EMPLOYMENT TRIBUNALS

Claimant:	Mr Slawomir Rowinski	
Respondent:	Kuehne + Nagel Limited	
Heard at:	Reading	**On: 2, 3 September and (discussion in chambers on) 16 November 2021**
Before:	Employment Judge Gumbiti-Zimuto Mrs A Brown and Mrs F Betts	

Appearances
For the Claimant: In Person
For the Respondent: Mr J Naylor, Solicitor

RESERVED JUDGMENT

1. The claimant's complaints of direct race discrimination are well founded and succeed. The respondent discriminated against the claimant by the incidents of 9 July 2019, 7 August 2019 and in the delay in considering the claimant's grievance.

2. The claimant's complaint of indirect race discrimination is not well founded and is dismissed.

3. A remedy hearing shall take place at the Reading Employment Tribunal, 30/31 Friar Street (Entrance in Merchants Place), Reading RG1 1DX on the **30 March 2022**, commencing at 10am.

REASONS

1. The respondent is a business which, amongst other services, provides logistics solutions to the food industry. Its business includes delivering foodstuffs to clients across a variety of industries.

2. Since 19 December 2005, the claimant, who is Polish, has been employed by the respondent as a Team Leader at Acre Road, Reading. By a claim form presented on 16 December 2019, following a period of early conciliation from 5

December 2019 to 6 December 2019, the claimant brought a complaint of race discrimination.

3. The claimant made complaints of direct and indirect race discrimination. The claim of direct discrimination concerns allegations about the way that the claimant was spoken to by colleagues and the way in which the respondent dealt with grievances raised by the claimant. The indirect discrimination claim concerns the respondent's English language policy and the way that it was applied. The claimant's complaints are denied by the respondent.

4. The claimant gave evidence in support of his case. The respondent relied on the evidence of Neil Wailes, Mathew Lindsay and Mathew Thomson. They all produced witness statements which were taken as their evidence in chief. The parties produced an agreed trial bundle containing around 200 pages of documents. We made the following findings of fact.

5. The claimant worked as a Team Leader on night shift acting up as Shift Manager on rotation basis. Since 2007 the claimant has worked as a practical trainer, Company Inductor and MHE Instructor responsible for training new and existing staff. Neil Wailes is employed as a Team Leader and at the relevant time employed as Acting Night Shift Manager.

6. The respondent employs many people from abroad whose first language is not English. Roughly 50% of the workforce at the Acre Road site are UK nationals and the other 50% includes nationals of Italy, Spain, Bulgaria, Hungary, the Czech Republic, Nigeria, Latvia, Lithuania, Slovakia, Romania and Poland.

7. The respondent has a policy that the language of the business is English. The respondent's Code of Conduct states the following:

   "*Colleagues are also referred to the briefing regarding language at work. Colleagues are reminded that English is the business language employed across the Company and particularly in the United Kingdom.*

   In some instances, conversing in a language other than English, whilst in the company of others within the working environment, can create an atmosphere which is exclusive, potentially disrespectful of others and may be regarded as a breach of Company policy. All colleagues are therefore expected to converse in English in the course of their working activities."

8. Notwithstanding the policy the claimant states that as some employees had communication problems, he found it useful during training to check that Polish trainees whose English language ability is limited had understood what they were being told by communicating with them in the Polish language.

9. The respondent accepts that there are occasions when the use of a foreign language in the business is acceptable. Examples given include delivery drivers from outside the company who cannot speak English may be spoken to by an employee who has the ability to speak to the driver in the driver's language.

10. On 9 July 2019 the claimant was training two new starters. One of them was experiencing some problems with an aspect of the training so the claimant explained where the trainee was going wrong and did so in Polish.

