowledged, because no positive decision had been made about probation when the second extension expired. In our finding, the reason for dismissal was the claimant's conduct towards her managers, which the respondent found unacceptable.

#### Appeal against Dismissal

- 39 The claimant appealed, saying she had been "discriminated" by gender, nationality and health condition. Ms Sumbo did not accept her being spontaneous, outgoing and direct, "saying she doesn't like Italian communication", so she had not been able to solve the issues with Italian management at Hitachi Vantara, "and not able to understand the culture and because unsuccessful uncharging her frustration on me because white Italian woman". From the start of lockdown she had been aggressive and threatening, "despite she knew and I warned her that in front of this unacceptable behaviour I was sensitive and emotional if she continues to be offensive my sensitivity and my emotional reactions are characteristic of my health issues that I had in the past and in the present are coming out again with a continuous harassment and bullying from her and Gorpel Singh raised the purpose knowing I was in lockdown in solitude". She concluded that "despite health conditions my results have been excellent".
- 40 In preparation for the appeal hearing, Olivia Sumbo prepared a summary of the claimant's performance, comparing her with others who had started at the

same time. Complaints about her been raised on the phone, but not in writing, and she quoted from some of those made by MS, SL, and ST (Hitachi staff).

- 41 At the appeal meeting, conducted by Adam Shaw and John McGouran, questions were asked about the discrimination allegations. The claimant said she had been treated differently to AB, who had been allowed to move to a different manager, so there was discrimination because of sex. She was discriminated against also for being Italian – “she (Olivia Sumbo) doesn’t understand me”. On the health condition, she would not say what it was, “for privacy reasons”. They were not able to make much progress on the detail of the discrimination allegations. A study of the transcripts shows that that the problem from the respondent’s point of view was not performance, but her attitude to her manager and her colleagues, John McGouran drawing on personal knowledge from his exchanges with her about a pay query in March, the claimant retorting that if colleagues complained about her it was because Olivia Sumbo: “blackmails them to fire if they don’t complaint”.
- 42 Listening to the claimant’s recording of the meeting reveals the claimant starting calmly, then interrupting, then a prolonged interruption when Mr McGouran was trying to talk, raising her voice with increasing agitation, until towards the end she was constantly shouting.
- 43 AB, the comparator for the sex discrimination claim, who, like her, had had his probation extended by one month for “quality of relationship with the client”, worked in the Spanish contract, also under Ms Sumbo. He was removed from that contract altogether at the request of the customer because of a personality clash. According to Mr McGouran, at the time there was a vacancy with a UK customer team, AB spoke good business English, and the customer agreed to take him on, so he was transferred. This did not work out, and he was dismissed later in 2020, when a similar personality clash occurred in his new team, and there was no further vacancy elsewhere. Early in September he was dismissed on notice.
- 44 The claimant asserted that she, like AB, had good business English, and so could have been transferred to another contract where English was used. We no evidence of her English qualification or a test certificate, and our own judgement on reading her written English in contemporary documents, the claim form and the witness statement, is that her syntax and vocabulary does not reach an adequate business level.
- 45 When questioning the respondent’s witnesses, the claimant frequently denied that she had behaved as the respondents say, stating they could not prove it because there was “no evidence” of this. From context, we understood she meant there was no documentary evidence of how she behaved. We do not know what documentary evidence there could be which is missing. There are emails produced on the day complaining about her conduct. There are her own recordings of meetings on 2 April and 16 July with their transcripts. There is the oral evidence of the witnesses we have heard who were in meetings where this conduct was displayed. Last, but by no means least, the claimant has amply demonstrated before this tribunal the behaviour complained of by the respondent. Despite guidance, she interrupted, argued with, and spoke over counsel, the witnesses, and the tribunal itself. Even making allowances for the anxiety experienced by litigants in person that they will not get their points



across, her behaviour has been extraordinary. She seemed to have no insight at all into how her behaviour comes across to others.

