EMPLOYMENT TRIBUNALS

Claimant: **Mr Z Bekele**

Respondent: **Syniverse Technologies Solutions Limited**

Heard at: **East London Hearing Centre (in person and hybrid by CVP)**

On: **12-14 April 2023**

Before: **Employment Judge S Shore**
Members: **Mrs G Forrest**
Mr D Clay

Appearances

For the claimant: In Person
For the respondent: Mr P Sands, Solicitor

RESERVED JUDGMENT AND REASONS ON LIABILITY

The unanimous decision of the Tribunal is that:

1. The claimant's claims of direct discrimination because of the protected characteristic of race (contrary to section 13 of the Equality Act 2010) are determined as follows:

    1.1. **First Claim** - The claim that Mr Ibrahim Sbeih asked the claimant in or around February 2020 to take on additional managerial responsibilities managing the Financial Clearing Team, which included specialised Financial Clearing tasks without any additional pay or change in job title and threatened him twice in or around February / March 2020 that if he did not take on the additional management responsibilities managing the Financial Clearing Team that his position would be eliminated, fails;

    1.2. **Second Claim** - The claim that Mr Ibrahim Sbeih instructed the claimant in August 2020 not to send an email about a complaint directed to senior management from his direct reports, fails;

1.3. **Third Claim** - The claim that Mr Ibrahim Sbeih had an argument with the claimant on or around 11/08/20 because the claimant had sent an email to Mr Ibrahim Sbeih against his instructions, fails;

1.4. **Fourth Claim** - The claim that the claimant was dismissed by reason of redundancy on 1 October 2020 by Ms Emma Blatch, fails;

1.5. **Fifth Claim** – The claim that Mr Bryan Thomas failed to consider the claimant's appeal properly on 11 November 2020 by:

1.5.1. considering false information provided by Mr Ibrahim Sbeih and Mr John Lloyd; and/or

1.5.2. failing to interview a key witness, Mr Nawaf Alabed as part of the appeal process; and/or

1.5.3. failing to recognise the acknowledge differences between the Financial Clearing responsibilities; and/or

1.5.4. not upholding the claimant's appeal against dismissal/complaint about discrimination on 11 November 2020; fails.

2. For the avoidance of doubt, the claimant's claim of age discrimination is dismissed upon withdrawal.

REASONS

Introduction and History of Proceedings

1. The claimant was employed by the respondent as a Customer Service Supervisor from 20 June 2011 until his dismissal on 1 October 2020. The respondent asserts that it dismissed the claimant for the reason of redundancy. The claimant identifies as Black and initially claimed unfair dismissal, age discrimination, direct discrimination because of the protected characteristic of race and harassment related to race. The respondent denied the claims.

2. The claim was presented on 2 March 2021. The claimant began early conciliation on 21 December 2020 and an ACAS certificate was issued on 1 February 2021. The time limit would therefore have expired on 1 March 2021 in respect of unfair dismissal and the other claims. The respondent applied for there to be an open preliminary hearing to consider the Tribunal's jurisdiction to consider the claims in view of the statutory time limits. It was initially decided that the question of time limits would be considered at the full merits hearing, as it was not considered to be in accordance with the overriding objective for a separate preliminary hearing to consider evidence on continuing acts and/or whether it was just and equitable to extend time.

3. Following discussions, the claimant withdrew his claim for age discrimination at the first preliminary hearing in the case on 29 October 2021 before REJ Burgher. We

have not been able to find a Judgment formally dismissing that claim upon withdrawal, so we have dismissed that claim in this Judgment.

4. At the preliminary hearing on 29 October 2021, REJ Burgher agreed a List of Issues with the parties and listed the case for a final hearing to start on 24 August 2022. That hearing had to be postponed, but EJ Burgher dealt with the time points that had been raised in respect of the claimant's claims of unfair dismissal and a single allegation of harassment related to race. As a result, the claimant's claims of harassment related to race and unfair dismissal were struck out on the jurisdictional point that they were out of time. That left the claimant with his claims of direct discrimination because of race.

Issues

5. An agreed list of issues was produced at the preliminary hearing on 15 October 2021. However, following the strike out of parts of the claimant's claim on 24 August 2022, REJ Burgher amended the List of Issues to reflect the remaining claims. The list of issues was finalised as follows:

Claim(s) under Equality Act 2010 s120

1. *The Claimant is Black.*

Direct race discrimination: Equality Act 2010 s13

2. *The Claimant alleges that the Respondent did the following things which constituted direct race discrimination:*

2.1. Mr Ibrahim Sbeih asked the Claimant in or around February 2020 to take on additional managerial responsibilities managing the Financial Clearing Team, which included specialised Financial Clearing tasks without any additional pay or change in job title and threatened him twice in or around February / March 2020 that if he did not take on the additional management responsibilities managing the Financial Clearing Team that his position would be eliminated;

2.2. Mr Ibrahim Sbeih instructed him in August 2020 not to send an email about a complaint directed to senior management from his direct reports;

2.3. Mr Ibrahim Sbeih had an argument with him on or around 11/08/20 because the Claimant had sent an email to Mr Ibrahim Sbeih against his instructions;

2.4. The Claimant was dismissed by reason of redundancy on 1 October 2020 by Ms Emma Blatch;

2.5. Mr Bryan Thomas failed to consider the Claimant's appeal properly on 11 November 2020 by considering false information provided by Mr Ibrahim Sbeih and Mr John Lloyd; failing to interview a key witness, Mr Nawaf Alabed as part of the appeal process; failed to

recognise the acknowledge differences between the Financial Clearing responsibilities; and not upholding the claimant's appeal against dismissal/complaint about discrimination on 11/11/20.

3. <u>Whether Claimant subjected to a relevant detriment</u>

3.1. Did the Respondent do those acts referred to at 3.1 to 3.5 above?

4. <u>Whether claim(s) in time</u>

4.1. Has the Claimant brought his claim within the time limit set by Section 123(1) of the Equality Act 2010? This gives rise to the following sub-issues:

4.1.1. What was the date of the act to which the complaint relates?

4.1.2. Was the act to which the complaint relates an element of conduct extending over a period? If so, when did that period end?

4.1.3. Insofar as the complaint relates to a failure to do something, when did the Respondent decide on it?

4.1.4. If not, is it just and equitable for the Employment Tribunal to extend time for the presentation of the complaint pursuant to section 123(1)(b) of the Equality Act 2010?

5. <u>Whether treatment was less favourable</u>

5.1. In doing the acts complained of, did the respondent treat the claimant less favourably than it treated the alleged comparator(s):

5.1.1. Mr Nawaf Alabed, a 'Lead Financial Clearing' who is Arab;

5.1.2. A hypothetical comparator, a 'Supervisor Customer Service' who is White or Arab.

5.2. If so, was there any material difference between the circumstances relating to the claimant and the comparator?

5.3. In doing the act complained of, did the respondent treat the claimant less favourably than it would have treated others in comparable circumstances?

6. <u>Reason for less favourable treatment</u>

6.1. If the respondent treated the claimant less favourably, was this because of the claimant's, colour, nationality, or ethnic or national origins or any other aspect of race as defined by section 9(1) of the Equality Act 2010?

7. <u>Remedy</u>

7.1. Is it just and equitable to award compensation (including financial loss, injury to feelings and person injury)?

6. As we have dismissed all the claimant's claims, a remedy hearing is not required.

<u>Law</u>

7. The statutory law relating to the claimant's claims of discrimination is contained in the Equality Act 2010 (EqA). The relevant sections of the EqA were sections 13 (direct discrimination); 123 (time limits) and 136 (burden of proof). The relevant provisions are set out here:

13. Direct discrimination

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.

If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

The relevant protected characteristics are—

(a) age;

(b) disability;

(c) gender reassignment;

(d) race;

(e) religion or belief;

(f) sex; and

(g) sexual orientation.

123. Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b)such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a)the period of 6 months starting with the date of the act to which the proceedings relate, or

(b)such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a)when P does an act inconsistent with doing it, or

(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

136. Burden of proof

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

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to—

(a) *an employment tribunal…*

8. We were referred to several precedent cases by Mr Sands that we considered when making our decision. We will refer to those that we found relevant in these Reasons.

Housekeeping

9. Before the hearing had started on first morning, our clerk advised us that Mr Bekele had enquired if there was a duty solicitor available. The Employment Tribunal does not have a duty solicitor scheme, so we dealt with the claimant's request as a first preliminary matter. Whilst no duty solicitor was available, we advised the claimant that the Tribunal would explain the procedure and law involved in the hearing as we went along. He was encouraged to ask questions, which we answered.

10. Mr Bekele is unrepresented. We reminded him that the Tribunal operates on a set of Rules. Rule 2 sets out the overriding objective of the Tribunal (its main purpose), which is to deal with cases justly and fairly. It is reproduced here:

"The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable —

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

11. We strived to ensure that Mr Bekele was given every opportunity to put his case and ask any questions he had about procedure and the law. There were times when we had to intervene to advise Mr Bekele that some of his cross-examination questions were not assisting us to answer the questions raised in the list of issues.

12. The parties produced a joint bundle of 413 pages. If we refer to pages in the bundle, the page number(s) will be in square brackets (e.g. [43]). If we refer to a particular paragraph in a document, we will use the silcrow symbol (§) with any paragraph number. If we refer to more than one paragraphs, we will use two silcrows (§§).

13. During the hearing, the respondent produced an unredacted copy of a list of Black employees recruited by Mr Sbeih that was shared with the claimant.

14. The claimant produced two short audio recordings of conversations between him and Mr Sbeih and him and John Lloyd, the respondent's head of HR. The recordings were made covertly without the consent of the respondent's employees. Mr Sands agreed the contents of the recordings and the transcript of all the first recording and the part of the second recording produced by the claimant on the second day. The transcript was given the page number 414.

15. Mr Bekele gave evidence in person and produced a witness statement dated 25 November 2022 that consisted of 219 paragraphs over forty-five pages. Not all the statement was relevant to the issues that we had to determine.

16. Evidence was given in person in support of the claimant by:

    18.1. Taye Zeleke, the claimant's brother-in-law. His witness statement dated 25 November 2022 consisted of 10 paragraphs over 3 pages.

    18.2. Hellagenet Teffera Ayalew, the claimant's sister in law who was recruited to work for the respondent in September 2019 and remains with the company at the date of this hearing. Her witness statement dated 25 November 2022 consisted of 4 paragraphs over 2 pages.

17. The claimant also submitted a witness statement dated 25 November 2022 from Nawaf Alabed, a former employee of the respondent whose witness statement consisted of 1 paragraph over 2 pages. We advised Mr Bekele that we could attach little weight to Mr Alabed's statement as he had not attended the hearing.

18. Evidence was given in person on behalf of the respondent by:

    18.3. Ibrahim Sbeih, who was the claimant's line manager at the times relevant to this claim. His witness statement dated 14 December 2022 consisted of 26 paragraphs over 7 pages. Mr Sbeih was alleged to have committed the acts of direct discrimination in the First, Second and Third Claims. He gave his evidence remotely.

    18.4. Emma Blatch, who is the Vice President Operations & Support for EMEA for the respondent and was Mr Sbeih's line manager. Her witness statement dated 14 December 2022 consisted of 20 paragraphs over 6 pages. She was the dismissing officer and was alleged to have committed the act of direct discrimination in the Fourth Claim.

    18.5. Bryan Thomas, who is the Vice President Operations for the respondent. His witness statement dated 14 December 2022 consisted of 17 paragraphs over 6 pages. He heard the claimant's appeal against dismissal and also heard a second appeal. He gave his evidence remotely.

19. All the witnesses gave evidence on affirmation. The claimant was cross-examined by Mr Sands in some detail. All the respondent's witnesses were cross-examined by the claimant in some detail. The Tribunal asked questions of the

witnesses either during cross-examination, or when cross-examination had finished.

20. At the end of his evidence, Mr Bekele was given the opportunity to clarify or expand upon any of the answers he had given to questions he had been asked. Mr Sands was offered the opportunity to ask re-examination questions of the respondent's witnesses.

19. The hearing started at 10:00am on the first morning. We agreed a timetable for the hearing and other housekeeping matters before breaking at 10:25am to finish our reading. We took a short lunch at 12:30pm before starting the evidence at 1:00pm.

20. The respondent was given the rest of the day to cross examine the claimant and his witnesses. The claimant gave evidence from 1:00pm to 4:15pm after which we took a short break. Taye Zeleke gave evidence from 4:30pm to 4:40pm. Hellagenet Teffera Ayalew gave evidence from 4:40pm to 4:50pm at which point we ended the hearing for the day.

21. The second day started at 10:00am. The claimant had produced the two recordings and two transcripts of the recordings referred to above. We took a break to listen to the recordings and compare them with the transcripts from 10:15am to 10:50am. Mr Sands was given copies of the recordings and the transcripts.

22. On the resumption, Mr Sands said he could not get the recordings to play. We indicated that the first transcript was 100% accurate. The second transcript was accurate but was only a transcript of part of the recording. We played Mr Sands the recordings in the Tribunal room and he was happy to agree the accuracy of the two transcripts.

23. The claimant was given the whole of the second day to cross-examine the respondent's witnesses. The claimant was reminded that if he failed to challenge the evidence of a witness with which he disagreed, the Tribunal was likely to find that evidence to be credible.

24. Ibrahim Sbeih, the claimant's line manager, was the respondent's first witness who gave evidence via video link. He answered supplementary questions from 11:00am to 11:10am. He was cross-examined from 11:10am to 12:15pm, when the claimant became upset. We took a break to 12:30pm. The claimant was able to continue and cross-examined the witness until 1:20pm when we took lunch.

25. We returned at 2:20pm when Emma Blatch gave evidence. Mr Sands asked a few supplementary questions until 2:26pm. Ms Blatch was cross-examined until 3:00pm.

26. Bryn Thomas was the respondent's final witness and gave evidence from 3:00pm until 4:04pm. We closed proceedings for the day at that point.

27. We heard closing submissions from both parties on the third morning. Mr Sands addressed us for an hour. The claimant submitted four pages of written submissions on the third morning and then addressed us for 35 minutes. We

retired to make our decision on liability and the applicability of **Chagger v Abbey National**, which is the relevant case when considering whether, if we decided that the claimant had been discriminated against, there was a chance that the claimant may have been dismissed in any event.

28. We reached a decision on the day but did not have enough time to prepare and deliver a Judgment, so reserved our decision.

29. **Note from Employment Judge Shore – It is entirely my responsibility that it has taken far too long to produce this Judgment and Reasons, for which I can only offer my sincere and profuse apologies to the parties, the representatives, and my colleagues. Following the hearing, I had to deal with several personal matters that reduced the time I had available to complete what was a complicated decision in a complex case, whilst also fulfilling my obligations to ongoing hearings and family duties.**

30. We were mindful of the fact that this is a claim of race discrimination and that the panel was made up of three members who self-identify as white British. We are all aware with the barriers facing participants in Tribunal proceedings who are from Black or other ethnic backgrounds and we reminded ourselves of the guidance given to the judiciary in Chapter 8 the Equal Treatment Bench Book, particularly on “Social and economic inequality” and “The black perspective.”

Findings of Fact

Preliminary Comments

31. All findings of fact were made on the balance of probabilities. The balance of probabilities is an assessment of whether it is more likely than not that something has happened. The balance of probabilities is the standard of proof in the Employment Tribunal.

32. If a matter was in dispute, we will set out the reasons why we decided to prefer one party’s case over the other. If there was no dispute over a matter, we will either record that with the finding or make no comment as to the reason that a particular finding was made. We have not dealt with every single matter that was raised in evidence or the documents. We have only dealt with matters that we found relevant to the issues we have had to determine. No application was made by either side to adjourn this hearing to complete disclosure or obtain more documents, so we have dealt with the case based on the witness statements and cross-examination of witnesses and the documents produced to us.

33. As we mentioned a number of times during the hearing, the Tribunal must achieve a just and fair hearing, as far as that is reasonably practicable. Part of that includes ensuring that both sides and the Tribunal all clearly understand what the claim is about and what the respondent’s defence is. That is why we produce a List of Issues (which is a list of questions that the Tribunal needs to find the answers to). We have only addressed evidence in this case that has assisted us to answer the questions asked of us in the List of Issues.

Undisputed Facts

34. We should record as a preliminary finding that the evidence of a number of relevant facts were not disputed, not challenged, or were actually agreed by the parties and we therefore record them as findings of fact. These were:

    32.1. The respondent is the United Kingdom arm of a multi-national organisation that provides telecommunications services. The agreed evidence was that the respondent's specialist niche is in roaming services in telecoms. It was agreed by the claimant that the respondent has experienced a decline in global revenues due to market pressures, such as increased competition and the Covid pandemic. It was also agreed that the respondent had reduced its headcount by 15% globally between March 2020 and December 2021 [160].