11. There is a dispute between the parties as to what happened next. The claimant says he was approached by Neil Wailes who "*exploded with angry and rude talk in a loud voice against using a foreign language in a workplace. The best bit of that was: "I'm really pissed off with people who do not speak English at work"".*

12. The respondent relies on the version given by Neil Wailes' of the incident that it was another colleague, Stephen Maginnis who had first asked the claimant to speak English during the training, and it was only when the claimant refused to change what he was doing that Neil Wailes himself stepped in and told the claimant "*to use the correct business language for the training*." Neil Wailes says that it was the claimant who then reacted aggressively throwing down a potato that he was holding and insisting that he could *"speak Polish if I want"*. To which Neil Wailes states that he reminded the claimant of the respondent's policy.

13. This incident was investigated by Mathew Lindsay, Shift Manager, on behalf of the respondent following the claimant making a grievance complaint. The respondent spoke to one of the trainees, P Zuberek, his statement was inconclusive, he did not recall the claimant being told to stop speaking Polish. The trainee stated that the claimant was speaking in English but used Polish if they were having trouble understanding.

14. The claimant stated in the grievance investigation that he had been given permission to use Polish when training in such circumstances (in his evidence to the Tribunal he stated that he was told that one of the reasons he was recruited was for his language skills). The respondent spoke to S Littlewood, the person who the claimant claimed had given him such permission, he said that he never gave the claimant permission to do any training in any other language than English.

15. Stephen Maginnis was spoken to in the grievance investigation and he said that he first asked the claimant to stop speaking Polish and it was only when the claimant ignored him that Neil Wailes became involved.

16. We found that on the 9 July 2019 the claimant was speaking in Polish, this was agreed by the parties. We accept that the claimant did this, as he said, to help a Polish trainee experiencing difficulties with an aspect of the training. We note that the claimant did not recall Stephen Maginnis' intervention. We attach no significance to that. The claimant's evidence to the Tribunal was that Neil Wailes' intervention was aggressive and hostile. The claimant accepted that he had an angry reaction to what was said by Neil Wailes but considered it was appropriate in the light of how Neil Wailes had spoken to him. Having had the opportunity to see and hear the claimant and Neil Wailes we preferred the claimant's version of events and conclude that on balance of probability the

claimant is correct when he describes Neil Wailes as having said "I'm really pissed off with people who do not speak English at work" and further that he did so in a manner that was angry, rude, ,aggressive and hostile.

17. The second incident that the claimant raised was on 6 August. What happened on this occasion was that the claimant was standing by the Goods In window speaking to a colleague in Polish. What the conversation was about is unexplained but it was not alleged by anyone to be business related. The only people present other than Neil Wailes who was passing at that moment were the claimant and his colleague. Mathew Lindsay, found during the grievance investigation, that the exchange by the Goods In window lasted a "a couple of minutes".

18. The claimant's case was that this conversation took place during the break. The respondent's witnesses say that it was after the break. Taking all the evidence into account the Tribunal concluded that the conversation took place after the break end buzzer had sounded but before the claimant and his colleague had returned to their workstations. They were on the way back to work when they stopped to talk at the Goods In window.

19. The claimant says Neil Wailes approached him and in a rude aggressive manner and said "stop speaking in Polish". While Neil Wailes agreed that the exchange took place he says he merely reminded the claimant and a colleague to speak English and did not do so in an aggressive manner. The way that Neil Wailes spoke to the claimant was described by the colleague to whom the claimant was speaking as "roughly". We accept the claimant's description of Neil Wailes speaking to him in a rude and aggressive manner. The description of Neil Wailes speaking to the claimant roughly in our view coincides with the claimant's description. We are also satisfied that Neil Wailes told the claimant to stop speaking Polish. He did not simply say the claimant "should abide by the policy" (see Neil Wailes' evidence) or "insisted that the company's business language policy is complied with" (evidence of Mathew Lindsay). Neil Wailes' and Mathew Lindsay's accounts suggest a polite reminder to the claimant to abide by the respondents' business language policy. We reject the respondent's characterization of what happened. We accept the claimant's account that he was told to "stop speaking Polish" in a rude aggressive manner by Neil Wailes.