### **Relevant law**

#### Direct Discrimination because of Race or Sex

- 46 The Equality Act 2010 at section 13 provides that: “a person (A) discriminates against another (B) if, because of a protected characteristic, a treats be less favourably than a treats or would treat others”.
- 47 Sex and race are both protected characteristics.
- 48 Section 9 of the Equality Act defines race as including colour, nationality and ethnic or national origins.
- 49 When making comparisons between the claimant and another (whether the other is a real person or a hypothetical person): “there must be no material difference between the circumstances relating to each case” (section 23).
- 50 The word “because” requires the tribunal to examine the reason why an employer acted as he did, and whether the protected characteristic had “a significant influence on the outcome” – **Nagarajan v London Regional Transport (2001) AC 501**.
- 51 Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:
- “(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”
- 52 How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is “in no sense whatsoever” because of the protected characteristic. Tribunals are to bear in mind that many of the facts required to prove any explanation are in the hands of the respondent. A tribunal need not always consider the burden of proof if it considers positive findings can be made on the evidence – **Amnesty International v Ahmed (2009) IRLR 884**.

#### Reasonable Adjustments for Disability

- 53 Section 20 of the Equality Act provides:

“(1) where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply;

and for those purposes, a person on whom the duty is imposed is referred to as A.

(2)The duty comprises the following three requirements.

(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage”.

54 The applicable schedule for work cases is schedule 8, where paragraph 20(1) provides that:

“ A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a)...

(b) that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

## **Discussion and conclusions**

### Disability discrimination

55 We begin with the disability discrimination claim, that the respondent failed to make reasonable adjustments for disability. In our finding, the claim fails because the respondent did not know, and could not reasonably be expected to have known, that she was subject to disability. The claimant quite deliberately did not inform the respondent at the outset. At the appeal stage she refused to explain what she meant by her health condition. We understand that she was reticent about her mental health because of the risk of stigma if the news spread, but keeping the respondent in the dark made it very difficult for them to take steps to help her with a level playing field.

56 The adjustment she wanted was transfer to another manager after she complained of Ms Sumbo creating a hostile work environment. There is nothing in her request to transfer that suggests a health condition underlies it. The claimant complained explicitly that Olivia Sumbo did not understand Italians, or Italian modes of expression, so the request for transfer suggested that cultural misunderstandings underlay it, not that Ms Sumbo's approach exacerbated a health condition.

57 The respondent was faced with an angry and difficult employee who argued with her manager and sought to denounce her in front of other team members. They had already attempted mediation. Excessive anger can be a symptom of depression, but poorly controlled anger can also be a matter of personality, or simple reluctance to exercise control. In our finding there was no reason why respondent should have asked themselves whether her behaviour was in fact a symptom of mental illness. At the appeal stage , they knew from the letter of appeal that the claimant referred to being emotional, and to Ms Sumbo aggravating that, but if they had entertained the possibility that the health condition was a mental health condition of which her behaviour was a symptom, they will have been impeded in investigating this (by getting an occupational health opinion) by the claimant insisting on her privacy. In these circumstances,

the respondent could not reasonably have been expected to take the step of getting medical evidence to find out if there was a disability reason for the claimant's poor conduct.

58 The claimants submitted that whatever the respondent's knowledge of her disability, they had a general duty of care towards her, in the difficult circumstances of lockdown. A duty of care can give rise to a claim of negligence, but such a claim cannot be brought in the employment tribunal. If by asserting a duty of care the claimant in fact meant that the respondent should have been put on enquiry as to whether she had a disability, we reject that this was a reasonable step for an employer to take. The request to transfer was on the basis that the claimant's behaviour expressed the cultural norms of Italians, not that she was ill or mentally impaired.

59 As the respondent had no knowledge of disability, and could not reasonably be expected to acquire that knowledge, the claim of discrimination by failing to make reasonable adjustments fails.

### Sex Discrimination

60 The first allegation of sex discrimination is that by failing to change her manager when she made the request on 22 June, the respondent treated her less favourably than AB, whose manager was changed, and that the reason for doing so was that she was a woman and he was a man.