    32.2. The claimant joined the respondent on 20 June 2011 and was dismissed for the stated reason of redundancy on 1 October 2020. At the time of his dismissal, Mr Bekele was Supervisor Customer Support. At the date of his dismissal, the claimant was on Grade 10M with the respondent and managed a team of Customer Service Operatives that were concerned with a product called Data Clearing (known as "DCH"). There was some dispute about the correct description of his team and their skill levels and grades, which we will address later.

    32.3. The claimant had advanced steadily through the respondent's organisation to the point where he was made Supervisor Customer Support in October 2017. It was Mr Sbeih's unchallenged evidence that DCH related to the management and processing of mobile phone data outside the users' home country (§6 w/s).

    32.4. Mr Sbeih's unchallenged evidence (§6 w/s) was that the information processed by the DCH Team would then be passed to the respondent's Financial Clearing Team (FCH), which processed the relevant invoices to the domestic network providers. The network providers would then invoice the individual phone customer. It was agreed that DCH and FCH both fell within the respondent's wider Customer Support Function.

    32.5. It was agreed that Mr Sbeih joined the respondent on 11 December 2017 from Dubai as Customer Service Director.

    32.6. Prior to the events with which this case is concerned, the respondent's FCH team had been managed by Nawaf Alabed. He had been promoted from grade 8 to Grade 9 and was given a pay award of 6.9% [129] The respondent later decided to demote Mr Alabed. He was returned to previous role but kept the 6.9% pay rise. The claimant was asked if he would take on responsibility as Team Leader of the FCH team.

    32.7. An email between Mr Sbeih and Ms Blatch dated 12 February 2020 [121] sets out the proposal to appoint Mr Bekele to manage the FCH team. The email also notes that the reorganisation would allow one of the claimant's colleagues in the DCH team to pick up more tasks, freeing the claimant's time to function as Team Leader to the FCH team.

32.8. It was agreed that Mr Sbeih offered the claimant the opportunity to replace Mr Alabed as leader of the FCH in or around 21 February 2020 (§76 claimant's w/s). We find that it was not disputed that the claimant initially appeared to be receptive to the offer of the new post.

32.9. It was also agreed that on 21 February 2020, before offering the claimant the post, Mr Sbeih made enquiries of Rob Ramsey to be the claimant's mentor in the role.

32.10. It was agreed evidence that on Monday 24 February 2020, Mr Sbeih held a meeting with the FCH team attended by Mr Bekele (§78 claimant's w/s). It was also agreed that Mr Sbeih announced to the FCH team at the meeting that Mr Bekele would become their new team leader.

32.11. The claimant says he was shocked by this announcement as he was expecting some form of negotiation over salary, title, and responsibilities. He also says he had an argument with Mr Sbeih immediately after the meeting and was told that the new post carried no increase in salary or change in job title. We will address these points in the disputed facts section below.

32.12. The claimant said that at this meeting, he declined the role. We will address this point in the disputed facts section below, also.

32.13. It was agreed that Mr Sbeih emailed the senior management of the respondent on 25 February 2020 [132] announcing the demotion of Mr Alabed and the promotion of Mr Bekele. Mr Bekele was copied into the email.

32.14. On 27 February 2020, Mr Bekele emailed Emma Blatch [136] about some operational matters concerning reports and job tickets. At the end of the email, the claimant said, *"By the way, I am just helping out covering the FCH Team, I am still considering my options (I have informed John [Lloyd] and Ibrahim [Sbeih] on Monday about it)."*

32.15. It was agreed that Mr Bekele did not take the role offered. Ms Blatch was not challenged on her evidence that she thought the claimant was the best candidate for the role and that she wanted him to accept it.

Disputed Points
General Points

33. We have not made findings of fact on much of what is alleged by the claimant in his lengthy witness statement because we did not find that many of the matters referred therein were relevant to the issues that we had to determine. Put simply, the claimant's case as set out in the agreed List of Issues is that:

33.1. He refused the promotion to FCH team leader in February 2020 after being threatened twice by Mr Sbeih that his role would be eliminated if he refused it;

33.2. He had a dispute with Mr Sbeih in August 2020 about an email that the claimant sent;

33.3. He was selected for redundancy because he had refused the FCH role; and

33.4. His appeals were refused because he had turned down the FCH role.

35. We find that the claimant has undertaken a selective review of events from his entire career with the respondent that sets out his progression through the organisation to November 2017, when he says Mr Sbeih joined the London office from Dubai (§§5 to 18 w/s). Those facts are neither in dispute nor relevant to the claims he brings to the Tribunal.

36. The claimant then produced an extremely negative assessment of his working relationship with Mr Sbeih from early 2018 to January 2020 (§§23 to 75 w/s), of which part is under the heading "Chronology of acts of discrimination" (§§28 onwards).

37. The Tribunal must deal with matters in a proportionate way – that is to say we must allocate time and resources to a question that is proportionate to its importance or value. This must be done through the lens of the List of Issues, which sets out the claims, and in a way that ensures that we only address matters that are relevant to the issues we must determine.

38. We find that the claimant has trawled through his recollections of events from November 2017 to February 2020 with the intention of highlighting every instance of alleged discrimination by the respondent in that period. We do not think that it is proportionate to deal with the claimant's allegations in any great length, because we find that:

38.1. He made no complaint about any of them in a way that could be described as a formal grievance at the time;

38.2. He raised no complaint before an Employment Tribunal about any of the incidents at the time they are alleged to have happened;

38.3. None of the people about whom the claimant raised allegations that they had been the victims of discrimination produced witness statements, other than Nawaf Alabed, who produced a witness statement, but did not attend the hearing and did not allege discriminatory conduct;

38.4. The claimant, by his own admission, made many hours of recordings of work conversations. The Tribunal received three recordings made by the claimant that totaled less than 10 minutes in length. He invited the Tribunal to draw inferences from the recordings that they showed managers at the respondent acting in a discriminatory manner towards colleagues. Of those three recordings we find:

38.4.1. The longest recording is 6 minutes 58 seconds long and appears to be a discussion between the claimant and Mr Sbeih about a female colleague that Mr Bekele wanted Mr Sbeih to promote. We found no suggestion that the conversation contained anything discriminatory.

38.4.2. The first recording received on the second day of the hearing was said to be "unmistakable evidence" that Mr Sbeih had prior knowledge that a colleague who was gay had been marked for redundancy in the future because of his sexual orientation. We find that the conversation contained no such evidence. Mr Sbeih said that he understood the person was going to be released "2 weeks ago" and that he did not know if that was still going to happen.

38.4.3. The second recording received on the second day was part of a conversation in which John Lloyd, HR Director of the respondent, was alleged to have instructed staff how to complete redundancy matrixes. The implication was that the respondent decided who it wanted to be made redundant and then worked backwards from that point to make it look like the chosen candidates had scored lowest on a redundancy matrix. We could not find anything that satisfied the standard of proof that this was what was recorded, and we found nothing that indicated that the behaviour was discriminatory.

38.4.4. None of the recordings related directly to the way in which the claimant alleged he was treated.

38.4.5. We find that there was no causal link between the three recordings and the substantive allegations made by the claimant.

38.4.6. We find that the recordings are an attempt by Mr Bekele to find corroborative evidence for his own claim where there was none.

39. The claimant made allegations about his annual performance reviews for 2017, 2018 and 2019. He sought to retrospectively claim that Mr Sbeih had discriminated against him because of race. We find that there was nothing in any of the reviews that indicated that the claimant had raised the issue of race discrimination or had complained of race discrimination and there was certainly no evidence that he had made a formal or informal complaint. We found no evidence in the documents that suggested that Mr Sbeih had discriminated against the claimant. There was nothing from which we could make a finding that the burden of proof had been switched to the respondent.

40. We make no further findings of fact on paragraphs 19 to 75 of the claimant's witness statement because we do not find them relevant to the issues.

41. We find that the claimant has attempted to rewrite history by claiming that he and Mr Sbeih were not friends in the period after December 2017 when Mr Sbeih arrived in London from Dubai. The claimant's evidence that his own use of the term *"…my long friend and carrying [which we find could only have been meant to say "caring"] manager…"* was an attempt to ingratiate himself with Mr Sbeih is implausible. It is also in sharp conflict with the agreed evidence that Mr Bekele organised an invitation for Mr Sbeih to celebrate Christmas at the home of Taye Zeleke, a friend and relative by marriage of the claimant. It also contradicts Mr Sbeih's evidence of their friendship which we find to be credible.