20. On 7 August Neil Wailes delivered a briefing in which he reminded staff of the respondent's language policy. The claimant raised a complaint about the way the briefing was delivered. The claimant states that Neil Wailes *"did it in a very loud voice, practically shouting with a smile of satisfaction on his face."* The claimant says Neil Wailes was looking in his direction as he delivered the briefing. Because the briefing was not being delivered in a normal way the claimant says he reacted to the way it was delivered and when he protested Neil Wailes replied "*so go away, you do not need to be here, off you go*".

21. Neil Wailes states that he delivered the briefing in a normal way using a normal voice, that he did not smile or smirk while giving this briefing. Neil Wailes says it was the claimant who said the briefing meant nothing to him and walked away.

22. Based on the evidence we have heard we concluded that there was nothing said or done by Neil Wailes in delivering the briefing that was offensive or inappropriate. The content of the briefing was sensitive because the language policy had been the point of conflict between the claimant and Neil Wailes. The claimant may well have considered that Neil Wailes hid his discriminatory treatment of him behind the guise of only implementing the respondent's language policy but the evidence on the delivery of the briefing did not establish this.

23. Mathew Lindsay carried out an investigation of the claimant's grievance. The claimant complains in these proceedings that during the grievance meeting on 16 October concerning the incidents on 9 July, 6 and 7 August the evidence of the foreign staff, in particular Polish staff was ignored. The claimant's first grievance meeting was on the 19 August. The 16 October was the date when the claimant was given his grievance outcome by Mathew Lindsay. In investigating the grievance Mathew Lindsay spoke to the claimant, Neil Wailes and 9 other employees. Mathew Lindsay's conclusions were to reject the claimant's grievance.

24. The claimant also complains that Mathew Lindsay said that the respondent had a policy of preventing staff from speaking Polish. We understand the claimant's point to be that Mathew Lindsay endorsed an approach that Polish could not be spoken in the workplace. The claimant's evidence during the hearing was that Mathew Lindsay said the respondent's policy prohibited speaking Polish language therefore Neil Wailes was within his rights to follow the code of conduct and ask the claimant not to speak Polish.

25. While there was some dispute between the claimant and Mathew Lindsay as to what precisely was said they broadly agree. The real dispute between them is what the meaning of what was said is and whether Mathew Lindsay correctly applied the respondent's policy.

26. The claimant complains about the appeal. He says that during the appeal, on 24 October, there was a failure to respond to the claimant's issues about the respondent's policy or practice relating to the use of a foreign language in the workplace and, about the claimant's reasons for using Polish in the workplace in order to help other Polish staff who may struggle with English, especially English spoken with a strong accent. The reference to a strong accent is directed at Neil Wailes who speaks with a Scottish accent.

27. The Tribunal have understood the claimant's point to be that the respondent failed to address the points he made on appeal.

28. The Tribunal agree that the appeal decision outcome has not addressed the issues in the appeal in the way that the claimant has raised them. The appeal letter has asked for an answer to a number of points that the claimant has made. The appeal outcome letter has determined the claimant's grievance appeal should be rejected and gives reasons why, relying on the code of conduct.

29. The claimant makes a further point about the grievance, complaining that the respondent took over three and a half months, from 9 August to 27 November 2019, to consider his grievance and appeal.

30. Matthew Lindsay agreed the timeline. On the 15 August the claimant was invited to a grievance meeting. The claimant submitted his detailed written grievance on 16 August. The claimant attended a grievance meeting on 19 August. Thereafter Mathew Lindsay spoke to a further 10 employees including Neil Wailes.

