EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Mr T Sami	**v**	NanoAvionics UK Limited (1) NanoAvionika UAB t/a NanoAvionika LLC (2) Mr A Avellan (4)

Heard at: Reading Employment Tribunal

On: 16, 19, 20, 21, 22, 23 August 2024
and on 21 and 22 October 2024
and (panel only) on 23 October 2024

Before: Employment Judge Hawksworth
Mrs C Baggs
Mrs C Tufts

Appearances
the Claimant: represented himself
for the Respondents: Ms K Balmer (counsel)
Lithuanian interpreters: Ms Balcuiniene (16 to 23 August 2024)
Ms L Mituziene (21 and 22 October 2024)

RESERVED JUDGMENT

It is the unanimous decision of the tribunal that:

1. The complaints of direct race discrimination fail and are dismissed.

2. The complaints of indirect race discrimination fail and are dismissed.

3. The claims against all three respondents are dismissed.

REASONS

Introduction

<u>The claims</u>

1. The claimant was employed by the first respondent as sales director, from 2 January 2019 until his dismissal on 24 May 2019. The claim is for direct and

indirect race discrimination. In short, the claimant says he was subjected to less favourable treatment (or disadvantaged) and dismissed because he is not Lithuanian.

2. The claimant's first claim was presented on 3 November 2019 against the first and second respondents. The first respondent is a UK company which was the claimant's employer. The second respondent is the Lithuanian parent company of the first respondent. Another company called AST & Science LLC was named in the first claim as the third respondent.

3. The claimant's second claim was presented on 26 February 2020. That claim was brought against the third respondent, AST & Science LLC, which was at the time the majority shareholder in the first and second respondents, and against a fourth respondent, Abel Avellan, the CEO of the third respondent.

4. The claims against the second and fourth respondents were struck out at a hearing on 25 August 2020. Written reasons were sent to the parties on 16 September 2020. The claimant's appeal to the EAT to have the claims against the second and fourth respondents reinstated was successful. The decision of the EAT was given on 17 May 2022.

5. The claim against the third respondent was also struck out on 25 August 2020. The claimant did not appeal against that decision. The proceedings against the third respondent were therefore brought to an end by the strike out decision.

6. The claim continued against the first, second and fourth respondents only. We refer to them as 'the respondents'. We refer to the first respondent as 'the respondent' and to the fourth respondent as Mr Avellan. The respondents defend the claims.

7. This hearing was to deal with liability only. The hearing was originally listed for six days from 16 to 23 August 2024. For reasons explained below, additional hearing days were required. We made case management orders after the hearing days in August, to assist the parties with their preparations for the next part of the hearing, together with a timetable for the additional hearing days.

8. The additional hearing days took place on 21 and 22 October 2024. There was a deliberation day on 23 October 2024 which was attended by the tribunal only.

Documents

9. The respondent prepared a bundle which had 4 lever arch files. It ran to page 1369. Some extra pages were slotted in after page 322, there were 144 additional pages in total, they were numbered pages 322A, 322B and 322.1 to 322.142.

10. The claimant prepared a supplemental bundle. It was one lever arch file. The pagination in the claimant's bundle helpfully started from 1370 and ran to

1849. We treated the parties' bundles as a combined bundle. With the interleaved pages, the bundle had over 2000 pages in all. Page references in these reasons are to the combined bundle.

11. The respondents prepared a cast list and chronology. The chronology was largely agreed by the claimant, subject to some additions and clarifications which he marked in red.

12. Both the claimant and the respondents' counsel prepared opening skeleton arguments.

13. During the hearing, the claimant produced a one page document setting out his analysis of the calculation of targets which he referred to during questions of the respondent's witnesses. The respondents did not object to the inclusion of this document. We included it in the bundle as page 1852.

Late documents

14. On the morning of 22 August (day 5 of the hearing) the respondent applied for permission to rely on a late disclosed document, a two page email chain dated 28 February 2020 between Mr Avellan and Vytenis Buzas, a founder and former CEO of the first respondent. We allowed the late inclusion of this document, subject to permitting the recall of Mr Buzas if the claimant had any additional questions for him. The email chain was added to the combined bundle with page numbers 1850 and 1851.

15. Our reasons for allowing the late disclosure were as follows.

    15.1 We recognised that the disclosure was provided very late and was on a subject on which the claimant had specifically requested disclosure at an earlier stage. However, the respondent provided an explanation for the late disclosure: the administrative difficulties arising from the witnesses no longer working for the respondent, and the need to conduct searches of emails elsewhere in Lithuania.

    15.2 Secondly, the document was directly relevant to an issue relied on by the claimant, that is the respondent's termination of a consultancy agreement with a consultant. We had already heard evidence on this issue and the respondent sought to rely on the late disclosed emails to give context to the evidence we had already heard. We decided that in the circumstances, the document was also necessary for the fair determination of the claim.

    15.3 Thirdly, the claimant said there were aspects of the document that help him, and that he did not object to its inclusion in principle. His main reason for opposing its inclusion was a concern about the wider publication of some of the information contained in the late disclosure emails, but we decided that this could be addressed in a different way. (In the event the information the claimant was concerned about was not relevant to the issues we are determining.)

15.4 Fourthly, in terms of the impact on the timing of the hearing, the late disclosure document was only two pages long. We decided that including it would not give rise to any delay in proceedings as there was room in the timetable to allow the claimant time to consider it and for Mr Buzas to be recalled if the claimant wanted to ask him questions about it. (In fact, the timetable was superseded for other reasons as we explain below, and so the claimant had more time to consider the late disclosure and prepare his questions and submissions on it. Mr Buzas was recalled, as we explain below.)

16. Having considered those factors, we applied the overriding objective in rule 2, that is the objective of dealing with cases fairly and justly to both parties, and decided whether we should allow the inclusion of the late document. We explained that in case management decisions like this, we apply the balance of prejudice, which here means that we weigh the hardship to one side of allowing the document with the hardship to the other side of not allowing it. In this case we decided that the balance fell in favour of allowing the document; the hardship to the respondent if we do not allow the document is greater than the hardship to the claimant if we do. We reached that decision because the hardship to the claimant can be addressed by allowing him more time to look at the document and to recall Mr Buzas if needed, whereas if the document were not allowed, the respondents would not be able to put their case as they wanted, and that could potentially affect our understanding of evidential matters which we will be considering when we make our decision and on which we have already heard some evidence.

17. For reasons explained below, it was not possible to complete the evidence in the time originally allocated. We arranged two further hearing days on 21 and 22 October 2024 to complete the evidence and for the parties to make their closing comments. On 16 October 2024, shortly before the hearing started again, the respondents provided more late disclosure, relating to the same point as pages 1850 and 1851. There were four documents: three agreements and an email chain. The documents were numbered 1853 to 1877.

18. The claimant said that he did not object to the inclusion of these documents, but he requested a change to the timetable to allow him more time to prepare his questions for the respondent's witness Mr Buzas who was to be recalled. The respondent did not object to this request. We allowed the change to the timetable.

Witness evidence

19. All the witnesses had produced witness statements. We took the first day for reading the witness statements and key documents which were identified by the parties.

20. We started hearing evidence on 19 August. We heard the claimant's evidence on 19 and 20 August.

21. The claimant told us that he has a condition which affects his speech from time to time. He experienced an episode of this after the lunch break on 20 August. His speech became intermittently slurred and slower, but there was no difficulty in understanding what he was saying. We asked the claimant whether he wanted to take a break or whether there was anything else we could do to help. We told him that it was absolutely fine to take a break, and that we would consider any other accommodation which might assist. He said he would prefer to continue so that he could complete his evidence as planned, and that if he had a similar episode while at work he was generally able to continue. He continued to give his evidence and his speech disturbance largely resolved. We took a break in the middle of the afternoon; the claimant confirmed he was happy to carry on afterwards. The claimant's evidence was completed by the end of the day on 20 August. He asked if we could start the hearing the next day at 11.00am rather than 10.00am, which we did.

22. The respondents' counsel Ms Balmer did not have any questions for the claimant's witnesses Haaniya Ayub-Sami, Roger Dewell or Shettima Mohammed Mairami. Their evidence is therefore accepted as unchallenged.