42. We find that the witness statement of Taye Zeleke contained no evidence that was of assistance to the Tribunal in determining the issues in the case other than the confirmation that Mr Sbeih was welcomed into Mr Zeleke's home to celebrate Ethiopian Christmas on 7 January 2018 (§4) and that Mr Sbeih had subsequently treated the claimant differently than other employees "…because of his origin" (not his skin colour). The rest of Mr Zeleke's statement was either irrelevant or hearsay as to what the claimant had said to him about the claims that appear before us.

43. We found the witness statement of Hellagenet Teffera Ayalew to be of little assistance to the Tribunal in determining the issues other than to confirm that she obtained her employment at the respondent through the claimant's recommendation at a time when the claimant says he was being discriminated against by Mr Sbeih. The remainder of the statement is hearsay of what the claimant is alleged to have told the witness about what he alleged happened to him.

44. We found the witness statement of Nawaf Alabed to carry little weight because he did not attend the hearing. We found the statement itself to be of little assistance to the Tribunal in determining the issues in the case because it does not address the facts about his appointment and subsequent demotion that the claimant alleges demonstrates that he was treated less favourably that Mr Alabed.

First Claim

45. The First Claim is an allegation that Mr Sbeih asked the claimant in or around February 2020 to take on additional managerial responsibilities managing the Financial Clearing Team, which included specialised Financial Clearing tasks without any additional pay or change in job title and threatened him twice in or around February / March 2020 that if he did not take on the additional management responsibilities managing the Financial Clearing Team that his position would be eliminated. The alleged acts were said to be because of race.

46. We find that the claimant's whole case is almost entirely about the offer to become the leader of the FCH team. Almost every word of his written closing submissions concerned the FCH job.

47. We find that the claimant's version of the facts surrounding the offer of the FCH Team leader post do not meet the standard of proof required because it is inconsistent with the documentary evidence in the following ways:

    47.1. The claimant attended the meeting with the FCH team on 24 February 2020, which clearly indicates that he was, at least, considering taking the role;

    47.2. We find it unlikely that if the claimant refused the role in the private meeting with Mr Sbeih on 24 February, he would not have reacted to Mr Sbeih's email of 25 February 2020 [132] announcing his appointment. That email was sent at 9:56am and no evidence that the claimant raised any objection was produced in the claimant's witness statement or in the documents.

    47.3. We find that if the claimant had refused the post on 24 February 2020 as he asserts, he would not have written the comment to Emma Blatch on 27 February 2020 [136] that he was "still considering his options."

    47.4. We find that this is an instance of the claimant re-engineering the history of the case to fit the requirements of his claim.

48. We find that the claimant's assertion that Mr Sbeih, in a meeting "between 24 and 28 February 2020", threatened that if Mr Bekele did not take the FCH Team Leader role, his position "would be eliminated" (§85 claimant's w/s) does not meet the standard of proof required. We make that finding because:

    48.1. We accept Mr Sbeih's evidence that he did not have the authority to restructure the teams or eliminate roles as he was not aware at that time of any proposals to make redundancies (§12 w/s).

    48.2. We find it unlikely that a manager in Mr Sbeih's position would jeopardise the working relationship with the claimant by making a threat to eliminate his role if he did not take the new role offered.

    48.3. We find it unlikely that the claimant, who appears to have recorded many hours of meetings would not have recorded this meeting, given its significance. The fact that no incriminating recording was produced indicates to the Tribunal that nothing incriminating was said.

    48.4. We find it unlikely that the claimant would not have made some form of note of the meeting so he could at least remember when it had taken place and what had been said if he did not record it.

    48.5. We find Mr Sbeih's written evidence about his faith in the claimant's ability to do the role to be credible because it was internally consistent; his written evidence was consistent with his oral evidence; and his evidence was consistent with the documents.

48.6. We find that Mr Sbeih's evidence was credible to the required standard of proof to the effect that he regarded the offer as an advancement for the claimant which, although it carried no increase in pay or change in grade or title, would be a development opportunity for Mr Bekele and would put him in a good place to advance his career in the future.

48.7. We accept Ms Blatch's evidence that she wanted Mr Bekele in the role because it played to his strengths as being credible because it was internally consistent; her written evidence was consistent with her oral evidence; and her evidence was consistent with the documents.

48.8. It was agreed that Ms Blatch had a separate meeting with the claimant to try and persuade him to take the role and made no threats towards him if he did not. That is inconsistent with the claimant's allegation that Mr Sbeih had threatened him with consequences if he did not take the role.

48.9. The claimant did not raise the alleged threats, even after he was told that his employment would end. We can understand that he might be reluctant to complain whilst he was still employed, but that barrier was removed once Ms Blatch decided to dismiss him.

48.10. We find that this is an instance of the claimant re-engineering the history of the case to fit the requirements of his claim.

49. We find the claimant's assertions that, at a second meeting with Mr Sbeih between 9 and 11 March 2020, he alleges that he was again threated with his job being eliminated if he did not take the FCH role does not meet the standard of proof required because:

49.1. We accept Mr Sbeih's evidence that he did not have the authority to restructure the teams or eliminate roles as he was not aware at that time of any proposals to make redundancies (§12 w/s).

49.2. The claimant says he met with Ms Blatch after the second threat. She agreed that they had this meeting. We find it highly unlikely that the claimant would not have raised repeated threats from his line manager with Ms Blatch. Instead, he said that she asked him to take the job "without threatening me."

49.3. The claimant did not raise the alleged threats, even after he was told that his employment would end. We can understand that he might be reluctant to complain whilst he was still employed, but that barrier was removed once Ms Blatch decided to dismiss him.

49.4. The claimant said nothing about the threats in his appeal email or his meetings with Mr Thomas.

50. We make the following findings about the nature of the FCH team:

50.1. We find that the claimant had a misguided concept of how the work of the DCH and FCH teams was rated and how the employees who did the work of the teams was graded.

50.2. We find that the clear unchallenged evidence of the respondent's witnesses was that it operated a grading system, but that remuneration could stretch across grades. We accept Ms Blatch's evidence that a person on a lower grade could be on a higher salary than a person on a higher grade. Mr Thomas' evidence corroborated this proposition.

50.3. We find that Mr Thomas' evidence on the structures within the respondent was credible, not least because he is Vice President Operations and has 25 years' experience with the company. He gave a long explanation about the interface between the level of work done and the grade of personnel who did the work, which we can summarise as follows:

50.3.1. Level one work is general frontline customer-facing support and deals with customer enquiries at source. The intention is that these enquiries are dealt with in one call – known as 'first touch";

50.3.2. Level two work is either about supporting a product or, where there is no product to support, it is operational. The queries that come in at level two are generally "Is it up? Is it running?";

50.3.3. The grade of a member of a team offering level one or level two support is immaterial (contrary to the claimant's submissions);

50.3.4. The DCH and FCH teams both had a mix of level one and level two queries that were dealt with by a mix of level one and level two operatives who were at various grades.

50.3.5. The crucial factor is the level of work;

50.3.6. The FCH and DCH both undertook broadly similar work in terms of the level of work and the split between level one and level two; and

50.3.7. We accept Mr Thomas' evidence as credible when he said that the screenshot that the claimant had taken of the FCH team members and DCH team members [251-252] was historical and not updated via the respondent's HR software.

51. We find that the claimant was under the mistaken belief that he was automatically entitled to a pay rise if he had taken the FCH job. As a matter of law, that is not a sustainable proposition, unless he was paid less than a genuine comparator because of a protected characteristic, such as sex, race, disability, etc. No such allegation was made by the claimant. We repeat our findings on agreed matters above concerning Mr Alabed's appointment and subsequent demotion. Mr Alabed was a Grade 8 employee before he was promoted to FCH team leader. He was paid £40,225.61 [98] until his promotion, whereupon he was paid

£43,000.00 and promoted to Grade 9. It was agreed that Mr Alabed retained the salary enhancement after his demotion.

52. We find that at the time he was offered the FCH role, the claimant was a Grade 10M and earned a salary of £50,000.00. We find that there was no express or implied term in the claimant's contract of employment with the respondent that entitled him to an automatic pay rise and new job title if he took the role, even if that was his genuine expectation.