31. Mathew Lindsay said, "*dealing with the grievance took rather longer than I hoped it would. We operate on a shift-based system and it was often difficult to ensure that I was available at the same time as the colleague that I needed to speak with. In addition, this was the peak holiday period towards the end of August."*

32. On16 October the grievance reconvened, and the claimant was provided with the outcome letter.

33. Answering the suggestion that the grievance took from August to October to complete due to the difficulty of seeing people because they were on different shifts the claimant said, "*I do not accept that. Nothing happened in September and then people only interviewed in October- witnesses often worked on same shift as Mathew Lindsay."* The claimant pointed out that *on* 11 September he was asked to come for grievance outcome meeting before the witnesses were questioned by Mathew Lindsay. We accept the accuracy of the claimant's observations concerning the respondent's explanation for the time that the grievance process took and find that there was an undue delay.

34. The claimant further complains that in carrying out the grievance and appeal, the respondent failed to take proper account of aggressive, hostile actions of one or more non-Polish staff members.

35. It is correct that the respondent came to conclusions that were against the claimant in the grievance. The conclusions were arrived at after speaking to other staff including Polish and non-Polish staff. The respondent did not find that Neil Wailes was aggressive to the claimant.

Indirect discrimination claim

36. Section 19 Equality Act 2010 include the following provisions: *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. (2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if— (a)A applies, or would apply, it to persons with whom B does not share the characteristic, (b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (c)it puts, or would put, B at that disadvantage, and (d)A cannot show it to be a proportionate means of achieving a legitimate aim.*

37. The respondent's written submissions included the following points:

> *19. The Respondent accepts that it applies a provision, criterion or practice that English is the appropriate business language (the "Policy") in the course of employees' working activities. This is a global Policy, applied across the Respondent's multi-national operations. The scope of the Policy is set out at page 66 of the Bundle:* ***"All colleagues are therefore expected to converse in English in the course of their working activities"****.*
>
> *20. It is important to note that this is* ***not*** *a Policy which prohibits the speaking of a particular non-English language. It is not a negative/prohibitive policy, but rather a positive/requirement-based policy of English being used as the business language in the course of employees' working activities.*
>
> *…*
>
> *23. It is accepted that the Respondent applies the Policy to all of its workforce. It is accepted that this Policy could be capable of being discriminatory in relation to a relevant protected characteristic of the Claimant (i.e. that his first language is not English) but the Respondent asserts that, under section 19(2)(d) of the Equality Act, this is a proportionate means of achieving legitimate aims.*
>
> *…*
>
> *26. It is accepted that the Respondent applies the Policy to persons who do not share the relevant characteristic of the Claimant.*
>
> *27. In relation to Section 19(2)(b) it is denied that the Policy puts persons with whom the Claimant shares the characteristic at a particular disadvantage if the characteristic alleged by the Claimant is his Polish nationality. This is because obviously the Policy is applied to all employees of the Respondent regardless of nationality and therefore other employees whose first language is not English, but whose nationality is not Polish, could potentially be affected in the same way as the Claimant.*
>
> *28. It is therefore respectfully submitted that the Claimant's claim can only be valid if he puts it on the basis that the relevant characteristic is employees whose first language is not English, rather than employees who are Polish.*
>
> *29. If the Claimant's case is put on the basis that the relevant characteristic is those whose first language is not English, then it is acknowledged that the Policy has the potential to place those with that relevant characteristic at a particular disadvantage when compared to those whose first language is English. The Respondent asserts, however, that*

under Section 19(2)(d) this is a proportionate means of achieving a legitimate aim.

30. In support of its defence, the Respondent relies upon the fact that the Policy is only relevant in the course of "the working activities" of any employee. There is no bar on any employee speaking in any non-English language prior to any work activities; after those work activities; in breaks from those work activities; at work-related social events; and in two expressly permitted work-related scenarios: (i) where third parties such as drivers delivering to the Respondent's premises are unable to converse in English; and (ii) where a formal meeting (for example a meeting under the Respondent's harassment and bullying policy) requires translation in order to ensure equality and fairness to the employee.

31. It is therefore submitted that the Respondent's application of the Policy is undertaken in an entirely proportionate manner and is the least discriminatory method of achieving its legitimate aims.