23. We heard from the respondents' witness Mr Buzas on 21 August and the morning of 22 August. We started the evidence of the respondent's second witness, Linas Sargautis, CCO and co-founder of the first respondent, on the afternoon of 22 August. The claimant's speech issues began to become more pronounced on that day. We took additional breaks as needed. We revised the timetable to allow the claimant more time to ask his questions of the respondents' witnesses.

24. We finished early on 22 August, at 2.45pm, to allow the claimant additional time to rest. The parties attended the tribunal on 23 August but the claimant was not well enough to continue. We arranged additional hearing dates for 21 and 22 October 2024, with the agreement of the parties, representatives and witnesses.

25. We included a timetable for the 21 and 22 October in our case management orders which we sent to the parties after the hearing days in August. We also arranged a date for a remedy hearing, explaining to the parties that it would be cancelled if not needed.

26. At the start of the hearing on 21 October, we talked through the timetable with the parties. At the claimant's request, we revised the timings of the respondent's witnesses, to give the claimant more time to prepare his questions for Mr Buzas on the late disclosure.

27. On 21 October, we heard the remainder of the evidence of Mr Sargautis.

28. On the morning of 22 October, Mr Buzas was recalled for the claimant to ask questions about the respondent's late disclosure (pages 1850 to 1877).

29. The respondent also served a statement by Žilvinas Kvedaravičius. He was at the relevant time the second respondent's sales manager. He was based

in Vilnius. He was not able to attend the hearing because of absence on holiday. We said we would attach such weight to Mr Kvedaravičius' statement as we thought appropriate, bearing in mind that he had not been at the hearing to be asked about it. We gave the claimant the opportunity to tell us the questions he would have asked Mr Kvedaravičius if he had been present. In the event, we did not rely on Mr Kvedaravičius' statement in reaching our decision. Our findings of facts about him are based on the documents or the evidence of the witnesses who attended the hearing.

Closing comments and reserved judgment

30. The claimant indicated in discussions at the start of the hearing that he would request written reasons in any event. We decided in light of that indication and the timetabling of the hearing that we would reserve judgment. The judge apologises to the parties and their representatives for the delay in promulgation of this judgment.

31. We took a longer lunch on 22 October, to allow the claimant time to prepare his closing comments. The claimant and Ms Balmer both prepared helpful written closing comments documents. We also allowed the claimant's request to start the spoken closing comments part of the hearing at 4.00pm rather than 3.00pm as we had originally intended, to give him more time to read Ms Balmer's written closing comments.

32. We started hearing closing comments from Ms Balmer at 4.00pm and from the claimant at 4.30pm. Closing comments finished at 5.15pm.

The issues

33. The claimant complains of direct and indirect race discrimination.

34. The issues for us to decide were discussed and largely identified at a preliminary hearing on 31 October 2022. There were some further discussions between the parties after that hearing to finalise an agreed list of issues.

35. The agreed list of issues was included in the bundle at pages 322.118 to 322.122. The description of some of the alleged acts of less favourable treatment referred back to the claimant's further information document ('additional requested particulars', page 163). At the hearing before us the claimant prepared an updated list of issues which included some clarifications to avoid the need to refer back to the additional requested particulars. The respondent did not object to this.

36. The agreed list of issues is set out in an appendix below. This is the updated version of the list, with the clarifications which were marked in red shown by underlining instead. The numbering of the agreed list of issues has been retained for ease of reference.

Findings of fact

37. In this section of our reasons we set out our findings about what happened, in broadly chronological order. Where the parties did not agree about what happened, we decide what happened on the balance of probabilities, that is what we think is most likely to have happened, based on the evidence we heard and read.

Introduction

38. The first and second respondents' businesses are in the space satellite and services sector. They manufacture satellites and parts of satellites.

39. The second respondent is a Lithuanian business founded by Mr Vytenis Buzas and Mr Linas Sargautis in July 2014. The business was successful and in late 2018 Mr Buzas and Mr Sargautis began expanding their business to other regions including the USA and Central and South America.

40. The second respondent also wanted to develop a market in the UK and Western Europe. They set up the first respondent, a UK limited company and a subsidiary of the second respondent. As the UK and Western Europe market was new to the second respondent, it needed a sales director with local knowledge and contacts who could provide commercial opportunities. The first respondent used a recruitment consultant to find a sales director, and the claimant was put forward. The claimant understood that the respondents' intention was to build a sales team to expand their business globally, including in the UK.

41. The claimant was interviewed by Mr Buzas on 16 October 2018. The recruitment consultant reported back to the claimant that Mr Buzas had really enjoyed the meeting. The claimant was invited to have an interview with the fourth respondent, Mr Avellan. Mr Avellan was the CEO of a US business, AST & Science LLC, which had invested in the first and second respondents. The claimant's interview with Mr Avellan went well. The claimant also attended a meeting with Mr Avellan's commercial deputy, Chris Ivory.

42. The claimant was offered employment with the first respondent which he accepted. He was the first employee of the UK company.

43. The claimant suggested that Mr Buzas and Mr Sargautis were reluctant to hire non-Lithuanian employees to work with them, and that they were pressured to do so by Mr Avellan. We do not find this to have been the case. The second respondent, the Lithuanian company based in Vilnius, employed people of many different nationalities at the time of the claimant's employment. We accept the evidence of Mr Buzas that it was his dream to build an international company. It would not be plausible to think that the leaders of a company which was keen to expand internationally would only want to hire Lithuanian employees. We find that Mr Buzas and Mr Sargautis wanted to hire the best people to promote their business in new territories around the world, whatever their nationality.

The 2019 sales strategy

44. On 1 January 2019, the second respondent produced a sales objectives strategy which set out commercial targets for each of the geographical areas covered by the group (page 533).

45. The commercial targets were expressed in terms of numbers of satellites sold ('missions' or 'platforms') rather than as a financial objective (page 536). The strategy document said that the target for 2019 for the first respondent, the UK business, was to sell two 6U satellite missions or platforms. A platform refers to the satellite hardware itself, a mission is the wider project involving a satellite. A 6U satellite is a specific type of satellite developed by the second respondent. It was also called a '6U bus' or an 'M6P'). This was a product which was fully developed and ready to be sold to customers. The document also said that the estimated total contract value for each 6U satellite was between €190,000 and €360,000 per satellite, depending on the configuration.

46. The target for the UK was broadly in line with but slightly lower than the targets for the other parts of the group. The target for the second respondent (the company in Lithuania) was to sell three 6U satellites. The respondents' business in the US also had a target to sell three 6U satellites.

The start of the claimant's role

47. The claimant started his employment with the first respondent on 2 January 2019. His annual salary was £70,000. This was higher than the annual salaries of Mr Buzas and Mr Sargautis: the first respondent had high expectations for the claimant because of this. The claimant understood that he had been hired to bring in new business for the first respondent.

48. The claimant's contract of employment at paragraph 11.1 said that the first six months of his employment would be a probationary period (page 555). Paragraph 17.1 said that the disciplinary procedure would not apply during the probationary period (page 559).

49. The claimant spent the first month of his employment in Vilnius, training and meeting the team there. Part of the training was on the respondents' customer relationship management system, HubSpot. This was used by the sales staff in Vilnius.

50. We find that during his time in Vilnius the claimant was provided with support by colleagues there. We make this finding based on the tone and volume of internal messages ('Slack chats') exchanged between the second respondent's staff and the claimant during January, for example on page 638.

51. While the claimant was in Vilnius, Mr Buzas and Mr Sargautis had some initial concerns that the claimant appeared to be focusing on strategy and market analysis rather than taking proactive steps to develop new business for them.

52. The claimant started working in the first respondent's office in Harwell Science Park in Oxfordshire on 4 February 2019. The office had been opened

to coincide with his joining the business. He was the only employee of the first respondent at the time.

53. By the end of February, Mr Buzas and Mr Sargautis' concerns about the claimant's approach were increasing. Mr Buzas was starting to feel that the claimant was spending too much time on theoretical opportunities at the expense of establishing contacts, leads and sales in the short term. He reminded the claimant of the importance of collaborating with the engineers when he was planning a meeting (page 658-659).

The March pipeline meeting

54. On 8 March 2019, Mr Buzas and Mr Sargautis attended the UK office in Harwell to meet with the claimant. They went through the claimant's pipeline document, that is his list of potential business opportunities showing the stage towards closure of each opportunity. Mr Buzas and Mr Sargautis were concerned that the claimant did not appear to have new and credible business development opportunities in his pipeline and that some of the areas he was exploring were in relation to products which were still in development and were not ready to be sold. For example, the claimant's pipeline included potential clients who were interested in constellation services, that is systems of multiple satellites. This was an area which the second respondent was developing. It had funding for a pilot project and in 2019 was looking for a partner organisation to join that project but it was not at the stage of being able to sell constellation services. At the meeting, Mr Buzas and Mr Sargautis asked the claimant to focus on selling the 6U satellite product that was developed and ready to be sold.