53. We do not find Mr Alabed to be a comparator that the claimant can use in his claim. We make that finding because he does not meet the description of a comparator set out in **Shamoon v Chief Constable of Royal Ulster Constabulary** [2003] IRLR 285 (§110):

> *"…the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class. But the comparators that can be of evidential value, sometimes determinative of the case, are not so circumscribed. Their evidential value will, however, be variable and will inevitably be weakened by material differences between the circumstances relating to them and the circumstances of the victim."*

54. We find that Mr Alabed was two grades lower than Mr Bekele before his promotion and earned nearly £7,000 less than him. Mr Bekele was at a management grade, whereas Mr Alabed was said in unchallenged evidence to be a good technician, but not good at running a team. Mr Bekele worked a 40-hour week, whilst Mr Alabed worked 37.5 hours. Importantly, in answer to questions, Mr Bekele said that Mr Alabed was "nothing like" him.

55. We find the claimant has not shown on the balance of probabilities that Ibrahim Sbeih asked him in or around February 2020 to take on additional managerial responsibilities managing the Financial Clearing Team, which included specialised Financial Clearing tasks without any additional pay or change in job title and threatened him twice in or around February / March 2020 that if he did not take on the additional management responsibilities managing the Financial Clearing Team that his position would be eliminated.

Second Claim

56. We have kept the Second and Third Claims separate because that is how they were set out in the List of issues. The second claim is that Ibrahim Sbeih instructed the claimant in August 2020 not to send an email dated 10 August 2020 at 22:25pm [164-165] about a complaint directed to senior management from his direct reports because of race. The claimant's direct written evidence was in paragraphs 105 to 106 of his witness statement. Mr Sbeih dealt with the claim in paragraphs 15 to 18 of his witness statement.

57. As a preliminary comment, we would say that there was far less evidence produced about the Second and Third Claims than there was about the First.

58. We find that Mr Sbeih did not instruct the claimant not to send the email dated 10 August 2020 [164-165] about a complaint directed to senior management from his direct reports in August 2020. We make that finding because:

58.1. The only comment that the claimant makes in his evidence about the Second Claim (§106 of his witness statement) is that "I told [Mr Sbeih] that I would send an email to him and Mr Lloyd with details of the team concerns. He instructed me not to send the email as it will 'become official'."

58.2. The email was only sent to Mr Sbeih. It was not sent to Mr Lloyd [164].

58.3. Mr Sbeih replied to the claimant's email at 16:10pm on 11 August 2020 [164] as follows:

> *"Hi Zelalem*
>
> *I will discuss this with the team tomorrow, in your absence who can provide the GoS slides? Also can you please cancel the heatmap call tomorrow and set an OoO and add me as your back up.*
>
> *Thank you"*

We find that response to carry no threat or anger.

58.4. It is indisputable that Mr Sbeih had a meeting with the team on 12 August 2020 because his evidence that he did (§13 of his witness statement) was not challenged by the claimant. The meeting is referenced in Mr Sbeih's emails of 11 August 2020 [164] and 12 August 2020 [164]. In his email to the claimant of 12 August, Mr Sbeih wrote:

> *"I had a team meeting where we spent around 40 minutes discussing the team concerns you highlighted here,*
>
> *I have made sure they see the full picture; I expect this to come up later on this year and when it does please engage me as I need to ensure the message is unified.*
>
> *There were no concerns from hela, anik and ingirda a side from workload which I addressed already as they work fixed shifts and don't stay a minute afterwards. They also save on commute now. all of it is fueled by Donatas and Filippos, Svitlana is just following the wave that Don created.*
>
> *The title discussion is a NO, nip it in the bud if it comes up again, its just a NO, companies evolve so is roles.*
>
> *The salary discussion, that's to be done on promotion based, show me the performance first, any comparison with other teams is not acceptable and should be pushed back, they don't know what they do and they don't know their salaries, anything they have is pure*

perception, none of them will be happy to work weekends or late nights."

58.5. We find Mr Sbeih's response to contain no anger or annoyance directed at the claimant. There is no suggestion that the claimant had been instructed not to send the email.

58.6. We find Mr Sbeih's evidence on the issue of this claim – whether he told the claimant not to send the email – was more likely to be correct than the claimant's because his evidence is corroborated by the documents, whereas the claimant's is not.

58.7. The claimant issued no formal grievance about the matter and did not complain about the allegation in his email of 6 October 2020 appealing his dismissal.

59. We find that the claimant has not shown on the balance of probabilities that Ibrahim Sbeih instructed the claimant in August 2020 not to send an email dated 10 August 2020 at 22:25pm [164-165] about a complaint directed to senior management from his direct reports.

Third Claim

60. The Third Claim is that Ibrahim Sbeih had an argument with the claimant on or around 11 August 2020 because the claimant had sent the email dated 10 August 2020 [164-165] to Mr Sbeih against his instructions because of race.

61. We find that the claimant has failed to show on the balance of probabilities that Mr Sbeih had an argument with him on or about 10 August 2020 for the following reasons:

61.1. We repeat our findings above on the Second Claim as far as they are relevant to the Third Claim.

61.2. We find that the claimant and Mr Sbeih had a discussion on 11 August 2020 because the claimant's written evidence (§107 of his witness statement) was not challenged.

61.3. The claimant deals with the exchange on 11 August 2020 in two paragraphs of his witness statement (§§ 107 and 108). The words that the claimant said that Mr Sbeih used were *"He said something like it was my job to handle it without involving him."* The claimant alleges that Mr Sbeih would not have spoken to him in the way alleged if he were not Black.

61.4. Mr Sbeih's perspective on the allegation was set out in paragraph 20 of his witness statement. He did not recall a disagreement about the team's concerns, but to the extent that there was any disagreement, he stated that it was definitely not motivated by the claimant's skin colour.

61.5. We find the claimant's oral evidence undermined his credibility because he produced the recording on Mr Sbeih talking about the redundancy of

a colleague who the claimant described as "LGBT" as evidence of discrimination on Mr Sbeih's part. We found the recording to display no such discrimination. The claimant produced the recoding to corroborate his allegation of a general discriminatory attitude by Mr Sbeih. We find that there was no evidence produced that would move the burden of proof to the respondent on that point.

61.6. The claimant's oral evidence on his assertion that Mr Sbeih would not have talked to him in the way alleged if he were white was that a white person would have been treated more respectfully. When he was asked to explain why that would be, the claimant produced an elliptical answer.

61.7. When it was put to the claimant that the tone of Mr Sbeih's emails of 11 and 12 August 2020 [164] was perfectly amiable, the claimant's response was that when expressed in an email, it was completely different language. We considered that it was possible that Mr Sbeih would communicate in a different style in an email than he had done in a face to face meeting but find the proposition to be less likely than the proposition that the tone of the emails and the discussion on 11 August 2020 were the same.

61.8. We find that the claimant has failed to show on the balance of probabilities that there was an argument between the claimant and Mr Sbeih in August 2020 because the claimant had sent Mr Sbeih the 10 August 2020 email.

Fourth Claim

62. The Fourth Claim is that the claimant was dismissed by reason of redundancy on 1 October 2020 by Emma Blatch because of race.

63. We make the following findings of facts in respect of the redundancy of the claimant:

63.1. The evidence in chief of Emma Blatch about the background and reasons that a redundancy exercise was undertaken by the respondent in from June 2020 (§§ 3 to 6 of her witness statement) was not challenged by the claimant. We therefore find that:

63.1.1. The respondent had experienced a steady reduction in global revenues that had been exacerbated by the Covid-19 pandemic;

63.1.2. On 29 June 2020, the respondent's Executive Chairman announced a reorganisation of the business into two separate entities [399-400]. Part of the restructure envisaged a streamlining (reduction) in the number of middle managers.

63.1.3. Between March 2020 and December 2021, the respondent reduced its headcount by 15% globally [160] through redundancies and natural attrition.

63.2. In August 2020, the claimant's post was identified as potentially redundant. We make this finding as the claimant did not challenge Ms Blatch's evidence on the point.

63.3. It was agreed that on 2 September 2020, Ms Blatch wrote to the claimant to advise him that his post was at risk of redundancy [168-169]. The claimant was invited to a consultation meeting on 3 September 2020 with Ms Blatch and John Lloyd, Regional Human Resources Director for the respondent.

63.4. The claimant attended the meeting on 3 September 2020 that was held on Zoom, but no notes of the meeting were produced. Ms Blatch's account of the meeting is at paragraph 9 of her witness statement.