61 Their situations were not materially comparable. Although both had been the subject of complaints by clients, in AB's case it was the client who had asked that AB be removed from the contract, it was not done at AB's request. It was not the respondent's choice. AB also had sufficient command of business English to enable him to work in an English-speaking market, and there was a vacancy there, and they were able to persuade the client that he should fill it. Even if the claimant is right and she does have sufficient business level English to function effectively in a non-Italian speaking market, there is no evidence that there was an available vacancy in another team, and the claimant has not explained how detaching her from the Italian team to be managed by someone in a different team would have been presented to the client as acceptable. In the claimant's case, the client *had* complained about her, but the claimant asserted that they were now getting on well, made the recording on 3 April to prove this (stating to the tribunal that this was what it showed). She was not transferring to any vacancy in another team, only asking for a change of manager. She has suggested either that while remaining in South team she should report instead to Ms Melone who would in turn would feed back to Ms Sumbo, alternatively, that the Italian contract, to which she and a fellow employee called Lorenzo were dedicated, should be transferred wholesale to the North region under Ms Melone. We accept the respondent's evidence that neither was a practical solution. Transferring the whole Italy contract would in particular have required consent from the client, as the teams were aligned with their structure. Introducing a separate manager would have made it difficult to manage the team and its bonuses as a whole. In our finding, these are the reasons why the request to transfer was refused, not the fact that she was a woman. The difference in sex is purely coincidental.

62 The second allegation of sex discrimination is that the respondent took no action on her email of 27 May complaining about SL's comment which can be understood as disparaging of women. The respondent has explained that the claimant herself had said that she was getting on better with SL, having modified her own behaviour, so they saw no need to take it any further. It is also argued that as SL was not their employee, they could not discipline him for conduct, and were limited to treating this as a grievance on the part of the claimant about a customer. It should be noted that she was not asking not to work with SL. In practice therefore there was little they could do about it. This does not excuse failure to respond to the complaint, or to ask other people on their own workforce for more context. She could be managing to get on with SL on a professional level while internally resenting his sexist attitude. It is possible that no action was taken because the claimant did not reply saying whether she wanted it to be referred to Adam Shaw. We also suspect the respondent was more preoccupied at the time with the claimant's disruptive behaviour, and as the claimant was otherwise working well on the Italy contract, and the current behaviour problem was her attitude to colleagues and managers, it was not given priority. If we were to assume that a man had complained to them about a customer making a disparaging remark about him, which the respondent did not investigate, in the context of similar concerns about his relations with his manager and colleagues, we could not understand that the respondent would have behaved any differently in the case of the hypothetical man. The respondent's reason for not going into this complaint in more detail was because of the context in which it was made, and the limit to any action they could take, not because she was a woman.

63 The third treatment complained of as sex discrimination is the dismissal by Ms Sumbo. Leaving to one side the fact that it was not her who dismissed, or heard the appeal, but other managers - though it is true that she prepared a report - we do not find that the claimant was dismissed because she was a woman, or because Ms Sumbo preferred men to women. The claimant relies on three comparators, AF, JH, and WT, all men, who she says had performance results at least as bad as hers, judging by the May dashboard figures. In our finding this is not a valid comparison. It was never suggested that she was dismissed because her performance was inadequate. There was mention of her performance in Ms Sumbo's report, but it is clear that performance was never relied on by the respondent as a reason to dismiss, only her relationships - with clients, and particularly her manager and colleagues. Nor has there been any suggestion whatsoever that any of the three comparators verbally attacked their manager or colleagues in meetings. She was not dismissed because she was a woman. If a man had behaved like her, he would have been dismissed. She was dismissed because her conduct was objectionable, and the respondent had ample grounds for objection. It was not possible to run a sales team when a member of it was so rude and difficult towards both the manager, and to other members of her team; mediation had been tried and had not worked.

### Race Discrimination

64 Some of this treatment is alleged as discriminatory because the claimant was Italian. Other treatment is alleged as discriminatory because three black employees (they are the same as the three male comparators) were not dismissed when she was, and she was white.

