



EMPLOYMENT TRIBUNALS

Claimant

Chibogu Eze v

Respondent

Pilgrim's Pride Limited

Heard at: Bury St Edmunds

On: 20 and 21 March 2023 and 22
March 2023 in chambers

Before: Employment Judge de Silva KC, Ms B Handley-Howorth and
Ms L Gaywood

Appearances

Claimant: In person

Respondent: Allan Roberts, Counsel

RESERVED JUDGMENT

1. The Claimant's claims for race discrimination, harassment and victimisation under the Equality Act 2010 are dismissed.

REASONS

THE PROCEEDINGS

The Claim

2. In the Claim Form, which was presented on 22 January 2019, the Claimant brought claims against the Respondent for race discrimination, harassment and victimization under the Equality Act 2010. Other heads of

claim which were originally in the Claim Form were dismissed by the Tribunal in a judgment dated 14 September 2020.

The Issues

3. No list of issues had been agreed before the hearing. At the request of the Tribunal, one was agreed between the parties and sent to the Tribunal on the second day of the final hearing. This set out the issues as follows.

Alleged Discrimination

- (1) Did the Respondent subject the Claimant to the following detrimental treatment: Did Dorina Rosu charge different prices or give different portion sizes, specifically:

(a) On a date unspecified, did Ms Rosu serve '[the Claimant] *different mayonnaise (one small sachet rather than a generous helping on the plate) than other workers who were also in the queue at the same time (for example, Paul Fox).*'

(b) On a date unspecified, did Ms Rosu give the Claimant a smaller portion of salad?

(c) On a day unspecified, was there '*a list of prices displayed on the wall*', did the Claimant ask Dorina Rosu '*why he was charged more for the same food (burgers, spicy potatoes etc.)*' and did Dorina Rosu '*reply by shouting at [the Claimant] in her home language of Romanian, calling him 'afrique*'.

- (2) On unspecified dates, whenever the Claimant walked past Dorina Rosu and her close acquaintance, did they say '*black*', '*Afrique*' and other racial slurs?

- (3) Did Dorina Rosu verbally abuse the Claimant in her car on the following occasions:

(a) On dates unspecified, would Dorina Rosu '*frequently talk about Africans and black people, making comments such as "they are criminals"*' and would she '*often speak in a derogatory manner about black people.*'

(b) On either 23 or 24 October 2018 (the last occasion), did Dorina Rosu call the Claimant '*Nigger*', a '*black bastard*' and '*Afrique*', amongst other racially discriminatory names.

- (4) Did the Respondent fail to '*respond appropriately*' as follows:

- (a) *'Two days after the incident [on 23 October 2023]', did the Claimant immediately speak to 'Andy [Abbott] (Head of Sauces in the Claimant's department)' ask him if he could make a complaint, and did Andy reply 'that he would not be able to, as there was work to be completed.'* (The Respondent disputes this forms part of the Claimant's claim, but has agreed to include it within the List of Issues for completeness).
- (b) On 26 October 2018, Mr Roach telling the Claimant, 'It is probably best if you go home and leave' and not inviting the Claimant to return to his job or bringing his assignment to an end.
- (5) If so, did the Respondent treat the Claimant less favourably than it treats or would treat others who do not share the Claimant's race?
- (6) If so, was any less favourable treatment because of the Claimant's race?

Alleged Harassment

- (7) Did the Respondent subject the Claimant to unwanted conduct as set out in paragraphs 0 - 0 above?
- (8) If so, was the conduct related to the Claimant's race?
- (9) Did the conduct have the purpose or effect of (a) violating the Claimant's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment?

Alleged Victimisation

- (10) Did the Claimant do a protected act? In particular:
- (a) Did the Claimant do the following (as identified in the Tribunal's order of 14 September 2020): *'In the office, the Claimant made a statement to Steve Roach detailing all of the acts of racism that he had experienced from Nina and several of her acquaintances. This was an oral meeting, but the Claimant recalls that Steve wrote it down and recorded what he was saying in writing. Richard Cooper (Production Operative) was also in attendance.'*

(b) Did the Claimant give false evidence or information or make false allegations in bad faith so that the Claimant did not do a protected act?