32. The Respondent has multiple legitimate aims: (i) to ensure the smooth running of the Respondent's operation (including the health and safety of all involved in operations in a site in which machinery and movement of that machinery is constant); (ii) to ensure that no colleagues feel bullied, excluded or unable to join in by virtue of other colleagues speaking a language they do not understand (this is expressly highlighted as a potential risk under the Respondent's Harassment and Bullying Policy (at page 164 of the Bundle); and (iii) ensuring cohesion in the Respondent's workforce by encouraging a common language and avoiding the formation of cliques based on language (this is particularly relevant to the Respondent as it is not only an international business but, at the site at which the Claimant is currently still employed, the workforce is of a large range of nationalities, roughly 50% of the workforce consisting of nationals of Italy, Spain, Bulgaria, Hungary, the Czech Republic, Nigeria, Latvia, Lithuania, Slovakia, Romania and Poland.

33. The Company's global policy is clear, concise and proportionate. It permits languages other than English to be spoken at various times prior to, after and during breaks in the working day.

38. The claimant's complaint is that the respondent had a policy or practice that only the English language was permitted to be spoken in the workplace at all or at specified times; alternatively, or in addition, a policy or practice that Polish language could not be spoken in the work place at all or specified times. The conclusion of the Tribunal is that the PCP as described in the list of issues was not applied by the respondent.

39. The Tribunal consider that the PCP is as described by the respondent "that English is the appropriate business language (the "Policy") in the course of employees' working activities."

40. Did the respondent apply the policy to the claimant at any relevant time? The claimant relies on the incidents on 9 July and 6 August as instances of the application of the policy. The respondent accepts that it applied the policy.

41. Did the respondent apply (or would the respondent have applied) the policy to persons with whom the claimant does not share the characteristic, i.e. persons who were not Polish or whose first language was not English? The respondent in its submissions relies on the evidence of Mathew Lindsay who confirmed that two employees who spoke Spanish as a first language would also be told to abide by the Respondent's Policy during working activities. The respondent accepts that it applied the policy to persons who were not Polish or whose language was not English. The claimant in his submissions said other nationalities (e.g., Romanians and Italians) were not asked to not speak their national language. The claimant did not give evidence that this policy was not applied to everyone. The claimant, at paragraph 14 of his statement, refers to an email from Graham Harris to "All" staff in which he makes clear the policy applies to all staff.

42. The Tribunal conclude that the respondent would have applied the policy to all the employees.

43. Did the policy put persons with whom the claimant shares the characteristic, i.e., Polish people or persons whose first language is not English, at one or more particular disadvantages when compared with persons who are not Polish or persons whose first language is not English? The respondent accepts that the policy puts those whose first language is not English at a particular disadvantage.

44. Did the policy in fact put the claimant at that or those disadvantage at any relevant time? The claimant did not identify a disadvantage in his evidence or submissions.

45. Has the respondent shown the policy to be a proportionate means of achieving a legitimate aim? The respondent company's global policy is clear, concise and proportionate. It permits languages other than English to be spoken at various times prior to, after and during breaks in the working day. The matters outside the policy show that it is proportionate (training when necessary or communication with people from outside the company).

46. The Tribunal accept that the respondent has shown that there were legitimate aims for the policy. These include to ensure the smooth running of the Respondent's operation; to ensure that no colleagues feel bullied, excluded or unable to join in by virtue of other colleagues speaking a language they do not understand; and ensuring cohesion in the Respondent's workforce by encouraging a common language and avoiding the formation of cliques based on language

47. The claimant's complaint of indirect discrimination is not well founded and is dismissed.

direct discrimination

48. Section 13 Equality Act 2010 provides that an employer must not discriminate against an employee by dismissing him or subjecting him to any other detriment. An employer discriminates against an employee if because of his race he treats the employee less favourably than he treats or would treat others. Race includes colour, nationality ethnic or national origins.