- 65 Some treatment complained of as discriminatory is that Ms Sumbo had called her weak and emotional, and did not like her Italian communication, characterised by the claimant as spontaneous, outgoing and direct, which relates to the difference in national origin between French and Italian. The claimant was asked why Lorenzo, another team member, also Italian, did not behave in the same way; she responded that he had a different character, talked less, and had more control, but she was more spontaneous and liked to show her emotions. She also considered that in any event he was a man, and Ms Sumbo preferred men.
- 66 We note from experience and observation (reinforced in particular by one panel member who had an Italian partner for 10 years and so much experience of Italian interaction) that Italians communicating with each other often have a particular style, using louder speech and hand gestures, when apparently in amicable discussion, than some other European national groups. We also note that Italians communicating with non-Italians often modify (“edit”) their communication style to suit quieter styles, as all groups tend to modify communication when interacting with different groups. English people, for example, recognise the need to modify their quiet, understated style, to avoid being ignored or misunderstood by other groups with more clearly stated styles of communication. The claimant on her own evidence had worked both with the respondent and a previous employer in a multinational context and has lived in England from 2011 at least, and possibly before that. We note that there were complaints by Italians that she was “aggressive”, suggesting that Italian cultural norms about communication style did *not* include interrupting and speaking over business colleagues and a complaint of aggression sounds more like a complaint about interrupting and over speaking, the conduct complained of by non-Italian colleagues. We *could* set this aside, on the basis that we do not know much about SL, who may have been a rude and unreasonable person, and could hypothesise that Italian style does condone interruption and speaking over someone else. The claimant however accepts that with her manager’s coaching and advice she had modified her behaviour towards SL, to something she described as “gentle”. Further, John McGouran’s evidence was that he had worked with Italians for many years and they did not behave like this (nor, as the claimant acknowledged, did Lorenzo). In our view, more to the point is that the claimant, having lived and worked in a multinational setting for many years, should have understood that interrupting and speaking over people is not acceptable. She was not criticised by Ms Sumbo because of her Italian style of communication, but because she was rude, behaving in a way which was unacceptable, to the claimant’s knowledge, in London, and with people from a different background.
- 67 As for describing the claimant as emotional, we noted from the transcript of 2 April meeting that it was the claimant who described herself as emotional, seeking to explain her behaviour as a response to criticism. It did not come from Ms Sumbo as a stereotype of Italians.
- 68 The complaint that after the start of lockdown the claimant was subject to verbal abuse, threats and harassment, does not hold true. There was a dispute about one day’s pay when the claimant started to work from home without permission, and absence was initially treated as on sick leave; this was resolved. We cannot see that anyone else would have been treated differently, and concluded that

any difference in race was irrelevant. In other respects, the aggression came from the claimant. The communications from Ms Sombo and McGouran were measured, though firm. If by harassment, the claimant meant the probation extensions, the respondent had reasons to extend probation, first because of complaint by the client of her aggressive communication style, then because of her conduct towards her manager. There was no “threat” until the mention after her 19 June outburst, of a “final meeting”. In our finding, this phrase, which might show the respondent contemplated dismissal, would have been used about someone of any race who had behaved as the claimant had

- 69 Of the other allegations, there is no evidence that emails were cancelled by Ms Sumbo; if Ms Sumbo did “talk badly” about the claimant to managers, it was a legitimate concern about the manner in which the claimant spoke to Ms Sumbo and her colleagues. Had the claimant not been Italian, Miss Sumbo is likely to have spoken in the same way.
- 70 We do not understand what behaviour is meant by “showing the claimant as a failure to the respondent and Hitachi back management in Germany”. Hitachi staff had complained about the claimant before Ms Sumbo started to monitor her work, so any suggestion of “failure” did not come from Ms Sumbo.
- 71 It is also alleged as less favourable treatment that Ms Sumbo *said* Hitachi had made a complaint against her. The claimant asks us to note there was no written complaint, but we do not doubt there was a complaint. Ms Sumbo did not make it up. The absence of a written complaint means only that the complainants were not asked to put it in writing. The respondent treated this complaint as a matter of ensuring customer satisfaction, not a disciplinary issue. Ms Sumbo took appropriate action to coach the claimant on her communication style to remove the cause for complaint. If there was a complaint, it was not for Ms Sumbo to ignore it – it was right to tell the claimant about it so that she could try to improve.
- 72 Finally, on the dismissal, our finding in relation to race discrimination is the same as on sex discrimination. The claimant was dismissed because of her conduct towards managers and colleagues, which is unlikely to have changed as she did not see anything wrong with it. If the three comparators, whose conduct was not objectionable, had been Italian, they would not have been dismissed. If non-Italians had behaved as the claimant did, they would have been dismissed.
- 73 For these reasons the tribunal does not find that the respondent treated the claimant less favourably because of sex or because of race.

Employment Judge Goodman

23<sup>rd</sup> Aug 2021

JUDGMENT and REASONS SENT to the PARTIES ON

23/08/2021.

FOR THE TRIBUNAL OFFICE