(11) Did the Respondent subject the Claimant to unfavourable treatment? The Claimant relies upon paragraph 0 (although the allegation about Mr Abbott was withdrawn at the hearing).

(12) Was any unfavourable treatment because the Claimant had done a protected act?

Jurisdiction

(13) Are allegations **Error! Reference source not found.**, 0 and 00 out of time?

Vicarious Liability

(14) Is the Respondent vicariously liable for the actions of its employees, per Section 109 of the Equality Act 2010? In particular:

(15) Regarding the allegation on 23 October 2018 (paragraph 0 above), was this done in the course of Ms Rosu's employment such that it is treated as being done by the Respondent (section 109(1) of the Act); and

(16) Did the Respondent take reasonable steps to prevent Ms Rosu from doing that thing or anything of that description (section 109(4) of the Act)?

The Final Hearing

4. At the final hearing, the Tribunal heard evidence from the Claimant. He submitted a witness statement which had been prepared with the assistance of solicitors and he was cross-examined for just under four hours by Mr Roberts. It also heard evidence from Dorina Rosu (Catering Manager) Kate Witherley (HR Manager), Stephen Roach (Senior Production Manager), Paul Fox (Stored Team Leader at the relevant time) on behalf of the Respondent. All of these witnesses provided witness statements and were cross-examined by the Claimant. Ms Rosu was cross-examined for just over an hour and a half, Ms Witherley and Mr Fox were cross-examined for around 45 minutes each. The Tribunal was also provided with an agreed bundle of documents running to 197 pages.

5. The Respondent provided written submission on the law. The Claimant provided written submissions on the evidence. Both parties made oral closing submissions.

FINDINGS OF FACT

6. The Tribunal makes the following findings of fact on the matters which are relevant to the issues between the parties. Where there was no dispute between the parties as to a particular fact, our findings are recorded below without further explanation. Where there was a dispute between the parties on the evidence, the Tribunal explains why it made its findings of fact.

The Claimant

7. The Claimant started working for Staffline Recruitment Limited as a temporary worker on 12 September 2018. On 18 September 2018, he was assigned by Staffline to the Respondent's Linton site as a temporary worker. He was assigned to work in the Sauce and Spice Room.

The Mayonnaise Incident

8. The staff canteen at the Linton site serves meals to around 200 members of staff at lunch time. There are three canteen staff managed by Ms Rosu.
9. Where mayonnaise is part of the dish being served – for example as a sauce within a burger or sandwich - there is a large tub of mayonnaise which is added to the dish by the servers. Where it is not part of the dish – for example as a condiment to be added to fries – the canteen sells branded sachets for 10p per sachet. The Claimant could not recall the brand but accepted that the sachets were branded. We accept the Respondent's evidence that these were of a higher quality than the mayonnaise in the tub (and the Claimant was not in a position to dispute this in particular as he could not recall the brand which the Respondent told us was Hellman's).
10. On one occasion, hamburgers were being served for lunch and mayonnaise from the tub was accordingly added to the burger by canteen staff when they were served. Someone in front of the Claimant was served mayonnaise from the tub but the Claimant was offered a sachet instead.
11. He stated in his witness statement that the tub "*appeared to him to still contain mayonnaise*" which the Tribunal takes to mean that this is what he thought, but he could not be sure about this. In any event, we accept the evidence of Ms Rosu that that tub was empty and a new one was not

ready. We also accept her evidence that when the new tub came out, the Claimant asked for mayonnaise from the tub.

Salad Serving

12. As for the allegation that he was served a smaller portion of salad, the Claimant said in his witness statement that he had been served half the full amount. He accepted in cross-examination that what was being served was a portion of salad as a side with another dish and that this was served with a serving spoon and therefore what he was alleging was that the spoon was only around half full when he was served by Ms Rosu.
13. Given the method of serving salad, the Tribunal accepts that the Claimant may have on occasion been served less than a full spoonful but it does not accept that this was deliberate. Further, Ms Rosu's unchallenged evidence was that on one occasion the Claimant asked for more salad and the Claimant was told that he would have to pay for a second spoonful.
14. We accept the evidence of Mr Fox which was not challenged by the Claimant that many people had issues with portion sizes in the canteen because they were not consistent.