Discussions with Mr Avellan

55. Mr Buzas and Mr Sargautis' impression from the March pipeline meeting was that the claimant was focusing on the wrong things. They thought that the claimant seemed unlikely to meet the target which had been set.

56. After the meeting, Mr Buzas raised his concerns about the claimant's performance in an exchange of emails with Mr Avellan on 14 March (page 760). Mr Buzas said it was time to see if there were any alternatives to the claimant as he was too weak as a sales director. He said that the claimant seemed in a bit of a panic, and they needed to find someone with relevant experience from the field, so they did not have to spend time teaching people and paying a big salary at the same time. He suggested that another possibility would be to agree a reduced base salary but a bigger bonus package with the claimant. They agreed to wait a few days to see how things developed.

The claimant's Delivery Plan memo

57. The claimant was also concerned about the discussions at the pipeline meeting. On 15 March 2019 he wrote a long memo to Mr Buzas and Mr Sargautis headed "Delivery Plan for Western Europe Financial Year 2019" (page 775). In the memo the claimant acknowledged that, as of 8 March, the

pipeline of commercial opportunities was weak. He said this was because it was only just being developed and was entirely self-generated. He said he had been given no real pipeline of mature opportunities to assist him with meeting the target, just a few leads. He said the UK target was unlikely to be achieved because the market was cash-strapped and competitive, with a long sales cycle. He said, 'Nevertheless, nothing is stopping me from running at this'.

58. Mr Buzas and Mr Sargautis replied to the memo by adding comments to it. They told the claimant to focus on M6P products. They agreed that there was no pipeline of mature opportunities to hand over to the claimant, because his role was to generate new leads. These were new territories for the respondents' business. They said he had been hired at director level to bring his own pipeline from previous companies or to quickly build a pipeline using his experience and relationships. They said it would not make sense to allocate cultivated leads or recurring customers to him, more junior staff could deal with those. The claimant's role was to generate new leads, 'the day to day reality' of the sales department (page 776).

The claimant's target

59. As the claimant was the only employee of the first respondent, the UK target set in the 2019 strategy was his target. There was a dispute between the parties about whether the claimant's target was changed by the respondents in March 2019.

60. The 2019 strategy document said the UK target was to sell two 6U satellite missions or platforms. In the claimant's delivery plan memo of 15 March 2019 he said that the target for the UK was to secure €600,000 worth of orders. He said this would require 3-4 contracts of €150,000 to €200,000 each.

61. We find that the first respondent did not, in March 2019, change the target the claimant was asked to meet. Rather the claimant himself expressed the UK target differently. He converted the target of selling two 6U satellites given in the 2019 strategy document into a monetary objective, and then broke it down in a different way, referring to the need to secure 3-4 contracts. He spoke about the target in that way in his delivery plan as part of his explanation as to why he felt the target was challenging. He asked the respondents to keep the target fixed to revenue and for target and KPI elements to be listed in a policy document in May (page 777).

62. The claimant said in the hearing before us that he could have met his target by selling two 6U satellites at the bottom of the range of estimated contract values given in the 2019 strategy document, equating to sales of €380,000 not €600,000. He said that the figure of €600,000 in his document therefore represented an increase in his target by the respondents.

63. We find that €600,000 was a figure given by the claimant, not by the respondents. The claimant reframed the target from the 2019 strategy. The respondents did not tell the claimant that he had to make sales totaling any particular sum, or that he had to sell four separate missions or platforms. The

respondents did not, as the claimant alleged, take advantage of the claimant's error in the way he expressed the target in March 2019. The respondents were keen for the claimant to make sales. At this stage, the target remained for the claimant to sell two 6U satellite missions or platforms. (This was later reduced by the respondents, as explained below).

Further consideration of the claimant's pipeline

64. Towards the end of March, Mr Sargautis looked at a report printed out from HubSpot, the customer relationship management system. Mr Sargautis was concerned that only a few of the potential deals listed by the claimant on HubSpot related to sales of 6U satellites. Others related to potential sales of satellites which were still in development at the time (for example the 12U satellite) and to constellation services which were only at project stage. Also, Mr Sargautis saw that the claimant had not entered all the required information into HubSpot. The claimant felt that HubSpot was not a good fit for the respondents' business and he preferred to keep his own record on an Excel spreadsheet (for example page 625).

65. Mr Sargautis went to Harwell from 3 to 5 April 2019. He attended some potential client meetings with the claimant.

Further discussions and the April pipeline meeting

66. Both Mr Sargautis and Mr Buzas visited the UK again on 11 April. They met with the claimant to go through his Excel version of the pipeline (page 888). The Excel spreadsheet did not increase the respondents' confidence in the claimant. It showed 21 potential opportunities with their percentage progress towards closure: 10% meant that the potential customer had been provided with a price list, 30% meant that the potential customer had made a request for more information, 100% would be a closed contract. On the claimant's spreadsheet, all the opportunities except one were at the 10% stage, one opportunity was recorded at 30% towards closure, there were no opportunities marked higher than 30%.

67. On 12 April 2019 the claimant met with Mr Avellan. Mr Avellan told the claimant that he needed to prove that he could sell. He said, "If you show me you can sell, I will embrace you." He looked at the claimant's pipeline document but said he did not believe paper numbers until they were realised. He emphasised that the claimant had been brought on board because the company needed professional salespeople. At the end of the meeting Mr Avellan gave the claimant his mobile number and said that he was only a call away if there were any problems with the Lithuanian management.

68. On 23 April the claimant met by video with Mr Buzas and Mr Sargautis. During the meeting they agreed to reduce the claimant's sales targets so that rather than trying to sell two 6U satellites in 2019, the claimant should focus on simply closing a deal with a customer, no matter what the amount, or at least get as close to doing so as possible. This target reduction was made to encourage the claimant, and because the respondents were trying to support the claimant and make things work.

69. On 29 April there was another discussion about the claimant's pipeline between the claimant, Mr Buzas and Mr Sargautis. Although there was one potential lead, it had been referred to the claimant by Mr Sargautis. The spreadsheet did not indicate any credible opportunities which had been generated by the claimant.

Potential customers

70. We make the following findings about interactions with some potential customers. These took place in April/May 2019.

71. The claimant met with a US Air Force contact and passed their details to the respondents. Mr Sargautis told the claimant that the US Air Force contact would be better dealt with by Mr Ivory as he was in the US. The claimant assigned the client to Mr Ivory and had no further involvement with this lead (page 1532). Mr Ivory did not progress it because of other commitments.

72. The claimant was in contact with Rutherford Appleton Laboratories (RAL) about a 6U opportunity for a low earth orbit (LEO) satellite. The lead was allocated to the claimant but Mr Kvedaravičius was also in touch with this potential customer as the contact had come via a former customer of his. This opportunity did not develop into a sale probably because the sale was to be dealt with by formal tender process and the customer was some way from issuing a tender at the time the respondents were in contact with them (page 703 and 1536)

73. In late April 2019, the claimant discovered that a new client enquiry had come in from a company called Thales in France. Mr Kvedaravičius had worked with Thales in other countries and the enquiry was wrongly allocated to him in the HubSpot system. When the claimant said that the Thales France enquiry should be passed to him, it was reallocated to the claimant (page 919, 965 and 1033).

74. In around May 2019 there was a discussion between the claimant and Mr Buzas about a potential customer called SES SA of Luxembourg. Mr Kvedaravičius was scheduled to attend a conference in Luxembourg at about this time, so Mr Buzas decided that the approach should be made by Mr Kvedaravičius rather than the claimant. In the event, this company did not become a client or active lead of the respondents.

75. One opportunity in Western Europe was not allocated to the claimant. Eutelsat is a satellite operator based in Western Europe. We find that Mr Kvedaravičius had been in contact with this potential client since at least 2017 and, as the respondents had explained to the claimant, they were not passing cultivated leads to him.