63.5. On 4 September 2020 [170], Ms Blatch emailed the claimant and attached a copy of the respondent's grievance policy. As the email sets out the complaint that the claimant made at the meeting on 3 September 2020, the whole of the of the email is produced below:

> *During your initial consultation meeting with me that took place on 3rd September, you brought to my attention for the first time allegation* (sic) *against your line Manager, Ibrahim Sbeih. You allegedly claimed Ibrahim verbally informed you that your position may be put at risk of redundancy back in February/March 2020 should you fail to take on extra responsibility managing the Financial Clearing Customer service team based in London. You stated to me that you believe your position has been put at risk of redundancy by Ibrahim Sbeih since February/March to date.*
>
> *I take your allegation very seriously. You have two options for you to review and consider should you wish to take your allegation clam* (sic) *further with me:*
>
> *1. You have the right to raise a formal grievance in accordance with the Company's grievance procedure, see attached. Should you wish to raise a grievance, I require you to put your grievance in writing to me and clearly outlining your reasons and provide me with any evidence to support your claim. This is a formal process outlined in the grievance procedure.*
>
> *2. Alternatively, if you want to avoid raising a formal grievance outlined above, but you want me to have a* (sic) *informal meeting with Ibrahim Sbeih in relation to your allegation. I'm able to investigate this for you and come back with my findings during your second consultation meeting.*
>
> *Let me know your thoughts."*

63.6. The claimant's evidence in chief (§112 of his witness statement) recorded that the above email was Mr Blatch's summary of the meeting. The claimant raised an issue with the email in his witness statement (§115). He said that he had written to Ms Blatch on 29 September 2020

[188-189] and had listed three matters that he said were discussed but were not included in Ms Blatch's email [170]:

63.6.1. He had been told that the decision to put his position at risk was made in August 2020 and that the respondent had been reducing numbers since July 2020.

63.6.2. He was told that only one person had raised a counterproposal to redundancy and that the counterproposal had been rejected.

63.6.3. He asked what his options were if he believed the whole consultation process to be wrong and raised the issue of the alleged threat by Mr Sbeih. Mr Lloyd had said that redundancy decisions were made at Vice-President and above level and that Mr Sbeih did not have the authority to make such a decision.

63.7. The claimant asked no questions of Ms Blatch about the email or paragraph 9 of her witness statement, so we find both to be a credible account of the meeting on 3 September 2020. We find that the additional points set out in the claimant's email of 29 September 2020 above were probably discussed on 3 September but add nothing to his case.

63.8. Ms Blatch and Mr Lloyd conducted the meeting with the claimant on 9 September by Zoom. It is regrettable that Ms Blatch kept no notes of this meeting with the claimant. Ms Blatch wrote to the claimant on 10 September setting out her recollection of the meeting, which included the following points:

63.8.1. The claimant had declined the opportunity to be accompanied by a colleague or trade union representative.

63.8.2. The respondent had decided to make the claimant's role redundant.

63.8.3. The claimant had raised no counterproposals to redundancy. He was given a final opportunity to make counterproposals by 15 September 2020.

63.8.4. The only suitable vacancy was a French-speaking role in London that the claimant could apply for. He said he did not apply because he does not speak French.

63.8.5. A final consultation meeting would take place on 17 September 2020.

63.9. Ms Blatch sent a separate email to the claimant on 10 September 2020 [186-187] in which she wrote:

> *"During our meeting of 9th September, you freely admitted to me of your decision not to take any further action with your alleged claim, as outlined in my email dated 4th September 2020.*
>
> *I respect your opinion and thank you for updating me with your final decision. Should this change in the future, please let me know."*

63.10. The claimant responded by email dated 29 September 2020 [186] in which he wrote:

> *"Just to be clear, during our meeting on the 9th of September, I stated the following:*
>
> *'I truly don't believe any investigation by you at this point will change anything.'*
>
> *I just want to make sure it is clear that I didn't say I took the decision not to take any further actions."*

63.11. On 30 September 2020, Mr Lloyd emailed the claimant as follows:

> *"We respect your opinion. However, by not raising official grievance in writing outlining your allegation with supporting evidence to Emma Blatch in accordance with the Company's grievance procedure, no further action could be taken."*

63.12. The claimant was certified as unfit to work on 15 September 2020 until 28 September 2020 [182]. It was agreed that the final consultation meeting would be put back to 30 September 2020 [183]. On 29 September 2020 [190], the claimant emailed Ms Blatch in response to her email of 10 September [186-187]. This is a different email than the one to Mr Lloyd referred to in the paragraphs above. On the issue of the grievance, he wrote:

> *"I explained the reason why I didn't respond to your email regarding what I mentioned about my line manager, Ibrahim Sbeih, Director of Customer Service. I don't believe any investigation by you at this point will change anything. The whole experience is causing unnecessary health issues. You said Ibrahim is not part of this process and only aware as he is my manager."*

63.13. On the issue of the redundancy process itself, the claimant wrote:

> *"I explained that I was not able to provide a counter-proposal to prevent the redundancy as I don't have any information on how the new global L1 support structure going to look. I mentioned that the global regional managers work closely to provide support to our customers. You mentioned that my duty will go to my line manager. And you cannot speak for those regions as they don't report to you.*
>
> *John said we only need to focus on my role here in London, he also said that this is about the role and the position in London under your*

leadership and that is where we only need to focus on. I said I am blinded to suggest any ideas as I have no clue on how the global structure will look like. But if something comes up or if I get more information, I will propose ideas."

63.14. We find that the claimant made no counterproposals to redundancy by 15 September 2020 or at all.

63.15. The final consultation meeting was held on Zoom on 30 September 2020 when Ms Blatch, Mr Lloyd and the claimant were in attendance. The claimant was told that his employment would end at the meeting. Following the meeting, Ms Blatch confirmed the claimant's redundancy in a letter dated 1 October 2020 [193-195]. It is agreed that the claimant's effective date of termination of employment (EDT) was 1 October 2020.

63.16. The clamant described the initial redundancy process in some detail (§§112-136 of his witness statement – we will return to the appeal in the Fifth Claim.) We find that the claimant's evidence about the discussion in the meeting and his raising of his concerns that Mr Sbeih had threatened that the claimant's job would be eliminated if he refused the FCT management mirrors Ms Blatch's.

63.17. It is agreed that the claimant never presented a formal grievance concerning Mr Sbeih's alleged threats and he never took up Ms Blatch's offer for her to speak to Mr Sbeih informally (§118 of the claimant's witness statement). The claimant's evidence in chief was that he did not accept either of the options offered to him because Mrs Blatch was involved in the decision to terminate his role if he didn't take the FCT manager role. He did not put that to Ms Blatch in cross-examination.

63.18. In answer to cross-examination questions, the claimant said that he was dismissed because Mr Sbeih threatened him in February 2020 and after that he engineered the claimant's dismissal for redundancy. We find that allegation to be highly unlikely to be true because we have found that the claimant's allegations about Mr Sbeih did not meet the required standard of proof to be credible. We also find that the claimant's redundancy was one of many redundancies made by the respondent as part of a strategy to remove middle managers from the business and flatten the structure of the business. Ms Blatch's evidence on this was not challenged.

63.19. We find that even if Mr Sbeih held a grudge against the claimant, he was not in a position to engineer the claimant's dismissal for a sham redundancy because Ms Blatch's evidence was not challenged and, in any event, was more credible than that of the claimant.

63.20. The claimant's evidence in chief included an allegation that the respondent's failure to keep him on as a furloughed employee was a potential alternative to redundancy as it *"…would have had only little financial impact on them."* We advised the claimant that there is case

law that outlines the principle that a failure to furlough a potentially redundant employee does not make a redundancy unfair.

63.21. It was put to the claimant in cross-examination that his case is that the reason he was selected for redundancy was his refusal to take the FCT manager job, not the colour of his skin. We find the claimant's response to that question was not credible:

> *"In February/March 2020 I was told my job would be eliminated if I didn't take the FCT role. So, six months later, I was redundant. They wouldn't have done it if not for my race."*

63.22. It was put to the claimant that the respondent followed procedural stages. His response was that the respondent followed what was required to make it look fair.

63.23. We find that the respondent's process looked fair because it was fair.

Fifth Claim

64. The Fifth Claim was that Bryan Thomas failed to consider the claimant's appeal properly on 11 November 2020 because of the claimant's race by:

64.1.1. considering false information provided by Mr Ibrahim Sbeih and Mr John Lloyd; and/or

64.1.2. failing to interview a key witness, Mr Nawaf Alabed as part of the appeal process; and/or

64.1.3. failing to recognise the acknowledge differences between the Financial Clearing responsibilities; and/or

64.1.4. not upholding the claimant's appeal against dismissal/complaint about discrimination on 11 November 2020.

65. The claimant's evidence in chief on this matter was contained in paragraphs 183 to 189 of his witness statement. The respondent's evidence on the appeal was given by the appeal officer.

66. We make the following findings on the Fifth Claim:

66.1. It was agreed that the claimant lodged a formal appeal against dismissal on 6 October 2020 [196]. His appeal email to M Thomas read:

> *"I wish to register a formal appeal request against the decision to terminate my employment contract by means of redundancy as of the 1st of October, 2020.*
>
> *My grounds for appeal are:*

> *That my position was terminated because I declined the additional role and responsibilities of managing the FCH team which was offered to me without any salary adjustment or title change.*
>
> *That the company has not fully explored alternatives to redundancy.*
>
> *That the company didn't provide me details on how the global first-line support team structure would look like in order for me to suggest a counter-proposal.*
>
> *Please can you convene an Appeal Hearing where I can be supported by my Unite The Union representative."*

66.2. We find that the claimant's appeal makes no reference to an allegation that Mr Sbeih had directly discriminated against him because of race or that Ms Blatch had dismissed him because of race. We also note that the claimant had trade union representation at the time that he submitted his appeal.

66.3. Mr Thomas' unchallenged evidence in chief (§3) was that he had been selected to hear the appeal because he had not been involved in the initial redundancy consultation process or in the decision making process leading to the claimant's dismissal.

66.4. In answer to a cross-examination question that asked which of the respondent's employees were involved in acts of racism against him, the claimant replied:

> *"I have respect for Mr Thomas but Ms Blatch, Mr Lloyd and Mr Thomas acted together to get rid of me. The information I gave to Ms Blatch was not followed properly. If someone is told "I am victimised because of the colour of my skin." One of Ms Blatch or Mr Thomas should have stopped the process to investigate."*

66.5. An appeal hearing took place on 14 October 2020 on Zoom. The respondent was represented by Mr Thomas and Sara DeBella of the respondent's HR department. The claimant attended with his trade union Regional Officer. It is regrettable that no notes were produced of this meeting by either side.

66.6. It was agreed evidence that in the meeting, the claimant read from a three-page statement which he had prepared [204-206]. The statement was provided to Mr Thomas by email later in the day of the appeal meeting. In summary, the claimant complained about:

66.6.1. Mr Sbeih pressurising him to take the FCT role in February March 2020;

66.6.2. Mr Sbeih threatening the claimant with redundancy in the future if he did not accept the role;

66.6.3. Mr Sbeih bullying the claimant; and

66.6.4. Mr Sbeih committing acts of discrimination against other employees of the respondent.

66.7. We find that Mr Thomas was not provided with "false facts" by Mr Lloyd. We have found the claimant did not show to the relevant standard of proof that Mr Sbeih did any of the alleged acts that the claimant complained of.

66.8. We find that Mr Alabed was not a proper comparator with the claimant and that his circumstances were markedly different from those of the claimant. We have found that Mr Alabed's witness statement provided for these proceedings does not assist the claimant's case at all.

66.9. We find that Mr Thomas knew the difference between the responsibilities of the various parts of the respondent's Financial Clearing operations but that this was irrelevant to the decision that he had to make as we found that Mr Sbeih did not make the threat to eliminate the claimant's job if he did not take the FCT role.

66.10. The outcome of the appeal was sent to the claimant in a letter dated 11 November 2020 [214-220]. The claimant did not challenge the assertion in the letter that Mr Thomas had interviewed Mr Sbeih, Ms Blatch, Mr Lloyd and two other members of the respondent. Neither did the claimant challenge the assertion that Mr Thomas had reviewed the documents and processed listed in the outcome letter [214].

66.11. We find that the claimant's statement made no direct mention of Mr Alabed but there was a reference to the alleged difference in the treatment of them both in the statement he read at the appeal as follows:

> *"When the same position* [FCT manager] *offered to a previous team lead* [Mr Alabed] *a 6.9% salary increase was given to him from day one, but not even a 0.0001% increase was considered when it comes to me."*

66.12. We find that there is no direct mention of Mr Alabed in the outcome letter but the above allegation was addressed [219]:

> *"The individual referred to here was an individual contributor that was promoted up into a Supervisory Function from a more junior level* [than the claimant]*. In contrast, you were already performing a supervisory function and the proposal was that this be expanded – in other words you would have more of the same responsibilities, rather than moving into a more senior position."*

66.13. We find that Mr Thomas undertook a thorough and impartial review of the claimant's dismissal and considered (and answered) all the points raised by the claimant in a carefully considered appeal outcome letter.

66.14. Mr Thomas heard a second appeal by the clamant following receipt of emails from the claimant between 17 February 2021 and 14 March 2021 [231-242]. The outcome letter dated 26 May 2021 (wrongly dated 2020) [161-163] noted that the second appeal was based on covert recordings made by the claimant over a period of years.

66.15. We find that Mr Thomas engaged in a full investigation of the matters raised by the claimant and interviewed five witnesses, including re-interviewing Mr Sbeih, Ms Blatch, and Mr Lloyd [161]. Mr Thomas found that the recordings showed no indication of "…bad behaviour…" on Mr Sbeih's part. Mr Thomas was not challenged on this finding.

66.16. Mr Thomas rejected the claimant's comparison between his circumstances and those of Mr Alabed. He was not challenged on this finding.

66.17. Mr Thomas rejected the idea that he did not check and understand the list of tasks that were imposed on the claimant. He was not challenged on that finding.

66.18. We find it highly unlikely that Mr Thomas participated in a conspiracy with Mr Sbeih and Ms Blatch to directly discriminate against the claimant.

66.19. We find Mr Thomas' evidence to be more credible than the claimant's because it is more logically coherent and consistent than the claimant's and is consistent with the other facts we have found above and the contemporaneous documents.

Conclusions

Applying the Facts to the Law and Issues

First Claim

67. Our first task is to apply the two-stage test of the burden of proof set out in section 136 of the Equality Act 2010. In doing this, we applied the legal precedents that were summarised by HHJ Tayler in the EAT case of **Field v Steve Pye and Co. (KL) Limited and others** [2022] EAT 68 (§§35 – 49).

68. Section 136(2) and (3) is to be interpreted following the guidance in **Igen Ltd (Formerly Leeds Careers Guidance) and others v Wong** [2005] ICR 931 and **Hewage v Grampian Health Board** [2012] UKSC 37.

69. The relevant facts are set out in detail above. Many of the facts around the offer to the claimant to manage the FCT were undisputed and appear in paragraph 32 above.

70. Our findings on the disputed facts can be summarised as follows:

70.7. The claimant's allegations that were dealt with in paragraphs 35 to 44 above do not show on the balance of probabilities that the factual matters

that the claimant alleged happened in the manner that he described them.

70.8. We do not find that that the facts alleged by the claimant that we deal with in paragraphs 35 to 44 above proved facts from which, if unexplained, the Tribunal could conclude that the claimant was subjected to direct race discrimination by Mr Sbeih as alleged in the First Claim. Our reasons are that:

70.8.1. The allegations were factually incorrect and were assertions by the claimant based on no solid evidence. Specifically, we found that Mr Sbeih did not threaten the claimant that if he did not accept the FCT management role, his position would be eliminated in the future.

70.8.2. We were mindful of the fact that it is unusual to find direct evidence of discrimination (such as an incriminating email or audio recording) but we found nothing from which we could properly draw from our primary findings of fact that switched the burden of proof to the respondent.

70.8.3. We found there to be no connection between the alleged discriminatory treatment and the claimant's skin colour.

70.8.4. The claimant appeared to have retrospectively re-engineered the facts to meet the requirements to make a claim of race discrimination.

70.8.5. The claimant never made a formal grievance about the alleged discrimination during his employment with the respondent, despite being advised that he could.

70.9. We should add that if the claimant had reversed the burden of proof, we would have found that the act complained of was not because of race because:

70.9.1. We had found that Mr Sbeih did not threaten the claimant that if he did not accept the FCT management role, his position would be eliminated in the future.

70.9.2. The claimant could not rely on Mr Alabed as a comparator because their circumstances were not materially the same save for the protected characteristic of race.

70.9.3. There was no evidence that met the required standard of proof from which we could draw an inference that the alleged discriminatory conduct was because of race.

71. We therefore dismiss the First Claim.

Second Claim

72. We applied the same legal principles as in the First Claim.

73. The relevant facts are set out in detail above. Many of the facts around the allegation that Mr Sbeih instructed the claimant not to send the email he sent on 10 August 2020 [164-165] were undisputed and appear in paragraph 58 above.