Incident with Price of Food

15. One on occasion, there was a disagreement between Ms Rosu and the Claimant about the price of food. We accept Ms Rosu's evidence that the Claimant had ordered a bacon and sausage roll with two eggs. She was clear and consistent about this and the Claimant was uncertain about what he had ordered, saying in his statement that he had ordered "*burgers, spicy potatoes etc.*" but in oral evidence repeatedly that he was unsure.
16. We also accept her evidence that she told him that the meal cost £2.05, consisting of £1.65 for the sausage and ham roll and 20p for each egg. She was clear and consistent about the detail of this whereas the Claimant was not able to say anything to the Tribunal about the price he was charged for or what he alleged was the correct price.
17. It is not in dispute that there was a disagreement about the price of the Claimant's meal. Ms Rosu's evidence, which we accept, was that that the Claimant said that it did not say anywhere that the price for the bacon and sausage roll was £1.65 and that the correct price for a bacon and egg role was £1.25. She accepts that she said that the price for the bacon and sausage roll was on the price list but turned out to be wrong about this as it was not in fact on the price list. When this was pointed out to her at the time, she explained the pricing as set out in the previous paragraph above.

As set out above, the Claimant was unable to say what the alleged overcharging was.

18. We accept the submission of the Respondent that the Claimant was evasive about this in his evidence as it was clear on evidence of Ms Rosu that he had not been overcharged and all that had happened was that she had made an incorrect statement about which prices had been written on the price list. He repeatedly answered questions about the pricing by asserting that he was overcharged, saying that he was unable to give any details about this. For this reason as well, we prefer the account of Ms Rosu.

Alleged Racist Comments in the Canteen

19. The Claimant further alleges that *“when I would walk past Nina and some of her close acquaintances, they would make derogatory comments aimed at me such as “Afrique” and “black” amounts other comments I did not understand but appeared to me made in their home language, the manner in which they were talking made it clear the comments were insulting and created a sense of hostility”*.
20. The Tribunal does not accept this for the following reasons. First, the Claimant does not identify any dates on which any of the alleged comments were said to have been made. Secondly, he does not identify who the alleged *“close acquaintances”* were, even though they are alleged to have made derogatory comments as well. Thirdly, he made no complaint about this potentially very serious matter at the time, for example to Paul Fox whom he got on well with and was lead representative on the Respondent’s works council.
21. Fourthly, the Claimant provides no detail of the *“other comments”* that are said to have been insulting. Fifthly, even where an English word is said to have been used, e.g. *“black”*, the Claimant provides no context for how that word is said to have been used. Sixthly, we accept the evidence of Ms Rosu that the word *“Afrique”* is not a Romanian (the language alleged by the Claimant to have been spoken) word, as the words for African and Africa are the same as in English. Particularly as the Claimant does not speak Romanian, there is no evidential basis to find that anything that was being said by Ms Rosu to her acquaintances was racial in nature.
22. We also find that the Claimant would have been unlikely to have asked Ms Rosu for a lift home from work on 23 October 2018 (which it is accepted that he did) had she previously racially abused him.