Koris

76. The claimant was allocated an opportunity for a potential client based in Nigeria (Koris) (page 876). Although this lead fell within the geographical area of Mr Kvedaravičius, he had a heavy workload and the respondents were

keen to support the claimant by giving him leads if they could, so it was allocated to the claimant. The claimant's contact was Shettima Mohammed Mairami. He provided a witness statement for the claimant in these proceedings which was not challenged by the respondents.

77. The claimant asked Mr Sargautis if he could spend 30 minutes with an engineer for technical support on this lead. Mr Sargautis agreed (page 873).

78. The potential contract was to supply thirty 12U satellites. The claimant asked Mr Sargautis whether the respondents were also interested in a project involving a 16U-27U satellite; Mr Sargautis told the claimant to focus on the 12U lead and 'not chase 16U-27U'. The respondents had started marketing 12U satellites from the beginning of April 2019. The claimant had only been given prices for sales of one 12U satellite. In an email sent on 14 May 2019 headed 'Outstanding Actions', the claimant asked Mr Sargautis for a price structure for multiple 12U satellites (page 1051). Mr Buzas and Mr Sargautis agreed to provide information 'tomorrow' on two occasions but did not do so (page 908 and 911).

79. The customer decided to go ahead with a competitor who had provided a costs breakdown.

80. The claimant said that Mr Buzas and Mr Sargautis deliberately allocated leads to him, including this one, which they knew would not lead to contracts. He said they wanted to sabotage his chances of meeting his targets. We accept the respondents' evidence that this was not true and that the reason they did not reply is because they were busy with other matters. It is not plausible to think that they would pay the claimant a salary higher than their own and then waste his time so that he would not secure any contracts for the business. Any contracts the claimant secured would have been a benefit to the business as a whole, not just to the claimant.

81. The 'Outstanding Actions' email (page 1051) also flagged up some other information which the claimant was waiting for, including in relation to another opportunity with RAL. This was for a 3U platform in middle earth orbit (MEO). The respondent did not at the time provide any MEO services. The second respondents' engineers expressed an interest in developing MEO services, but Mr Sargautis asked the claimant not to pursue it further because he did not think it could be delivered within the client's required timeframe (page 917). The need for product development meant it was not a viable commercial opportunity.

82. The 'Outstanding Actions' email was a summary of points where the claimant was waiting to hear back from Mr Buzas or Mr Sargautis. It was a normal 'chasing' email between colleagues. It was not evidence of any failure to support the claimant or provide him with feedback. Mr Buzas or Mr Sargautis were in regular contact with the claimant about their work, via email and Slack chat as well as meetings and phone calls. They did not always reply to the claimant immediately, but this was because they had busy roles.

<u>HubSpot</u>

83. In early May, while on a visit to Vilnius, the claimant found that he was experiencing problems with access to the HubSpot system (page 1042). He raised this with colleagues in Vilnius and his access rights were reactivated. We find that the issues with access were the result of an earlier outage of the HubSpot system which had ongoing implications (page 853) and restrictions which had been introduced by the second respondent's marketing department for all salespeople at around this time.

Attendance at Grenoble conference

84. At around this time the claimant had been asked to attend a conference in Grenoble to talk about the respondents' business. When he was asked to give a second talk at the same conference, Mr Buzas and Mr Sargautis told the claimant that it might not be a good use of his time to give two talks and that he should restrict it to one (page 911). However, the claimant had already agreed to give the second talk and felt that he had to go ahead with it. We do not accept, as the claimant suggested, that he was given little support with preparing for these talks. On 7 May 2019 Mr Sargautis asked the claimant to send an outline of his presentation and said 'we will try to help you' (page 912). The claimant had a 15 minute phone call with Mr Sargautis and Mr Buzas about the presentation. The claimant put his presentation together on 12 and 13 May 2019 before the conference on 14 May 2019.

85. After the talks, the second respondent's head of marketing criticised the claimant because he had not sent his presentations to her for prior review or liaised with her about the content of his talk. (page 1107). She was concerned that he had emphasised the start-up nature of the company when the respondents' strategy was to focus on achievements rather than origin, and that he had not followed their visual branding and document guidelines.

The Orbitare lead

86. In early May, the claimant was in discussions with another potential client called Orbitare (page 1001). The CEO of Orbitare noted the second respondent's US address on some paperwork (page 1002). He asked the claimant about the regulatory impact of hardware being built in the US, referring to regulations known as ITAR and EAR (page 1015). The claimant raised this with the respondents on 6 May 2019 (page 1017).

87. Mr Ivory and Mr Buzas replied on the same day. Mr Ivory told the claimant that the US company was nowhere near being ready to do any manufacturing in the US (page 1019). Mr Buzas told the claimant that this was not relevant as the ITAR regulations did not apply to the respondents (page 1021). Mr Buzas replied promptly to the claimant's follow up email, saying again that there would be no regulatory impact (page 1022). This was because all the hardware was built in Lithuania. Mr Buzas told the claimant, 'We cannot analyze [a] problem which does not exist" (page 1022 and 1023).

88. The claimant's responses were not sufficiently clear for Orbitare's CEO and he asked further questions which the claimant asked Mr Buzas about (pages 1013, 1014 and 1015). Mr Buzas found this frustrating as, in his mind, there

was a simple answer that the regulations did not apply because the respondents did not build hardware in the US. He felt the claimant had overcomplicated things and that this had caused difficulties with the potential client.

89. The Mission Questionnaire which Orbitare had completed did not have enough information for the second respondent's engineers to understand and comment on the proposed project. Mr Buzas asked the claimant to make sure that the technical discussions were led by the engineers (page 1037). The claimant sent a long email on 13 May 2019 to which Mr Buzas replied that the claimant should, 'Just please involve engineering…as it increases chances of closing. As simple as that' (page 1035).

The decision to dismiss the claimant

90. By the afternoon of 13 May, after these exchanges, Mr Buzas and Mr Sargautis told Mr Avellan that they had decided to let the claimant go (page 1039).

91. On 14 May, the claimant had a discussion with Chris Ivory about his concerns. Mr Ivory offered to talk to Mr Avellan about the claimant's concerns. The claimant accepted the offer.

92. Having heard nothing more by 21 May, the claimant emailed Mr Avellan to ask if he could discuss the pipeline. Mr Avellan replied to say he was in Japan and had back-to-back meetings but they could have a discussion once he was back from holiday. In the event the claimant was dismissed before that conversation took place.

93. We find that the claimant's email to Mr Avellan was not, as the claimant suggested, a formal grievance. It was not made to the claimant's employer and it did not say he had concerns. Rather, it was an attempt by the claimant to raise his concerns informally with Mr Avellan following on from the discussion they had had in April. Because of Mr Avellan's absence the claimant was unable to raise his concerns in this way.

Meetings in the UK in May

94. On 20 and 21 May 2019, Mr Buzas and Mr Sargautis came to Harwell and met with the claimant. They had intended to dismiss the claimant during this trip but, in the event, they decided to give it more thought.

95. They ran through the claimant's updated pipeline with him (page 1121). The pipeline showed three leads at 30%. All the others listed were at 10% or 0% (page 1122 to 1124).

96. While Mr Buzas and Mr Sargautis were with the claimant in the UK, they had a meeting with Inmarsat, an important potential customer.

97. Mr Buzas and Mr Sargautis had had some concerns that the claimant did not seem willing to set up meetings for them all to attend. There was some

resistance on the part of the claimant to copying emails to people from the second respondent; he told one of the second respondent's engineers that it was important to introduce people one by one to customers, as introducing several people with foreign names all at once on emails would be complicated (page 1235). There had been some protracted email exchanges between the claimant, Mr Buzas and Mr Sargautis about dates for the Inmarsat meeting, resulting in Mr Sargautis taking over responsibility for arranging it and asking the claimant not to 'open [a] parallel communication line' (page 975). A similar issue had happened with a meeting the claimant was arranging with Airbus.

98. In the Inmarsat meeting itself, Mr Buzas felt that the claimant overcomplicated things and focused on unimportant details. He felt the claimant was trying to reinvent products or services, rather than focusing directly on selling the 6U product. Mr Buzas felt that during the meeting he and the claimant seemed to be competing to make their points. In the second half of the meeting the claimant became quieter and spoke much less.

99. After the meeting there was a heated discussion in a car between the claimant and Mr Buzas. Mr Buzas became frustrated at the claimant's suggested approach to arranging a meeting with Thales France, another potential client (page 1111 to 1112). He was unhappy that the claimant had not told him that the client could not make the meeting, and in discussions about rescheduling the meeting he felt that the claimant was overcomplicating things.