49. Where the employee seeks to compare his treatment with that of another employee there must be no material difference between the circumstances relating to each case.

50. If there are facts from which the employment tribunal could decide, in the absence of any other explanation that the employer contravened the provision concerned the employment tribunal must hold that the contravention occurred. However, this does not apply if the employer shows that it did not contravene the provision.

51. It is not sufficient for the claimant simply to prove facts from which the Tribunal could conclude that the respondent could have committed an unlawful act of discrimination. The bare 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 probabilities, the respondent had committed an unlawful act of discrimination. The Tribunal has to consider all the evidence relevant to the discrimination complaint. The absence of an adequate explanation for differential treatment of the complainant is not relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant.

52. At the second stage the burden is on the respondent to prove that he has not committed an act of unlawful discrimination. The respondent may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If the respondent does not, the Tribunal must uphold the discrimination claim.

53. The Tribunal conclude that Neil Wailes spoke to the claimant in a rude and aggressive way. On the 9 July the claimant was speaking in Polish during training to help a Polish trainee experiencing difficulties. Neil Wailes said to the claimant *"I'm really pissed off with people who do not speak English at work"* in an angry, rude, aggressive and hostile manner. Further on the 6 August Neil Wailes approached the claimant and said to him in a rude and aggressive manner "*stop speaking in Polish*".

54. We are satisfied that this was a detriment. If the claimant is treated as in breach of the respondent's policy at the time that he was speaking Polish on 9 July it was a technical breach and treating it as such is in our view

contrary to the intention and spirit of the respondent's policy. We doubt that a reasonable employer aware of the all the circumstances would view the claimant's action on this occasion as a breach of the policy. In any event even if the claimant was in technical breach of the policy, no such breach of the policy would justify Neil Wailes speaking to the claimant in a rude and aggressive way as he did.

55. In respect of the incident on 6 August we are satisfied that this was an occasion when the claimant was speaking Polish in circumstances that did not on a sensible application of the respondent's policy amount to a breach of the respondent's policy. The respondent accepts that during breaks speaking Polish or any other language does not offend the policy. We have found that the claimant was standing by the Goods In window talking to a colleague in Polish. The claimant and his colleague were not carrying out "working activities" they were returning to the workstations after a break. The policy states: "English is the business language employed across the company." The rational of the policy is explained as: "*In some instances, conversing in a language other than English, whilst in the company of others within the working environment, can create an atmosphere which is exclusive, potentially disrespectful of others and may be regarded as a breach of Company policy. All colleagues are therefore expected to converse in English in the course of their working activities.*" The claimant and his colleague's brief conversation by the Goods In window could not rationally be considered to create an atmosphere which is exclusive or potentially disrespectful of others.

56. We are satisfied that the claimant was treated less favourably. Neil Wailes words suggested that it was not so much the breach of the policy that was annoying him but the claimant speaking Polish. We are satisfied that there are facts from which we could conclude that the claimant was treated less favourably and that the less favourable treatment was on the grounds of his race. We have rejected the account given by Neil Wailes for the reasons set out above. We conclude that the respondent has failed to prove that the less favourable treatment is not in any way related to the claimant's race.

57. The respondent's consideration of the claimant's grievance and appeal took too long. Mathew Lindsay recognised this in his evidence. This in our view was a detriment to the claimant. We agree with the claimant that there is no justification for the length of the delay. In September nothing appears to have occurred progressing the grievance. The delay in our view was likely to have been cause by the respondent's failure to prioritise the claimant's grievance and may have been impacted on by the nature of the grievance. We have been provided with no evidence to compare the treatment of the claimant with. While there was an assertion that the claimant's grievance was raised at a time when holidays were taken which may have impacted on the investigation, no such evidence to support the assertion was in fact produced.

58. We consider the nature of the claimant's grievance is likely to have been a factor which influenced the tardy manner in which the respondent dealt with

the grievance. We have taken into account that the grievance procedure provides that the grievance hearing will take place once the respondent has had a reasonable opportunity to consider its response and investigate the matter. There is no specific time scale for dealing with the grievance. The claimant is required to submit an appeal to the grievance "without delay and in any event within ideally five working days. The appeal hearing will be without unreasonable delay. The Tribunal note that the ACAS Code of Practice provides that the grievance meeting and grievance appeal should be held without unreasonable delay. The Tribunal concluded that the unexplained delay together with the nature of the grievance require an answer. We are of the view that the claimant has proven facts from which we can conclude that the delay was due to claimant's race. The respondent has not shown that the claimant's race was not a factor in the way that the grievance was dealt with i.e., undue delay.

59. The claimant says that the way in which Neil Wailes delivered the briefing on the respondent's a language policy was in a loud voice with a manner the claimant found offensive. The Tribunal concluded there was in fact nothing said or done by Neil Wailes in delivering the briefing that was offensive or inappropriate. The underlying tension between the claimant and Neil Wailes may have caused the claimant to perceive the briefing antagonistically but in our view the evidence suggested that Neil Wailes simply gave the briefing as he was directed to by reading out the contents of an email on the respondent's language policy. We concluded that there was no detriment to the claimant. The claimant was not treated less favourably in this regard.

60. The claimant also complains that in the grievance meeting the respondent ignored the evidence of Polish staff. Mathew Lindsay's conclusion was to reject the claimant's grievance. In investigating the grievance Mathew Lindsay spoke to the claimant, Neil Wailes and 9 Other employees. Based on the information before him Mathew Lindsay was entitled to conclude as he did. The evidence before us does not suggest that he subjected the claimant to any detriment no evidence of overt unfairness has been shown the fact that Mathew Lindsay rejected the claimant's grievance complaint is not a detriment, the claimant was not treated less favourably.

61. The claimant states that during or following the grievance meeting Mathew Lindsay said that the respondent had a policy of preventing staff from speaking Polish. The Tribunal are satisfied that Mathew Lindsay said something along the lines that the respondent had a policy that staff cannot speak Polish. In saying what he did Mathew Lindsay was trying merely to articulate the respondent's policy. The reference to Polish in this context was only referring to the fact that was the language under discussion in the grievance. Whatever the precise words used by Mathew Lindsay we are satisfied he was not placing Polish in any special category merely articulating the effect of the respondent's policy that required English as the business language. We are of the view that the claimant was not subjected to a detriment by the misstatement of the policy by Mathew Lindsay. The misstatement of the respondent's policy was not based on race, the

reference to Polish was merely specifying the way the policy had been supposedly breached. The same would have been said about any foreign language in this context.

62. The claimant also complains that the respondent failed to respond to the claimant's issues about the respondent's policy or practice relating to the issue of a foreign language in the workplace and the claimant's reasons for using Polish in the workplace. We concluded that the respondent did fail to deal with the points he made on appeal of the grievance. The appeal outcome letter shows that the respondent has agreed that the grievance was correctly rejected. In giving its reason the appeal outcome letter did not engage squarely with the points raised by the claimant but did answer the central question relating to the grievance. The respondent's conclusions in the appeal were not less favourable treatment. They were the conclusions (right or wrong) of the decision maker of which there is no evidence that they were tainted by considerations of the claimant's race. There is no evidence that the claimant's appeal was considered less favourably because of any issue of race.

63. The claim of direct discrimination succeeds, and the claim of indirect discrimination is dismissed.

64. A remedy hearing shall take place on the 30 March 2022. The parties are to attend in person. The parties must by 7 January 2022 disclose any documents relevant to remedy. The parties must send to each other witness statements setting out the evidence on which the parties will rely on at the remedy hearing by 28 January 2022.

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Employment Judge Gumbiti-Zimuto
Date: 10 December 2021.

Sent to the parties on: 24/12/2021
N Gotecha

For the Tribunals Office