Lifts to Work from Ms Rosu Prior to 23 October 2018

23. The Claimant lives in Ipswich and was reliant on getting lifts to work from colleagues. One person whom he approached to give him a lift was Ms Rosu. She agreed to this as she, like him, lived in Ipswich.
24. As set out above, the Claimant alleges that Ms Rosu made a number of racist comments to him on unspecified dates. For the reasons set out below, the Tribunal finds that Ms Rosu did not make the alleged comments.
- a. The Claimant was unable to identify the dates on which the alleged comments were made, in particular on which occasions specific alleged comments were made. He simply states that she made racist comments “*constantly*” and “*frequently*”;
 - b. No context is provided in the Claimant’s witness statement for the alleged comments, for example how the Claimant responded to alleged comments such as “*they are criminals*”. He said in oral evidence for the first time that she apologised for certain comments but there is no mention of this in his witness statement;
 - c. Had the comments been made, he would have been able to give an account of the conversations in which she made the comments rather than simply list alleged comments such as black people were “*into crime or poor living in mud huts with no food or water*”;
 - d. He continued to take lifts with her despite her allegedly “*constantly*” making racist comments. While we accept that the Claimant needed a lift to get to the Linton site, had the racist comments been made, he would have sought an alternative sooner. His evidence was that he “*asked around after the comments happened frequently*” and we take the view that he would not have waited until the happened “*frequently*” to find an alternative means of getting to work if she had said what he alleges she said;
 - e. The Claimant has not provided a consistent account of what Ms Rosu is alleged to have said. He refers to different alleged racist comments in his Claim Form, further information, statements and oral evidence;
 - f. When giving evidence about these matters, the Tribunal found him to be evasive, for example when an inconsistency in his account was put to him, saying that he did not understand the point of a question rather than answering it;

- g. In contrast, Ms Rosu was clear and consistent both in her statement and oral evidence, essentially that it was the Claimant who raised issues of race when she gave him lifts, for example black people not being treated as well as white people, and she avoided getting into any conversation on the subject of race.

Lift on 23 October 2018

25. On 23 October 2018, Ms Rosu again gave a lift home to the Claimant. It is accepted that this was arranged by text message the previous day when the Claimant had requested a lift. The Claimant originally thought that the lift was given on 24 October 2018 but when the absence sheet was put to him showing that he was absent on 24 October 2018, he accepted that the lift was given on 23 October 2018. In any event, nothing material turns on this date.
26. Ms Rosu was giving a lift to another colleague, Ralaca Sandu, and asked that Ms Sandu sit in the front. She drives a three door Mini Cooper and the Claimant was unhappy to be sitting in the back. He said that this was partly due to size – he is much taller than Ms Sandu – but the Tribunal also notes that in his further information provided on 19 March 2020 he said (emphasis added): *“Now she would make me sit in the back and move “the gypsy” she would move to the front of the car even with my big size and “the gypsy” being so small a female as well...”*.
27. On the way back to Ipswich, he asked that he be dropped at Rasputin, a shop in Ipswich (rather than at his home), which he said was on his way home. Ms Rosu said that she could not drop him there as she was not allowed to stop there. The Claimant accepts that he persisted with this request. He said in oral evidence that Ms Rosu agreed to his request to be dropped at Rasputin and then changed her mind. This was not alleged in the Claim Form, the further information or his witness statement. We do not accept that she originally agreed to drop him at home and we believe that the Claimant added this in his oral evidence to support his assertion that she could have dropped him at Rasputin’s.
28. In the event, he was dropped off at Bramford Lane/Road. There was a dispute about payment and the Claimant by his own account became agitated. He told the Tribunal that he felt claustrophobic. It is clear on the evidence that he was unhappy both about being made to sit in the back and about not being dropped off where he wanted to be dropped. He grabbed the seat in front of him and shouted that he wanted to be let out of the car. There was a dispute about payment as the Claimant refused to pay.