74. Our findings on the disputed facts can be summarised as follows:

    74.7. We made a finding that Mr Sbeih did not instruct the claimant not to send the email of 10 August 2020 [164-165].

    74.8. We do not find that that the matters alleged by the claimant proved facts from which, if unexplained, the Tribunal could conclude that the claimant was subjected to direct race discrimination by Mr Sbeih as alleged in the First Claim. Our reasons are that:

        74.8.1. The allegations were factually incorrect and were assertions by the claimant based on no evidence. Specifically, we found that Mr Sbeih did not instruct the claimant not to send the email.

        74.8.2. We were mindful of the fact that it is unusual to find direct evidence of discrimination (such as an incriminating email or audio recording) but we found nothing from which we could properly draw from our primary findings of fact that switched the burden of proof to the respondent.

        74.8.3. We found there to be no connection between the alleged discriminatory treatment and the claimant's skin colour.

        74.8.4. The claimant appeared to have retrospectively re-engineered the facts to meet the requirements to make a claim of race discrimination.

        74.8.5. The claimant never made a formal grievance about the alleged discrimination during his employment with the respondent, despite being advised that he could.

    74.9. We should add that if the claimant had reversed the burden of proof, we would have found that the act complained of was not because of race because:

        74.9.1. We had found that Mr Sbeih did not instruct the claimant not to send the email.

        74.9.2. There was no evidence that met the required standard of proof from which we could draw an inference that the alleged discriminatory conduct was because of race.

75. We therefore dismiss the Second Claim.

Third Claim

76. We applied the same legal principles as in the First and Second Claims.

77. The relevant facts are set out in detail above. The facts around the allegation that Mr Sbeih argued with the claimant on or around 11 August 2020 appear in paragraph 61 above.

78. Our findings on the disputed facts can be summarised as follows:

    78.7. We made a finding that Mr Sbeih did not argue with the claimant on or about 11 August 2020.

    78.8. We do not find that that the matters alleged by the claimant proved facts from which, if unexplained, the Tribunal could conclude that the claimant was subjected to direct race discrimination by Mr Sbeih as alleged in the First Claim. Our reasons are that:

        78.8.1. The allegations were factually incorrect and were assertions by the claimant based on no evidence. Specifically, we found that Mr Sbeih did not argue with the claimant as alleged.

        78.8.2. We were mindful of the fact that it is unusual to find direct evidence of discrimination (such as an incriminating email or audio recording) but we found nothing from which we could properly draw from our primary findings of fact that switched the burden of proof to the respondent.

        78.8.3. We found there to be no connection between the alleged discriminatory treatment and the claimant's race.

        78.8.4. The claimant appeared to have retrospectively re-engineered the facts to meet the requirements to make a claim of race discrimination.

        78.8.5. The claimant never made a formal grievance about the alleged discrimination during his employment with the respondent, despite being advised that he could.

    78.9. We should add that if the claimant had reversed the burden of proof, we would have found that the act complained of was not because of race because:

        78.9.1. We had found that Mr Sbeih did not argue with the claimant as alleged.

        78.9.2. There was no evidence that met the required standard of proof from which we could draw an inference that the alleged discriminatory conduct was because of race.

79. We therefore dismiss the Third Claim.

Fourth Claim

80. We applied the same legal principles as in the First, Second, and Third Claims.

81. The relevant facts are set out in detail above. The facts around the allegation that Mr Sbeih argued with the claimant on or around 11 August 2020 appear in paragraph 63 above.

82. Our findings on the disputed facts can be summarised as follows:

    82.1. The respondent had a genuine redundancy situation.

    82.2. The claimant was one of many people employed by the respondent that were unfortunately made redundant.

    82.3. The purpose of the redundancy exercise was to remove a layer of management from the respondent's operation.

    82.4. The decision on redundancy was Ms Blatch's and Mr Sbeih had no input into it.

    82.5. It was unlikely that Mr Sbeih influenced Ms Blatch to make the claimant redundant.

    82.6. The respondent followed a reasonable redundancy process.

    82.7. The claimant did not raise a formal grievance about the alleged discriminatory behaviour of Mr Sbeih during his employment.

    82.8. We do not find that that the matters alleged by the claimant proved facts from which, if unexplained, the Tribunal could conclude that the claimant was dismissed for the stated reason of redundancy but that the real reason was direct race discrimination as alleged. Our reasons are that:

        82.8.1. The allegations were factually incorrect and were assertions by the claimant based on no evidence.

        82.8.2. We were mindful of the fact that it is unusual to find direct evidence of discrimination (such as an incriminating email or audio recording) but we found nothing from which we could properly draw from our primary findings of fact that switched the burden of proof to the respondent.

        82.8.3. We found there to be no connection between the alleged discriminatory treatment and the claimant's race.

        82.8.4. The claimant appeared to have retrospectively re-engineered the facts to meet the requirements to make a claim of race discrimination.

82.8.5. The claimant never made a formal grievance about the alleged discrimination during his employment with the respondent, despite being advised that he could.

82.9. We should add that if the claimant had reversed the burden of proof, we would have found that the act complained of was not because of race because:

82.9.1. We found the evidence of Ms Blatch and the supporting contemporaneous documents to show that the sole reason that the claimant was made redundant was for the reasons set out in Ms Blatch's evidence.

82.9.2. There was no evidence that met the required standard of proof from which we could draw an inference that the alleged discriminatory conduct was because of race.

83. We therefore dismiss the Fourth Claim.

Fifth Claim

84. We applied the same legal principles as in the First, Second, Third, and Fourth Claims.

85. The relevant facts are set out in detail above. The facts around the allegation that Mr Bryan failed to consider the claimant's appeal properly on 11 November 2020 because of race appear in paragraph 66 above.

86. Our findings on the disputed facts can be summarised as follows:

86.1. Mr Thomas conducted a thorough and detailed investigation.

86.2. It is unlikely that he was part of a conspiracy with Mr Sbeih and Ms Blatch.

86.3. The claimant did not raise a formal grievance about the alleged discriminatory behaviour of Mr Sbeih during his employment. Mr Thomas investigated and provided reasonable answers to the allegations about Mr Sbeih that were made by the claimant.

86.4. We do not find that that the matters alleged by the claimant proved facts from which, if unexplained, the Tribunal could conclude that Mr Bryan failed to consider the Claimant's appeal properly on 11 November 2020 because of direct race discrimination as alleged. Our reasons are that:

86.4.1. The allegations were factually incorrect and were assertions by the claimant based on no evidence.

86.4.2. We were mindful of the fact that it is unusual to find direct evidence of discrimination (such as an incriminating email or audio recording) but we found nothing from which we could properly draw from our primary findings of fact that switched the burden of proof to the respondent.

86.4.3. We found that Mr Thomas was not provided with false facts by Mr Sbeih. We have found the claimant did not show to the relevant standard of proof that Mr Sbeih did any of the alleged acts that the claimant complained of.

86.4.4. We found that Mr Thomas was not provided with false facts by Mr Lloyd. We have found the claimant did not show to the relevant standard of proof that Mr Sbeih did any of the alleged acts that the claimant complained of.

86.4.5. We found that Mr Alabed was not a proper comparator with the claimant and that his circumstances were markedly different from those of the claimant. We have found that Mr Alabed's witness statement provided for these proceedings does not assist the claimant's case at all.

86.4.6. We found that Mr Thomas knew the difference between the responsibilities of the various parts of the respondent's Financial Clearing operations but that this was irrelevant to the decision that he had to make as we found that Mr Sbeih did not make the threat to eliminate the claimant's job if he did not take the FCT role.

86.4.7. The claimant appeared to have retrospectively re-engineered the facts to meet the requirements to make a claim of race discrimination.

86.4.8. The claimant never made a formal grievance about the alleged discrimination during his employment with the respondent, despite being advised that he could.

86.4.9. The claimant did not challenge Mr Thomas' evidence about the second appeal.

86.5. We should add that if the claimant had reversed the burden of proof, we would have found that the act complained of was not because of race because:

86.5.1. We found the evidence of Mr Thomas and the supporting contemporaneous documents to show that the Mr Thomas made his decision to reject the claimant's appeal against dismissal for non-discriminatory reasons.

86.5.2. There was no evidence that met the required standard of proof from which we could draw an inference that the alleged discriminatory conduct was because of race.

87. We therefore dismiss the Fifth Claim.

88. As we have dismissed all the claimant's claims. There is no requirement for a remedy hearing.

Employment Judge Shore
Dated: 10 June 2024