100. Mr Buzas and Mr Sargautis returned to Vilnius on 21 May 2019 having decided to give the claimant's position more thought. On 22 May 2019, shortly after arriving back at the office, the CEO of Orbitare sent an email to say that Orbitare was no longer interested in working with the respondents (page 1119). The CEO of Orbitare did not expressly complain about the claimant as Mr Buzas suggested (page 1279) but he did say that he thought Mr Buzas should work more closely with customers to get a first-hand understanding of their needs (page 1119). Mr Buzas and Mr Sargautis felt that the claimant had not been clear enough in his communications with this potential customer and had failed to involve engineering early enough. They held him responsible for the loss of this potential client. This was the final straw for the respondents. Mr Sargautis had already made plans to travel to London on 24 May and they decided that he would go to see the claimant and dismiss him on that day.

<u>The claimant's dismissal</u>

101. Mr Sargautis took advice from the respondent's human resources service prior to meeting with the claimant on 24 May. He did not tell the claimant before the meeting that it was to be a dismissal meeting. He said it was to discuss potential client matters.

102. At the meeting on 24 May, Mr Sargautis dismissed the claimant. He said that there had been some recent tensions between them. He told the claimant that it may be to do with culture, in that the claimant may be more suited for larger companies. By this he meant that the claimant may be more suited to a role in a larger sales team with a clear structure, instructions and line

management. Mr Sargautis told the claimant he would be given two months' notice which he was not required to work and his accrued holiday pay. We make these findings based on Mr Sargautis's evidence which was supported by contemporaneous handwritten notes of the meeting (page 1143). It is also consistent with an account of the meeting which the claimant wrote in August 2019 in which he recorded that there was a discussion about larger and smaller companies (page 1235).

103. The claimant was sent a dismissal letter and his final pay (page 1141). As the claimant was in his probationary period when dismissed, he was not offered an appeal. This was in line with the respondents' policy as set out in the claimant's contract of employment.

Events after the claimant's dismissal

104. The first respondent has grown to over 20 people, none of whom are of Lithuanian nationality. Across the respondents' businesses, Mr Buzas himself hired around 25-30 people who were not Lithuanian.

105. When Mr Buzas received and read the claimant's employment tribunal claim, he was in the office in Vilnius. Mr Buzas said he was facing different emotions such as anger and panic. He had the claimant's work badge on his desk. He picked it up and he held it towards his colleagues saying something like, 'Be afraid of me you racist Lithuanians'. He acknowledged that this conduct was unprofessional.

Findings about comparators and the burden of proof

106. As a comparator the claimant relies on Mr Kvedaravičius, the second respondent's sales director who was based in Vilnius. He is Lithuanian. He also relies on other members of the sales force based in Vilnius.

107. The claimant also relies on evidence about other non-Lithuanian individuals, as evidence relevant to the burden of proof. We make findings about these other individuals as follows:

    107.1 Mr Ivory: The claimant said that Mr Ivory himself had a short-lived relationship with the first respondent. He was not employed by the first or second respondent. He was the Chief Commercial Officer of AST & Science LLC. He was described in marketing literature as a sales director (page 722). He is American. After the claimant's dismissal, Mr Ivory had a call with the claimant and was sympathetic to him. Mr Ivory said he felt the claimant had been treated poorly and he offered to write a reference for the claimant. We accept the claimant's evidence about this because he made a contemporaneous voice note of what was said (page 1190). Mr Ivory later wrote a short recommendation for the claimant (page 1577). Mr Ivory did not say that he thought he or the claimant had been subject to discrimination because of not being Lithuanian.

    107.2 a consultant based in South America. He is not Lithuanian. The consultant worked under a consultancy agreement which was signed in

January 2019. In November 2019 Mr Buzas signed a variation to that contract under which some of the terms were improved, for example, there was a longer notice period and an expanded territory allocated. The respondent stopped working with this consultant in February 2020. This decision was made by the new CEO of the American company, a US national. He gave a detailed explanation of his reasons to Mr Buzas.

107.3 A US national who joined the respondents' US business at the time the claimant was leaving. He was dismissed about a year later. The decision to dismiss him was taken by the new CEO of the US business. The claimant got in touch with this individual in 2020 via LinkedIn. He told the claimant, 'I think messy break ups are the consequence of cultural differences' (page 1606). He also said he was surprised to get the claimant's message about a dispute with the respondents because he said the respondents 'spoke of you fairly highly'. He said he 'thought the split [between the claimant and the respondents] was more or less amicable'.

Conduct by Mr Buzas

108. The claimant said that Mr Buzas displayed nationalist fervour. The claimant relied on the fact that Mr Buzas had set up a non-profit organisation to promote STEM subjects and to stimulate engineering innovation in Lithuania. The claimant also referred to a media interview in which Mr Buzas spoke about his ambitions when starting off, saying 'I would wake up and go to sleep thinking about a Lithuanian satellite' (page 324). We do not find that this amounts to nationalist fervour.

109. The claimant also said that, at about the time Mr Avellan was investing in the second respondent, Mr Buzas marched his team to the roof of the second respondent's offices to wave the Lithuanian flag (page 442). We find that the context for this was that the second respondents were taking part in a national TV programme to celebrate the centenary of Lithuania as an independent nation and had been asked to go to the top of the building with a flag by the TV crew so that they could be filmed there.

110. The claimant said that during his employment by the first respondent, there were occasions on which Mr Buzas displayed animosity to non-Lithuanians. We do not find this to be the case. We find that when the claimant first went to Vilnius, he and Mr Buzas were developing a good relationship. They shared discussions about family background and history, and spoke about culturally sensitive topics including the history of Lithuania under the control of the Soviet Union, and the colonisation of India by the British.

111. The claimant made allegations of specific comments by Mr Buzas (page 1233). Our findings on these are below.

111.1 The claimant said that Mr Buzas suggested that a Latvian company would be reluctant to provide business to the second respondent because Latvians and Lithuanians are rivals. We accept Mr Buzas' evidence that he did not make this comment. The second respondents worked closely with the Latvian company. We accept Mr Buzas'

evidence that the alleged comment was an incorrect stereotype and that Latvians and Lithuanians regard each other as brothers, not rivals.

111.2 The claimant said that Mr Buzas said that a Polish company did not give business to the second respondent because Polish people think down on Lithuanians, and see them as a little brother. We find that Mr Buzas was talking about the loss of a business opportunity to a larger British competitor and that he referred to a comment by the Polish company that they perceived the second respondent as 'a small fish in a big ocean'. We do not find that he used the words alleged.

111.3 The claimant said that Mr Buzas called an Italian company 'timewasters'. We find that Mr Buzas' use of the word 'timewasters' was to a specific category in the HubSpot customer relationship management system. It was not used in a pejorative sense.

111.4 The claimant said that Mr Buzas made mocking gestures when the claimant tried to explain British business etiquette. We understand this to refer to the heated discussion between Mr Buzas and the claimant which took place on 20 May 2019. We have found that Mr Buzas was frustrated about the claimant's approach to arranging a meeting. We have decided that it is unlikely that he made mocking hand gestures.

111.5 The claimant said that Mr Buzas spoke pejoratively of Russian speaking taxi drivers. We find that the claimant raised the subject of taxi drivers, and the fact that he sometimes had to use his phone to show where he wanted to go because some drivers spoke only Russian. We do not find that Mr Buzas spoke pejoratively about Russian speakers during this conversation.

Disclosure and information in the course of proceedings

112. The claimant suggested that the respondents had been selective with disclosure and in their replies to his responses to information.

113. We do not find this to have been the case:

113.1 There was a large amount of documentation before us, especially in the context of a period of employment of less than six months.

113.2 The claimant requested large amounts of documents and information from the respondents during preparations for the hearing, but did not make any application for specific disclosure or any order for information.

113.3 We accept that because of the locations of the respondents, some of the documents the claimant requested cannot be located by the respondents and have been lost or destroyed. In particular, this applies to the notebooks the claimant sent back to the (unstaffed) UK office after he left the first respondent's employment. Despite searches, the respondents have been unable to find these.

113.4 The respondents decided on legal advice not to reply to the claimant's informal 'ask and respond' request.

The law

Race

114. Race is a protected characteristic under sections 4 and 9 of the Equality Act 2010. Race expressly includes nationality and national origins (section 9(1)(b) and (c)); this encompasses not being of a particular nationality or national origin.

Direct discrimination

115. Section 13(1) of the Equality Act says:

> *"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."*

Indirect discrimination

116. Section 19 of the Equality Act 2010 says:

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

117. Race is one of the relevant protected characteristics for the purpose of section 19.

Comparators

118. Section 23(1) (as in force at the relevant time) said:

> "On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case."

119. As explained in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285:

> "The comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class."

Liability under the Equality Act 2010

120. Section 109 provides for liability of employers and principals for acts by employees and agents. It says (so far as relevant):

> *"(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.*
>
> *(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.*
>
> *(3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval."*

121. Section 112 says:

> *"(1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention)."*

Burden of proof in complaints under the Equality Act 2010

122. Sections 136(2) and (3) provide for a shifting burden of proof:

> *"(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) This does not apply if A shows that A did not contravene the provision."*

123. This means that if there are facts from which the tribunal could properly and fairly conclude that there has been unlawful discrimination, the burden of proof shifts to the respondent.

124. If the burden shifts to the respondent, the respondent must provide an adequate explanation, which proves on the balance of probabilities that the respondent did not discriminate. The respondent would normally be expected to produce cogent evidence to discharge the burden of proof. If there is a

prima facie case and the explanation for the treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

125. The drawing of inferences from a failure to respond to requests for information was considered in *D'Silva v NATFHE* [2008] IRLR 412. Underhill J (as he then was) considered the statutory questionnaire process, since repealed and replaced by an informal 'ask and respond' procedure. He explained that a failure to answer a questionnaire does not automatically raise a presumption of discrimination, rather:

> "It is necessary in each case to consider whether in the particular circumstances of that case the failure in question is capable of constituting evidence supporting the inference that the respondent acted discriminatorily in the manner alleged; and if so whether in the light of any explanation supplied it does in fact justify that inference."

Conclusions

126. We apply these legal principles to our findings of fact to reach our conclusions on the issues for us to decide. We have started by considering the complaints of direct and indirect race discrimination against the first respondent and then the issue of the liability of the other respondents.

Direct race discrimination

127. The claimant makes seven complaints of direct race discrimination. We have first reminded ourselves of our findings in respect of the general matters which the claimant says are facts from which we could decide that there has been race discrimination, which would mean the burden of proof shifting to the respondent. We have concluded that none of these are facts which would in themselves cause the burden of proof to shift to the respondent.

127.1 We have not found that Mr Buzas displayed a 'nationalist fervour' as alleged by the claimant, or that he made comments with racist connotations. We have found that in the main he did not make the comments alleged and that those comments we have found to have been made did not display racial animosity towards non-Lithuanian people. The unprofessional conduct which Mr Buzas admitted which occurred after the claimant's dismissal was in response to learning about the claimant's allegations of race discrimination and not a display of racial animosity. These are not facts from which we could infer that the respondents discriminated against the claimant in the way they treated him while he was employed and in relation to his dismissal.

127.2 The comparators relied on by the claimant in support of his claim that he was treated less favourably are not appropriate comparators within section 23 of the Equality Act. The claimant was a non-Lithuanian employee of the first respondent, the UK based company. An appropriate comparator would be a Lithuanian employee of the first respondent in the UK. Mr

Kvedaravičius and the sales force in Vilnius are not appropriate comparators.

127.3 The claimant relies on a conversation with Mr Ivory which took place after his dismissal. Mr Ivory was sympathetic to the claimant and said he felt he had been treated poorly. That is not the basis for an inference of discrimination. Mr Ivory was in a very different position to the claimant; Mr Ivory's relationship with the respondents being short-lived is not a fact from which we can make any inferences about the treatment of the claimant.

127.4 The treatment of the two non-Lithuanian individuals relied on by the claimant does not support the claimant's suggestion that there was antipathy towards or a pattern of negative behaviour towards non-Lithuanian employees by Mr Buzas and Mr Sargautis. The individuals were not employees of the first respondent. The decision to terminate their working arrangements with the group was taken in both cases by the new American CEO. This is not evidence from which we could infer that Mr Buzas and Mr Sargautis discriminated against the claimant because of his nationality.

127.5 We have not found facts which would justify the inference of discrimination from the respondents' failure to reply to the claimant's request for information under the informal 'ask and respond' procedure. In the course of proceedings, the claimant requested a large amount of information and documents. The respondents decided on legal advice not to reply to the informal request for information.

128. We have next considered the complaints of race discrimination (in broadly chronological order rather than following the order in the list of issues). For each complaint, we have reminded ourselves of our findings of fact and then considered in relation to each complaint whether there are facts from which we could decide, in the absence of any other explanation, that the respondent subjected the claimant to direct race discrimination.

129. Issue 2.2: The claimant alleged a lack of feedback and support from Mr Buzas (and Mr Sarguatis) during the claimant's employment. In general, we have not found that Mr Buzas and Mr Sargautis failed to provide the claimant with feedback and support. They were in regular contact with him by email and Slack chat, they responded to his questions, and provided him with guidance and steers. They met with him regularly to discuss his pipeline and the steps he was taking to build it and meet his target. There were some occasions when they did not respond immediately, we return to this below in relation to Koris.

130. In relation to the specific matters identified by the claimant, we found as follows:

130.1 US Air Force handover support: we have not found any lack of feedback or support in relation to this issue. Mr Sargautis decided that the lead would be better dealt with by the US team and the claimant handed it over.

130.2 RAL 3U approval of timely resource: we have not found that there was any failure to provide the claimant with feedback or support. The respondents took a commercial decision not to pursue this lead and communicated that decision to the claimant.

130.3 Koris technical and commercial support: we have not found that the respondents failed to provide the claimant with technical support for this lead. The claimant asked for 30 minutes technical support and this was agreed. There was a failure by Mr Buzas and Mr Sargautis to respond to the claimant's request for pricing details and the delay in providing this resulted in the client withdrawing from discussions with the respondents.

130.4 Orbitare ITAR/EAR support; Orbitare Configuration selection; We have not found that there was any failure to provide the claimant with feedback or support in relation to Orbitare. When the claimant asked about the ITAR/EAR regulatory issue, Mr Ivory and Mr Buzas both replied to his query on the same day. In relation to the configuration issue, Mr Buzas encouraged the claimant to seek assistance and support from the engineers.

130.5 CSUG Grenoble New Space Week conference presentations: We have found that Mr Sargautis offered to try to help with this, and asked the claimant to send an outline of his presentation. They also had a 15 minute call about it. The claimant did not prepare his presentation until a day or two before the conference and he did not send an outline as suggested. The criticism of the claimant was from the second respondent's head of marketing, not from Mr Buzas or Mr Sargautis. She perceived a failure to follow the respondents' agreed visual and messaging guidelines. We have not found that there was any failure to provide feedback or support in respect of this conference.

130.6 Outstanding Actions email: we have found that this was a normal 'chasing' email between colleagues and was not evidence of a lack of feedback or support.

131. In summary, we have not found that there was a lack of feedback or support for the claimant. We have not found that anyone else had more feedback or support than the claimant.

132. We have found that Mr Buzas and Mr Sargautis failed to provide the claimant with a pricing structure in connection with the Koris discussions. We have not found any facts from which we could conclude that this failure was anything to do with the claimant not being of Lithuanian nationality. This means that the burden of proof does not shift to the respondent on this complaint.

133. If we had found that the burden had shifted, we would not have found this to be race discrimination. We accept the respondent's evidence that the failure to reply in this instance was because Mr Buzas and Mr Sargautis were busy with other matters, not because they wanted to sabotage the claimant's chances of meeting his targets because of his nationality.

134. Issue 2.3: the claimant said that he was not trusted to perform his role by Mr Buzas and Mr Sargautis. He relies on interference with three potential clients. This issue relates to Mr Buzas and Mr Sargautis becoming involved with arranging meetings. They asked the claimant to copy them in to emails, and, in respect of the Inmarsat meeting, Mr Sargautis took over the arrangements himself.

135. There are no facts from which we could conclude that Mr Buzas and Mr Sargautis became involved in arranging meetings because the claimant is not Lithuanian. There are no facts from which we could conclude that a Lithuanian sales director working for the first respondent in the UK would have been treated any differently.

136. If the burden of proof had shifted to the respondents, we would have accepted the respondents' explanation for this treatment. Mr Buzas and Mr Sargautis had become frustrated by protracted email exchanges when the claimant was arranging meetings. They were concerned that the claimant did not seem willing to arrange meetings for them all. They wanted to make sure that they could attend the meetings with these important potential clients.

137. Issue 2.4: the claimant said that promised accounts were taken away from him. Our findings were:

    137.1 Thales Alenia Space of France was allocated to the claimant but this was wrongly shown on the system because of a mistake arising from a colleague having worked with other Thales companies.

    137.2 RAL (6U) UK was allocated to the claimant. Mr Kvedaravičius was also involved with this lead because it had come via a contact of Mr Kvedaravičius.

    137.3 Koris was allocated to the claimant.

    137.4 The claimant was not allocated SES SA or Eutelsat.

138. We have not found facts from which we could conclude that the decision not to allocate two leads to the claimant was because the claimant is not Lithuanian. The burden of proof does not shift to the respondent on this allegation. If we had found that the burden shifted, we would have accepted the respondents' explanation that Mr Kvedaravičius was asked to deal with these leads because a) he was going to a conference with SES SA and b) he had longstanding contacts with Eutelsat.

139. Issue 2.5 is an allegation that the respondents varied the claimant's sales target (the UK sales target). We have found that the UK target was set in January 2019. The target was to sell two 6u satellites. The UK business target was lower than the other parts of the business. The UK target was reframed by the claimant in March 2019 but was not changed by the respondents at that time. The respondents only changed the claimant's target in April 2019; the change was to reduce the target to encourage the claimant. That change was favourable to the claimant. This complaint fails because the claimant has

not shown any less favourable treatment. In any event, we have not found any facts from which we could conclude that the claimant not being Lithuanian had anything to do with the setting or varying of his target.

140. Issue 2.6: We have not found that the claimant was 'managed out' of the business from March 2019. Our findings about the timing of the respondents' decision to dismiss are in summary:

140.1 We have found that Mr Buzas and Mr Sargautis had concerns about the claimant's performance from early in the claimant's employment. These concerns were based on specific aspects of the way the claimant did his work, such as his focus on strategy and analysis, the time he spent on leads for products still in development, and his preference not to use HubSpot.

140.2 After the first pipeline meeting in March 2019 Mr Buzas felt the claimant's sales performance was weak and he suggested to Mr Avellan that they think about alternatives. The claimant acknowledged in his memo following that meeting that the pipeline was weak.

140.3 Mr Buzas and Mr Sargautis decided to give the claimant more of a chance to demonstrate his sales skills. That was the message which Mr Avellan gave the claimant when they met on 12 April 2019.

140.4 Following another discussion about the pipeline on 29 April 2019 and in the context of the discussions around Orbitare, Mr Buzas and Mr Sargautis made the decision on 13 May 2019 that they should let the claimant go. They were planning to dismiss him in the UK on 20 or 21 May 2019 but decided to give it more thought.

140.5 The claimant had not made any real progress towards making a sale by this point, and the loss of the Orbitare lead the following day was the final straw which led to the decision to dismiss the claimant.

141. The respondents did not try to 'manage out' the claimant from March 2019. They had concerns about his performance in the role which crystallised in March 2019. However, they gave the claimant longer to demonstrate his selling skills, and emphasised to him the importance of making sales. The decision to dismiss was prompted by the loss of an important lead.

142. We have not found facts from which we could conclude that the respondent's decision-making process from March 2019 which led to the claimant's dismissal in May 2019 was anything to do with the claimant not being of Lithuanian nationality. If we had done, such that the burden shifted to the respondent, we would have accepted that the respondent has provided cogent evidence that their concerns about the claimant were prompted by and based on his work and were not because of race.

143. Issue 2.1: we return to issue 2.1 which is the dismissal. We have explained in issue 2.6 our findings in relation to the decision making process which led to the claimant's dismissal.

144. We have found facts from which, without further explanation from the respondents, we could conclude that race played a part in the claimant's dismissal:

144.1 in the claimant's dismissal meeting Mr Sargautis made a reference to 'culture';

144.2 there was an inaccuracy in the respondent's explanation of the trigger for the claimant's dismissal in that the CEO of Orbitare did not make an express complaint about the claimant as the respondents said.

145. Based on this, we find that the burden shifts to the respondent to show that the dismissal was not to do with the claimant's nationality.

146. We are satisfied that Mr Sargautis' reference to culture in the dismissal meeting was not a reference to or suggestive of nationality-based differences. There was cogent evidence from Mr Sargautis, supported by contemporaneous handwritten notes, that by 'cuture' Mr Sargautis was referring to business culture and not to anything related to nationality. We have in mind that discrimination can be sub-conscious as well as conscious, and that differences in business culture could be related to nationality. However, we accept that Mr Sargautis' reference to 'culture' was to different sizes of organisations and not to any issues relating to nationality. Mr Sargutis' view that the claimant could be better suited to a larger more structured organisation was consistent with the issues which the respondents had identified throughout his employment. They recognised his skills but thought they would be better suited to a larger organisation. This is supported by the fact that after the claimant left, the respondents spoke of him 'fairly highly' to others.

147. In relation to the inaccuracy in the explanation, although the CEO of Orbitare did not make a complaint about the claimant, the tenor of his email was that he would have preferred to have dealt more closely with Mr Buzas than with the claimant. In the context of the respondents' frustrations arising from the communications with Orbitare, it was understandable that they described this as a complaint. The inaccuracy was not because the respondents were trying to cover up discrimination.

148. We have concluded that the respondents have met the burden of showing that the claimant's dismissal was in no sense whatsoever to do with the fact that he is not of Lithuanian nationality. Ultimately, the respondents decided to dismiss the claimant because they were not confident that he would be able to perform in the role and meet his targets and, despite being given time, he did not make or come close to making any sales.

149. Issue 2.7: the claimant says that he was not allowed an appeal against dismissal and that a Lithuanian employee would have been allowed this opportunity. We have not found facts from which we could have concluded that the claimant was not allowed an appeal because he is not Lithuanian. If we had, we would have accepted the respondent's explanation that the claimant was not provided an appeal because he was dismissed during his

probationary period, and the company's disciplinary policy which allowed an appeal did not apply during the probationary period.

150. There is no basis on which we could conclude that a Lithuanian employee in the claimant's role in the UK who was dismissed during their probationary period would have been treated any differently.

Indirect race discrimination

151. The claimant relies on the provision, criterion or practice (PCP) that the respondent had a 'quick fire' dismissal policy without feedback or correction.

152. We have not found that the first respondent had a PCP framed in this way. The claimant was given time to improve as he was not dismissed until more than two months after the first respondent first contemplated dismissal. The claimant was given feedback. Mr Avellan explained to him the importance of making sales. The first respondent emphasised this when it reduced the claimant's target in April.

153. However, we have found that the first respondent had a policy not to apply the disciplinary policy during a probationary period, and the absence of appeal under that policy might be described as 'quick fire'. We have considered whether the complaint of indirect discrimination by reference to this PCP is made out. We have concluded that it is not.

154. The policy not to allow an appeal during the probationary period was applied to the claimant and would have been applied to a Lithuanian person working for the first respondent in the UK. (The policies or contractual terms of employees or consultants of the second respondent or of AST & Science LLC are not relevant. The focus is the first respondent's policy, not the policies of the second respondent or another group company.)

155. The claimant relied on the particular disadvantage that the PCP disproportionately affects individuals who do not share the ethnic, racial, cultural and linguistic backgrounds of the management team. We did not hear any evidence about this particular group disadvantage or how it disadvantaged the claimant himself. It does not seem to us that this is something which we can regard as so obvious that we can accept it as being correct without hearing evidence about it. The evidence relied on by the claimant (the experience of a consultant and other individuals working for the second respondent and AST & Science LLC) does not relate to particular disadvantage arising from the first respondents' policy.

156. In any event, we accept that not providing an appeal under the disciplinary policy to those in their probationary period was a proportionate means of achieving a legitimate aim. The aim relied on is 'to give the respondent reasonable time and flexibility to assess an employee's suitability and performance for role." That is the purpose of a probationary period and is a legitimate aim. Taking into account the small size of the first respondent's business (the claimant was the only employee) and the importance for the first respondent of having the right employee in that role to meet its business

and operational needs, we conclude that the first respondent acted proportionately in meeting its aim when it decided to dismiss the claimant without an appeal during his probationary period, after developing concerns about his suitability. It did so after allowing him some time to improve and emphasising to him the need to make sales.

157. For these reasons, the complaint of indirect discrimination does not succeed.

The claim in the round

158. The need to focus on individual complaints can lead to a failure to see the bigger picture. Having reached our conclusions on the complaints of direct and indirect race discrimination, we stepped back and considered the claim in the round.

159. The claimant is a conscientious and driven person, and his dismissal by the first respondent after a short period of employment has impacted him significantly. He may feel that the respondents had unreasonably high expectations of what he could achieve for them and there may have been a mismatch of skills and approach. However, we are satisfied that this was not related to race. The evidence we have seen and heard, in particular the contemporaneous documentation evidencing the communications between the parties, demonstrates that genuine concerns arose about the claimant's suitability for this role which were not related to his race and which were the reason for the treatment we have found to have occurred. The claimant not being of Lithuanian nationality did not play a part in the way he was treated during and after his employment, or in the first respondent's decision to dismiss him.

The second and fourth respondents

160. The claims against the second and fourth respondents are brought under the agency/aiding provisions in sections 109 and 112 of the Equality Act. As we have not found there to have been any acts of discrimination, these claims also fail.

Remedy hearing

161. As the claimant's claim has not succeeded, the remedy hearing which was provisionally listed for 3 March 2025 will not be needed and will be cancelled.

Approved by:

Employment Judge Hawksworth

Date: 23 January 2025

Sent to the parties on: 24 January 2025

For the Tribunal Office

Recording and Transcription
Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

APPENDIX - AGREED AMENDED LIST OF ISSUES SERVED PURSUANT TO EMPLOYMENT TRIBUNAL'S ORDER OF 31 OCTOBER 2022 (AS AMENDED)

[underlined text – not agreed but clarifications added by the claimant at the start of the main hearing, referring back to the additional requested particulars document (page 163)]

---

1. For the avoidance of doubt:
   1.1. Claimant = C
   1.2. Nanoavionics UK Limited = R1
   1.3. Nanoavionika UAB = R2
   1.4. Mr A Avellan = R4
   1.5. Case Number 3221885/2019 = the First Claim
   1.6. Case Number 3324466/2019 = the Second Claim
   1.7. Equalities Act 2010 = EA

Liability

R1 Liability for Direct race discrimination

2. Did R1 treat the C less favourably than it (would have) treated an actual/hypothetical comparator in materially similar circumstances in that:

   2.1. C was dismissed by R1 on 24 May 2019;
   2.2. There was a lack of feedback and support from Vytenis Buzas (and Linas Sarguatis of R1's alleged agent R2) to C during his employment, as set out at paragraphs 3 [USAF Handover support, RAL 3U approval of timely resource Koris Technical support; Koris Commercial Support; Orbitare ITAR/EAR support; Orbitare Configuration selection; CSUG Grenoble New Space Week presentations], 4 [matters already mentioned and further matters referred to in the email of 14th May 2019 '*RE: Outstanding Actions'* including SpacePlatform] and 7 [matters already mentioned] of the Additional Requested Particulars;
   2.3. C was not trusted to perform his role by Mr Buzas (and Mr Sarguatis of R1's alleged agent R2), as set out at paragraph 25 [Inmarsat interference, Airbus interference and Thales Alenia Space interference] of the Additional Requested Particulars;
   2.4. C's promised accounts were taken away from him, as set out at paragraph 9 [Thales Alenia Space of France, SES SA of Luxembourg, Eutelsat of France, RAL (6U) of UK] of the Additional Requested Particulars, and he was allocated other accounts, as set out at paragraph 18 [Koris of Nigeria] of the Additional Requested Particulars;
   2.5. C's sales targets were varied [from those initially set on 1st January 2019] by Mr Buzas (and Mr Sarguatis of R1's alleged agent R2) in or around 8 March 2019, 23 April 2019 and 24 May 2019; and
   2.6. For the avoidance of doubt, it is C's contention that (2.2), (2.3), (2.4) and (2.5) are incidents of C being 'managed out' of the business following the decision made by Vytenis Buzas, (or in the alternative some other person

involved in the management), in or around Feb-March 2019 to advocate the dismissal of C.

2.7. Was C as a former employee not given the same opportunity to appeal as would have been applied to a Lithuanian employee? (Per finding of the EAT on analysis in their Judgment handed down on 17 May 2022 at paragraph 29)

3. If so, was any such treatment because C is not Lithuanian?

R1 Liability for Indirect race discrimination.

4. Did R1 (itself or through its alleged agent, R2) apply to C a provision, criterion or practice ("PCP"), namely a "quick fire" dismissal policy without feedback or correction.

5. Did R1 (itself or through its alleged agent, R2) apply, or would it have applied, such a PCP to Lithuanian individuals? The actual/hypothetical pool of comparators that C relies upon are hypothetical comparator(s).

6. Did that PCP put, or would it have put, non-Lithuanian individuals to a particular disadvantage when compared to Lithuanian individuals, namely in relation to dismissal.?

7. Did the PCP put, or would it have put, C to that particular disadvantage?

8. Can R1 show that the PCP is a proportionate means of achieving a legitimate aim?

9. For the avoidance of doubt for paragraph 8, R1 sets out that the proportionate means of achieving a legitimate aim was "to give the Respondent reasonable time and flexibility to assess an employee's suitability and performance for role."

R4's Liability through Aiding Contraventions Helping R1

10. Was R4 knowingly helping R1 and/or R2 to do anything which contravenes s 39 of the EA?

11. 1. For the avoidance of doubt: the particulars of R4 "knowingly helping" are that he:
    - 11.1.1. failed to seriously engage with the informal grievance process before the Claimant's dismissal, as set out at paragraph 17(a) of ET1 Rider in the Second Claim;
    - 11.1.2. failed to challenge or properly challenge C's dismissal when consulted, as set out at paragraph 17(a) of the above Rider;
    - 11.1.3. approved the dismissal, as set out at paragraph 17(a) of the above Rider;
    - 11.1.4. failed to hold an appeals process, as set out at paragraph 17(b) of the above Rider;

11.1.5. attempted to hide his record of involvement in the discussion around the appeals process, as set out at paragraph 17(b) of the above Rider;

11.2. the acts which contravene s 39 of the EA are:

11.2.1. R1's direct discrimination laid out at paragraph 2.1 and/or indirect discrimination laid out at paragraph 4 above for all the knowing help alleged above at paragraphs 10 and 11;

11.2.2. R1's direct discrimination laid out at paragraph 2.7 above for 11.1.4 and 11.1.5 above

R2's Liability As An Agent of R1

12. If R1 performed a contravention as alleged in paragraph 2(1-7) and/or paragraph 4, were these acts/treatment performed by R2 for R1 with R1's authority?

R2's Liability through Aiding Contraventions helping R1

13. Was R2 knowingly helping R1 do anything which contravenes s 39 of EA?

14. For the avoidance of doubt:

14.1. the particular of R2 "knowingly helping" are that they:

14.1.1. acted disingenuously in setting up the dismissal meeting, by claiming to be flying into the UK for a customer meeting as a pretext to deceive C so to abruptly dismiss C with no prior warning, as set out at paragraph 5, 89 and 25 of ET1 Rider in the First Claim;

14.1.2. were liable from any activity committed by its chairman, R4 in paragraph 11 above;

14.2. the acts which contravene s 39 EA are:

14.2.1. R1's direct discrimination laid out at paragraph 2.1 and/or indirect discrimination laid out at paragraph 4 above for all the knowing help alleged above at paragraph 14.1;

14.2.2. R1's direct discrimination laid out at paragraph 2.7 above for 11.1.4 and 11.1.5 above.

Limitation

15. When did the alleged acts and/or omissions upon which C relies occur? Any act and/or omission which took place more than three months prior to the date of presentation of the claim on 27 August 2019 (subject to ACAS Early Conciliation) is potentially out of time.

16. Are the alleged acts or omissions based on a series of unconnected acts or a continuing state of affairs?

17. If any of the acts and/or omissions are out of time, can C show that it would be just and equitable to extend time?

Remedy

18. C seeks a declaration that he was discriminated against.

19. Is C entitled to any financial loss, award for injury to feelings and/or an award for aggravated damages as a result of the alleged discrimination?

20. If so, has C mitigated his loss?