29. The Claimant alleges that Ms Rosu grabbed his hand and squeezed it as well as shouting various racist comments: *“black this African that”, “nigger”, “Afrique”* and other discriminatory comments in relation to African people. For the first time in oral evidence, the Claimant alleged that she had used the word *“negra”* or similar. When put to him that this had not been mentioned before, he said that things were *“popping into his mind”* as he recalled the incident. We do not think that this is likely as this is not the first time that he would have recalled the incident, for example he did so to provide his further information and his witness statement. We accept the submission of the Respondent that the Claimant is putting forward allegations to support his case which are not true and this is the reason why his account changes.
30. Furthermore, when he texted Ms Rosu about the incident later that evening, he said that he would complain about her conduct in the canteen: *“When im bk at work il be making a complaint about how you have been treating me and other black staff when serving food. And I have witnesses.”* He added *“Iv been so polite to you and you treat me like shit. So now you will learn”*. Had there been anything to complain about in relation to her behaviour during the car journey on 23 October 2018, he would no doubt have told her that he was going to complain about this.
31. On 24 October 2018, Ms Rosu reported the incident to Rachel Mann, HR Officer and Ms Witherley. Ms Witherley told Mr Roach that Ms Rosu had reported an incident with the Claimant. The Claimant was absent from work that day and on 25 October 2018.
32. He returned to work on 26 October 2018 when there was another incident involving him. The Claimant says that two colleagues were rude and aggressive to him but it was reported via Nick Watts, the Claimant’s line manager to Richard Cooper, who was in charge of running the Sauce and Spice Room, that the Claimant had been aggressive and argumentative with others. It appears that this incident arose out of a misunderstanding as one of the other workers was unable to speak English.
33. Mr Roach called the Claimant into a meeting. The Claimant’s evidence was that he had made a complaint to Mr Cooper and that he understood that this was the reason for the meeting. However, it is apparent from Mr Roach’s contemporaneous note that the meeting was to discuss the complaint by Ms Rosu. Mr Roach’s note is mentioned in the Claimant’s witness statement where there is no suggestion that it was incorrect.
34. The Claimant told Mr Roach that the allegations were *“bullshit”* and made allegations that Ms Rosu had been racist to him. So far as the incident earlier that day was concerned, Mr Roach told the Claimant that he had been angry and raising his voice when he was speaking to Mr Watts about

it. The Claimant said that he had been angry but not aggressive. The Claimant also said that colleagues had been referring to him as “bro” and “bruv” when speaking to him which he took to be racist.

35. The Claimant gave the impression to Mr Roach of being agitated at this meeting and told Mr Roach that his hands were shaking. At one point he was clenching his fists on the table. In light of the Claimant’s demeanour and the two complaints of aggressive behaviour, Mr Roach decided to ask the Claimant to leave the premises.
36. The Claimant said something along the lines that Mr Roach was stupid. On the way out, the Claimant asked Mr Roach whether he played chess. Mr Roach said that he did to which the Claimant immediately replied that he would beat Mr Roach at chess. When Mr Roach said, to defuse the situation, that he expected that the Claimant would in fact beat him as he (Mr Roach) was not very good, the Claimant replied that he was not talking about chess and that he would beat Mr Roach as he wins at everything and always win. He said that he would make sure that the Mr Roach would regret this and he would cause trouble for the Respondent. This was also recorded by Mr Roach in his notes and the Claimant did not deny in evidence that such an exchange took place.
37. As a result of this, Mr Roach and Mr Witherley decided to inform Staffline, that his conduct had been unacceptable and ask that he be reassigned.

Investigation

38. On 29 October 2018, Ms Witherley interviewed Ms Rosu and Ms Sandu and took statements from them about the incident in the car on 23 October 2018. As the Claimant’s pointed out to the Tribunal, Ms Rosu’s statement focuses on Ms Sandu being scared and finding the Claimant aggressive but does not say that she herself found the Claimant to be aggressive or that she was scared. However, in the statement, she mentioned threatening language such as “*listen bitch, who the fuck do you think you are to talk to me like that*” and aggressive behaviour such as the Claimant punching the car seat. Ms Witherley also interviewed staff about the alleged incident on 26 October 2018.
39. By email dated 29 October 2018, the Claimant raised a complaint with Staffline and the Respondent that he had been dismissed because he had made complaints of racist conduct. By email dated 29 October 2018, this was followed up internally within Staffline but there is no evidence that any investigation took place.

RELEVANT LAW

Direct Race Discrimination

40. The Claimant brings a direct discrimination claim under section 13 of the Equality Act 2010 (“**the Act**”) relying on the protected characteristic of race. Section 13(1) of the Act states: “*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*”.
41. If a claimant prove facts from with the Tribunal could decide, in the absence of any other explanation, that a respondent discriminated against him, the Tribunal must hold that the contravention occurred unless the Respondent proves that it did not discriminate against him (section 136 of the Equality Act). As Simler P (as she then was) observed in ***Pnaiser v NHS England and Another*** [2016] IRLR 170 (paragraph 38): “*Although it can be helpful in some cases for tribunals to go through the two stages suggested in ***Igen v Wong***, as the authorities demonstrate, it is not necessarily an error of law not to do so, and in many cases, moving straight to the second stage is sensible*”.

Harassment

42. The claimant alleges that he was harassed under section 26 of the Equality Act. Section 26(1) states:

“A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

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

(i) violating B's dignity, or

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

43. Section 26(5) of the Equality Act states that race is a relevant protected characteristic for the purposes of section 26.
44. The burden of proof provision in section 136 of the Equality Act cited above apply to harassment claims under section 26 of the Act.

Victimisation

45. The Claimant alleges that he was victimised under section 27 of the Equality Act because he had raised a complaint of discrimination. This section states:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

...

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith”.

46. The burden of proof provisions in section 136 of the Equality Act also apply to victimisation claims under section 27 of the Act.

CONCLUSIONS

47. In light of the evidence, the Tribunal makes the following conclusions on the agreed issues in the proceedings.

Discrimination

(1) Did Dorina Rosu charge different prices or give different portion sizes, specifically:

(a) On a date unspecified, did Dorina Rosu serve [the Claimant] different mayonnaise (one small sachet rather than a generous helping on the plate) than other workers who were also in the queue at the same time (for example, Paul Fox).’

48. As set out above, the Claimant was offered higher quality mayonnaise in a sachet rather than mayonnaise from the tub because the latter had run out.

(b) On a date unspecified, did Dorina Rosu give the Claimant a smaller portion of salad?

49. As set out above, salad was served by the spoonful and therefore serving sizes were variable. Variable portion sizes were an issue for many people given this inconsistency. If the Claimant was served less than what he perceived was a full spoonful it was for this reason and not deliberate. As further set out above, on a particular occasion, the Claimant asked for more salad and the Claimant was told that he would have to pay for a second spoonful.

(c) On a day unspecified, was there 'a list of prices displayed on the wall', did the Claimant ask Dorina Rosu 'why he was charged more for the same food (burgers, spicy potatoes etc.)' and did Dorina Rosu 'reply by shouting at [the Claimant] in her home language of Romanian, calling him 'afrique'.'

50. As set out above, the Claimant ordered a bacon and sausage roll with two eggs and Ms Rosu told him that the meal cost £2.05, being £1.65 for the sausage and ham roll and 20p for each egg. The Claimant said that it did not say anywhere that the price for the bacon and sausage roll was £1.65 and that the correct price for a bacon and egg roll was £1.25.

51. She said that the price for the bacon and sausage roll was on the written price list which she was incorrect about (as she accepted when this was pointed out to her at the time) but the price she had charged was correct.

(2) On unspecified dates, whenever the Claimant walked past Ms Rosu and her close acquaintance, did they say 'black', 'Afrique' and other racial slurs?

52. For the reasons set out above, the Tribunal finds that no such comments were made.

(3) Did Dorina Rosu verbally abuse the Claimant in her car on the following occasions:

(a) On dates unspecified, would Ms Rosu 'frequently talk about Africans and black people, making comments such as "they are criminals"' and would she 'often speak in a derogatory manner about black people.'

53. For the reasons set out above, the Tribunal finds that Mr Rosu did not make these comments.

(3b) On either 23 or 24 October 2018 (the last occasion), did Ms Rosu call the Claimant 'Nigger', a 'black bastard' and 'Afrique', amongst other racially discriminatory names.

54. Again, as explained above, the Tribunal finds that Ms Rosu made no such comments.

(4) Did the Respondent fail to 'respond appropriately' as follows:

(a) 'Two days after the incident [on 23 October 2023]', did the Claimant immediately speak to 'Andy [Abbott] (Head of Sauces in the Claimant's department)' ask him if he could make a complaint, and did Andy reply 'that he would not be able to, as there was work to be completed.' (The Respondent disputes this forms part of the Claimant's claim but has agreed to include it within the List of Issues for completeness).

55. The Claimant confirmed at the hearing that this allegation was no longer pursued.

(b) On 26 October 2018, Mr Roach telling the Claimant, 'It is probably best if you go home and leave' and not inviting the Claimant to return to his job or bringing his assignment to an end.

56. For the reasons set out above, Mr Roach told the Claimant that he should go home because there had been two allegations of aggressive behaviour and the Claimant was displaying anger at the meeting on 26 October 2018. The decision to bring the assignment was made later and was in light of these matter also his behaviour to Mr Roach himself when being escorted out of the building which we accept was threatening.

(5) If so, did the Respondent treat the Claimant less favourably than it treats or would treat others who do not share the Claimant's race?

(6) If so, was any less favourable treatment because of the Claimant's race?

57. In the circumstances, we find that the Claimant was not treated less favourably than others who did not share the Claimant's race would be treated or that the less favourable treatment was because of his race. So far as any alleged conduct is proved as set out above, the Respondent has established a non-discriminatory explanation for this.

Harassment

(7) Did the Respondent subject the Claimant to unwanted conduct as set out in paragraphs 0 - 0 above? (8) If so, was the conduct related to the Claimant's race?

(9) Did the conduct have the purpose or effect of (a) violating the Claimant's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment?

58. The Tribunal finds that any conduct towards the Claimant was unrelated to his race and in any event did not have the purpose or effect of (a) violating the

Claimant's dignity or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Victimisation

Did the Claimant do a protected act? In particular:

(10) Did the Claimant do the following (as identified in the Tribunal's order of 14 September 2020): 'In the office, the Claimant made a statement to Steve Roach detailing all of the acts of racism that he had experienced from Nina and several of her acquaintances. This was an oral meeting, but the Claimant recalls that Steve wrote it down and recorded what he was saying in writing. Richard Cooper (Production Operative) was also in attendance.'

(11) Did the Claimant give false evidence or information or make false allegations in bad faith so that the Claimant did not do a protected act?

59. The Claimant made allegations about racist comments by Ms Rosu at the meeting on 26 October 2018. Although these are capable of amounting to protected acts, the Tribunal finds that the allegations were false and made in bad faith in order to pre-empt allegations which the Claimant correctly anticipated would be made about his own behaviour. We find that the allegations that colleagues referred to the Claimant "bro" or "bruv" were true. These words are capable of having a racist connotation but could also be used as a general greeting without any racial connotation. Had the Claimant thought there was a racial connotation, he would have been likely to have raised this before the meeting on 26 October 2018, As he chose that meeting to raise them and as he raised them at the same time he raised untrue allegations about Ms Rosu, we find that these were also made in bad faith. Therefore, we find that these matters were not protected acts.

(10) Did the Respondent subject the Claimant to unfavourable treatment?.

60. The Respondent subjected the Claimant to unfavourable treatment following these allegations by asking him to leave the premises and then terminating his assignment with it.

(11) Was any unfavourable treatment because the Claimant had done a protected act?

61. As set out above, the Claimant did not do any protected acts. In any event, the reasons for the unfavourable treatment referred to in the previous paragraph above were concerns about the Claimant's behaviour rather than any allegation of racism that he made.

(12) Are the allegations about Ms Rosu's conduct in the kitchen out of time?

62. As the Tribunal found that there were no unlawful acts by Ms Rosu, it is not necessary for the Tribunal to make a finding on the issue of limitation in relation to these allegations.

(13) Is the Respondent vicariously liable for the actions of its employees, per Section 109 of the Equality Act 2010? In particular; regarding the allegation on 23 October 2018, was this done in the course of Ms Rosu's employment such that it is treated as being done by the Respondent (per Section 109(1) of the Act); and did the Respondent take reasonable steps to prevent Ms Rosu from doing that thing or anything of that description (per Section 109(4) of the Act)?

63. As the Tribunal found that there was no unlawful act during the car journey on 23 October 2018, it is not necessary for the Tribunal to make a finding on the issue of vicarious liability in relation to this allegation.

Employment Judge de Silva KC

Date: 14 June 2023

Sent to the parties on: 15 June 2023

For the Tribunal: