



EMPLOYMENT TRIBUNALS

Claimant: Mr Timothy Bettney

Respondents: Ethiopian Airlines Group

Heard: Manchester Employment Tribunal

On: 7, 10, 11, 12, 13 and 14 March 2025 (6 days)

Before: Employment Judge G Tobin

Members: Mr B Rowen
Dr B Tirohl

Representation

Claimant: Mr A Dyke (solicitor)

Respondent: Mr M Akram (counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. The claimant succeeds in 4 of his 5 allegations of direct discrimination on the grounds of his race, in breach of s13 Equality Act 2010.
2. The claimant was indirectly discriminated against on the grounds of his race, in breach of s19 Equality Act 2010.
3. The claimant was constructively unfairly dismissed, pursuant to s95(1)(c) Employment Rights Act 1996.

REASONS

The case

1. I apologise to the parties for the delay in providing this Judgment and Reasons. This was caused by my (i.e. the Judge's) ill health. I have written to the parties separately.
2. The claimant worked for the respondent at Manchester airport for almost 19 years, latterly as a Traffic Sales Manager or "TSM". He claimed the following against his former employer: direct race discrimination contrary to section 13 Equality Act 2010 ("EqA"); and indirect race discrimination, pursuant to s19 EqA; and constructive unfair dismissal under s95(1)(c) Employment Right Act 1996 ("ERA"). The respondent denied liability. The claim was helpfully summarised by Employment Judge Cookson following the hearing of 30 May 2024.

The list of issues

3. A list of the issues to be determined at this hearing had been agreed between the parties. This summarised the factual disputes and the appropriate the legal tests. We (i.e. the tribunal) reviewed the list of issues with the parties at the start of the hearing. The list of issues was as follows:

Direct discrimination contrary to s13 EqA.

1. Did the respondent treat the claimant less favourably than it treats or would have treated others? (EqA 2010, s 13).

The claimant relies on the following:

- a. The claimant was excluded from meetings in Addis Ababa on both 28 May 2022 and 2-3 June 2023. The claimant was the only Area Manager/TSM denied to attend.
 - b. When the claimant was permitted to attend company meetings, meetings were regularly held in Amharic to the claimant's exclusion. The claimant does not speak or understand Amharic.
 - c. The claimant was not provided with a company car. Other managers were provided with company cars, but the claimant was excluded. The claimant has been provided with a spreadsheet confirming a company car will be given by the respondent, "When we have ET Appointee". ET standing for Ethiopian.
 - d. The claimant was subjected to an unfair pay structure in comparison to those not from the UK. The claimant is aware of a manager with a Pakistani heritage who is paid £16,000-£17,000 more as a local sales manager.
 - e. The claimant was not afforded the same celebration or award demonstration as Mr Yonas Tamrat when he identified a cost saving for the company.
2. Did the respondent do any or all of the alleged acts of direct discrimination?
 3. Was any less-favourable treatment accorded to the claimant because of the claimant's race (EqA 2010, s13). The Claimant relies on an actual and/or hypothetical comparator.

4. Are Mr Yonas Tamrat and Mr Mohammed Bilal Ali appropriate comparators?
5. What are the characteristics of an appropriate hypothetical comparator?
6. Are there facts from which the tribunal could decide, in the absence of any other explanation, that the respondent discriminated against the claimant (EqA 2010, s136(2))?
7. If so, has the respondent shown that it did not discriminate against the claimant (EqA 2010, s136(3))?

Indirect discrimination contrary to section 19 of the Equality Act 2010

8. Did the respondent apply a provision, criterion, or practice ("PCP") to the claimant? (EqA 2010, s 19(1))

The Claimant relies upon the following PCP[s]:

- a. That employees are moved around and assigned to a new base after a 4-year period.
 - b. That meetings are held in Amharic.
 - c. That there is a preference to hiring those of an African nationality over those of other nationalities, including White British. The PCP can be found in the policy manual, last updated 1 August 2023, in which it states in section 7.3.4.4 that Area Managers, TSMs and Station Managers for Europe, America and Asia are only to be selected from "those in Africa unless there is approved exception up to the GCEO".
9. Did the application of that PCP put others who shared the claimant's protected characteristic of being of White British ethnicity at a particular disadvantage when compared with persons of other racial groups EqA 2010, s19(2)(b)?
 10. Did that PCP put the claimant at that disadvantage (EqA 2010, s19(2)(c))?
 11. If so, can the respondent show the PCP to be a proportionate means of achieving a legitimate aim (EqA 2010, s 19(2)(d))?

Equality Act 2010 claims — Remedy

12. [to be addressed later]
13. ...

Constructive Dismissal

14. Did the claimant resign in circumstances in which he entitled to treat himself as having been constructively dismissed (ERA 1996, s 95(1)(c))? In particular:

- a. Was there a fundamental breach of the employment contract by the respondent? The claimant relies on the following:

That he was working 7 days per week almost every single week due to no staff in Manchester.

The claimant was excluded from company meetings on a regular basis. The claimant was excluded from Area Managers meetings in Addis Ababa, Ethiopia in 2022 and 2023.

When the claimant was permitted to attend company meetings, meetings were regularly held in Amharic to the claimant's exclusion. The claimant does not speak or understand Amharic.

The claimant was excluded from being given a company car despite them being approved for

all other Area Managers and Traffic and Sales Managers.

The claimant's vacation was operated different in having to take a minimum of 5 days leave per period and no more than 2 periods of leave per year.

The claimant does not receive sick leave unlike Ethiopian employees.

The claimant was excluded from benefiting from the respondent's reward scheme for those who can identify a cost saving.

- b. Accordingly: did the respondent, without reasonable or proper cause, act in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the parties?
- c. If so, did the claimant resign in response to the breach of his contract of employment?
- d. Did the claimant waive any breach and affirm the contract?

Constructive Dismissal – Remedy

15. [To be addressed later]

16. ..., etc

The relevant law

4. The relevant applicable law for the claims considered is as follows.

Protected characteristics

5. Under s4 EqA, a protected characteristic for a claimant includes race, which includes: (a) colour; (b) nationality; and (c) ethnic or national origin.

Direct discrimination

6. S13(1) EqA precludes 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.

7. The examination of *less favourable treatment because of the protected characteristic* involves the search for a comparator and a causal link. When assessing an appropriate comparator, "there must be no material difference between the circumstances relating to each case": s23(1) EqA.

Indirect discrimination

8. Indirect discrimination occurs when there is equal treatment of all groups but the effect of the *provision, criterion or practice* ("PCP") imposed by the employer has a disproportionate adverse impact on one group, unless the requirement can be justified. The definition of indirect discrimination is set out in s19 EqA:

(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.

...

The burden of proof and the standard of proof

9. S136 EqA implements the European Union Burden of Proof Directive. This requires the claimant to prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of unlawful discrimination, and it is then for the employer to prove otherwise.
10. The cases of *Barton v Investec Henderson Crosthwaite Securities Ltd* [2003] ICR 1205 and *Igen Ltd v Wong* [2005] EWCA Civ 142, [2005] ICR 931 provide a 13-point form/checklist which outlines a two-stage approach to discharge the burden of proof. In essence, this can be distilled into a 2-stage approach:
- a. Has the claimant proved facts from which, in the absence of an adequate explanation, the tribunal could conclude that the respondent had committed unlawful discrimination?
 - b. If the claimant satisfies (a), but not otherwise, has the respondent proved that unlawful discrimination was not committed or was not to be treated as committed?
11. The Court of Appeal in *Igen* emphasised the importance of *could* in (a). The claimant is nevertheless required to produce evidence from which the tribunal could conclude that discrimination has occurred. The tribunal must establish that there is *prima facie* evidence of a link between less favourable treatment and the difference of (in this instance) race and that these are not merely two unrelated factors: see *University of Huddersfield v Wolff* [2004] IRLR 534. It is usually essential to have concrete evidence of less favourable treatment. It is essential that the employment tribunal draws its inferences from findings of primary fact and not just from evidence that is not taken to a conclusion: see *Anyia v University of Oxford* [2001] EWCA Civ 405, [2001] ICR 847.
12. So, the burden is on the claimant to prove, on a balance of probabilities, a *prima facie* case of discrimination. The Court of Appeal, in *Madarassy v Nomura International plc* [2007] EWCA Civ 33 said the court in *Igen* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the respondent *could have* committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal *could conclude* that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. It was confirmed that the claimant must establish more than a difference in status (e.g. race) and a difference in treatment before a Tribunal will be in a position where it *could conclude* that an act of discrimination had been committed.

13. Even if the Tribunal believes that the respondent's conduct requires explanation, before the burden of proof can shift there must be something to suggest that the treatment was due to the claimant's race. In *B and C v A [2010] IRLR 400 EAT* at paragraph 22:

The crucial question is on what evidence or primary findings the tribunal based its conclusion that C would not have feared further violence from a female alleged aggressor (and so would have accorded her due process). As we have already noted (paragraph 19), the tribunal does not spell out its thinking on that point. There was no direct evidence on which such a conclusion could be based; no such situation had ever occurred, and the tribunal refers to no admission by C, or other evidence of his attitudes, that might have supported a view as to how he would have behaved if it had. It is of course true that the tribunal was in principle entitled to draw appropriate inferences from the nature of the behaviour complained of. C's behaviour was certainly sufficiently surprising to call for some explanation: in the public sector in particular, it is second nature to executives to follow appropriate procedures, and the explanation offered by C for his failure to do so in the present case – namely that he was seeking to avoid repeat violence (see paragraph 16 above) – is irrational since he could have mitigated the risk to precisely the same extent by suspending the claimant. But the fact that his behaviour calls for explanation does not automatically get the claimant past 'Igen stage 1'. There still has to be reason to believe that the explanation could be that that behaviour was attributable (at least to a significant extent) to the fact that the claimant was a man. On the face of it there is nothing in C's behaviour, all the surrounding circumstances, to give rise to that suspicion.

14. It is not sufficient to shift the burden onto the respondent, that the conduct is simply unfair or unreasonable if it is unconnected to a protected characteristic. In *St Christopher's Fellowship v Walters-Ellis [2010] EWCA Civ 921* at paragraph 44:

The respondent's bad treatment of the claimant fully justified findings of constructive unfair dismissal, but it could not, in all the circumstances, lead to a finding, in the absence of an adequate explanation, of an act of discrimination. Non-racial considerations were accepted as the explanation for the respondent's similar treatment of the claimant in the other instances in which the claimant alleged race discrimination in relation to participation in recruitment. In the case of Ms Hayward, the respondent made a genuine mistake about the nature of the relationship, which they would not have made if they had properly investigated the nature of the relationship with the claimant and communicated with her, but their failure to do so was accepted to be the result of a genuine belief. The fact that it was mistaken could not, in the context of scrupulous attention to recruitment procedures, reasonably be held to have the effect of indicating the presence of racial grounds and so shifting the burden of proof to the respondent to prove that he had not committed an act of race discrimination.

15. In the case of *Nagarajan v London Regional Transport [2000] 1 AC 501*, Lord Nicholls stated at 512-513:

Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds, even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the aggravating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided. So far as possible. If racial grounds or protected acts has a significant influence on the outcome, discrimination is made out.

16. Employment Tribunal's adopt the civil standard of proof, which is on the balance of probabilities, i.e. more likely than not.

Unfair Dismissal

17. S95(1) ERA provides that an employee is dismissed by her employer for the purposes of claiming unfair dismissal if:

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

18. An employee may terminate his employment in circumstances that amount to a constructive [unfair] dismissal if the employer has committed a fundamental breach of contract. According to the leading case, *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*:

If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed..

19. In *Courtaulds Northern Textile Ltd v Andrew [1979] IRLR 84* the Employment Appeal Tribunal ("EAT") held that a term is to be implied into all contracts of employment stating that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.
20. *Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 (EAT)* described how a breach of this implied term might arise:

To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

21. *Western Excavating* established that a *serious* breach is required. In *Brown v Merchant Ferries [1998] IRLR 682*, the Court of Appeal accepted that if the employer's conduct is seriously unreasonable, this may provide evidence that there has been a repudiatory breach of contract, but, on the facts, held that the conduct in question fell far short of a repudiatory breach by the employer. Mere unreasonable behaviour is not enough. In *Hilton v Shiner [2001] IRLR 727* the EAT confirmed that the employer's conduct must be without reasonable and proper cause.
22. *WA Gould (Pearmak) Ltd v McConnell and another [1995] IRLR 516* held that an employer's obligation to address an employee's grievance may amount to an implied contractual term existing in all contracts of employment. In *Malik and another v Bank of Credit and Commerce International SA (in compulsory liquidation) 1997 ICR 606* the House of Lords held that a failure to respond to an employee's grievance can amount to a breach of the implied term of mutual trust and confidence. Thus, a failure by an employer to address an employee's grievance could itself amount to a breach of contract and entitled the employee to resign and claim constructive dismissal. *Claridge v Daler Rowney Ltd [2008] IRLR 672* held that for an employer's mishandling of a grievance to amount to a breach of trust and confidence, it was necessary for the employee to show that the conduct complained of was calculated or likely to destroy or seriously damage the employment relationship. On the facts of that case, it was held that a delay of 4½ months in notifying the employee of the outcome of the grievance was not a fundamental breach of contract.
23. According to *Morrow v Safeway Stores [2002] IRLR 9* if a breach of mutual trust has been found, this implied term is so fundamental to the workings of the contract that its

breach automatically constitutes a repudiation – a Tribunal cannot conclude that there was such a breach but, on the facts, hold that it was not serious.

24. If an employee contends that a particular matter amounted to a “last straw” entitling him to resign, the “last straw” must not be entirely innocuous. It need not be in itself a breach of contract, but it must contribute to the series of events alleged to amount to a breach of the mutual trust and confidence term: *Waltham Forest London Borough v Omilaju* [2005] ICR 418.
25. We should consider whether the claimant has established, in the respects alleged by him, a breach of the implied term of mutual trust and confidence. We will need to analyse not only the alleged failure to respond to each individual grievance but also the cumulative effect of a failure to respond to the grievance matters and/or the grievance itself.
26. The employee must accept or rely upon the breach within a reasonable period following the fundamental breach of contract to avoid being taken as having affirmed the contract and waved to breach. Mere delay by itself (unaccompanied by any express or implied affirmation of the contract) does not constitute affirmation of the contract, but if it is prolonged, it may be evidence of an implied affirmation. In *Fereday v South Staffordshire NHS PCT* UKEAT/0513/10 the claimant invoked the grievance procedure, which resulted in a decision adverse to her on 13 February 2009, nevertheless she resigned, by letter dated 24 March 2009. The EAT upheld the Employment Tribunal’s decision that the respondent had repudiated contract of employment, but that the claimant had affirmed the contract by her delay. A prolonged delay of nearly 6 weeks between the last breach of contract (the grievance decision) and the claimant’s resignation was an implied affirmation, bearing in mind that the claimant was expecting or requiring the respondent (the employer) to perform its part of the contract of employment by paying her sick pay.
27. ACAS has published a Code of Practice on Disciplinary and Grievance Procedures. The ACAS Code is not legally binding. It sets out the basic requirements for dealing with grievances and disciplinary matters and the Code should be considered by a Tribunal. If an employer fails to comply with the Code, that will be taken into account by the Tribunal. The Code has particular force in deciding unfairness in respect of disciplinary processes. However, unfairness is not the appropriate test for constructive dismissal and the Code in relation to Grievances has limited relevance.

The hearing

28. We heard evidence from the claimant plus one witness Miss Laura Steele. Miss Steele was formerly an Airport Supervisor who worked with the claimant.
29. On the respondents’ behalf we heard evidence from Mr Michael Yohannes who was the claimant’s line manager, specifically the Area Manager for UK & Ireland, from 1 September 2017 to 1 October 2022. We also heard from Mr Henock Woubishet, who was Mr Yohannes’ successor as the claimant’s Area Manager (or sometimes referred to as “AM”).

30. All witnesses confirmed their statements at the outset of their evidence. The witnesses were then cross-examined by the opposing professional representatives, and we (i.e. the tribunal) also asked questions for clarification.
31. We also considered a final hearing bundle consisting of 1,204 pages. This had lots of irrelevant material; however, given the size of the hearing bundle, the tribunal was surprised that the respondent had not provided for the inclusion of key documents relating to the issues they knew had been pleaded; this included salary scales of senior employees, time logs referred to in the respondents' witness evidence, annual appraisals referred to in the claimant's appointment letter and the claimant's contract of employment. It was difficult to follow some email chain because of obvious gaps. In respect of the claimant's contract of employment we were provided with various documents that did not marry up, although there was not a significant dispute from the claimant that he had signed a fixed term appointment for his role as Traffic Sales Manager. No adequate explanation was proffered from the respondent or their representatives for the obvious gaps or omissions in the documents. This was a disappointing way to approach such a case. Consequently, the claimant produced a witness statement accompanied by a large number of exhibits, although many of the documents were already contained in the hearing bundle. The disregard of case preparation orders highlighted a disappointing lack of coordination and agreement between the parties in preparing the case.
32. Having now heard all of the evidence, we make the following determination in respect of the witness evidence.
33. We regarded the claimant as a credible witness and an honest historian. The claimant answered questions directly and we feel he did not embellish his evidence. His evidence was consistent with contemporaneous documents, and he also presented what we regarded to be a credible narrative.
34. Miss Steele was a peripheral witness, whose main input was to give evidence in respect of the claimant's working hours and the breakdown in relations with Mr Woubishet. We regarded Miss Steele as credible and not prone to exaggeration. Her account was clear and reliable.
35. In contrast, we had significant reservations with the evidence of both of the respondent's witnesses. Their statements were brief, bordering on perfunctory, which is why we needed very clear explanations. In terms of answering questions, Mr Woubishet began cross-examination with answering questions directly but as his questioning progressed he lapsed into giving long answers, which did not answer the question he was asked. At various times, Mr Woubishet was reminded of the need to answer the questions asked yet on significant issues he was, in our opinion, evasive.
36. When addressing the claimant's fixed-term appointment, Mr Woubishet said that his previous appointment in Italy was for a fixed term, but it was only after this period that the respondent addressed his rotation. He did not provide any documentary corroboration of this, and it was not a feature of his witness statement. He could not explain the operational or administrative reasons for this lackadaisical approach by his employers. Indeed, such a lethargic attitude runs counter to the contractual documentation made available and to an organisation that operates in a heavily

documented and regulated industry. So, we do not believe him on this point, in particular.

37. It was clearly a part of the claimant's case that Mr Woubishet, as his line manager, failed to communicate with him directly and that this indicated a breakdown in his relationship with his employer. That was part of the claimant's grievance. Mr Woubishet did not address this point in his witness statement but under cross-examination he said that he decided to deal directly with Miss Steele because the claimant would not return his calls. This was with regard to a claimant who had previously worked long hours and was outstanding in his conduct of duties. The respondent had disciplined the claimant for a flight being late yet there was no contemporaneous documentation to support Mr Woubishet's version of events. The point was not put to Miss Steele whose evidence was that Mr Woubishet would come to her to ask routine questions which would properly and easily be directed towards the claimant and that this had made her feel uncomfortable. In the absence of contemporaneous warning, advice or operative correspondence persuades us that Mr Woubishet's lack of contact with the claimant was an adverse reaction against the claimant's non-compliance with his move to London, which the claimant made at paragraph 8a of his Particulars of Claim [Hearing Bundle page 16].
38. Perhaps of greater significance, we were concerned with Mr Woubishet's account of the meeting of 20 March 2023. Mr Woubishet's version of this meeting differed significantly from the claimant. Mr Woubishet confirmed that this meeting lasted almost an hour when, in fact, the Teams meeting history document at page 449 of the hearing bundle demonstrated that the meeting lasted 10 minutes and 51 seconds. Once the claimant was given a copy of this meeting, he responded immediately to contest the truthfulness of the respondent's account. We believe the claimant's version of events and reject Mr Woubishet's evidence in this regard.
39. Where the evidence of Mr Yohannes, but especially, Mr Woubishet conflicted with that of the claimant we preferred to rely upon the account of the claimant as we regarded this as a truthful and accurate version of events. We were reluctant to accept many aspects of the respondent's evidence unless this was corroborated by contemporaneous documents.

Our findings of fact

40. We set out the following findings of fact, which we determined were relevant to finding whether or not the claims and issues identified above have been established. We have not determined all of the points of dispute between the parties, merely those that we regard as relevant to determining the issues of this case as previously identified. When determining certain findings of fact, where we consider this appropriate, we have set out why we have made these findings.
41. In assessing the evidence and making findings of fact, we placed particular reliance upon contemporaneous documents as an accurate version of events. We also place some emphasis (and drew appropriate inferences) on the absence of documents that we expected to see as a contemporaneous record of events. Witness statements are, of course, important. However, these stand as a version of events that was completed sometime after the events in question and are drafted through the prism of either

advancing or defending the claims in question. So, we regard them with a degree of circumspection as both memories fade and the accounts may reflect a degree of re-interpretation.

42. The claimant commenced employment with the respondent on 1 November 2004. The claimant moved to Manchester Airport as a Traffic Sales Manager with effect from December 2018. The claimant moved to set up the Ethiopian Airline operation at Manchester Airport. At this time the claimant's line manager was Mr Michael Yohannes and Mr Yohannes stayed as the claimant's Area Manager until September/October 2022, when he was succeeded by Mr Woubishet. The AM's role was based at London Heathrow.
43. The claimant's assignment to Manchester Airport was confirmed on 4 October 2018 [Hearing Bundle p232-233]. This was said to be with effect from 1 December 2018, and the TSM assignment was said to be "for a maximum period of 4 years renewable every year based on annual performance (appraisal)". We have not been provided with copies of the claimant's annual appraisal, so we do not believe that any formal process was undertaken. Furthermore, the claimant's assignment was not formally renewed in any of the years after the 2018 so the respondent failed to follow its own contractual obligations. The assignment letter provided for the assignment to be cut short with a return to the "home base", but, surprisingly, it did not make provision for what would happen after the completion of the fixed term appointment, including whether this was to be temporarily extended.
44. We accept the claimant's evidence that from around October 2018 Mr Yohannes gave him assurances that the TSM role could be made permanent or, at least, that it was likely to be kept longer than 4 years. The claimant's position was unique. He was a "local employee" and, indeed, he the only senior white British employee in the respondent's organisation. The role was new and both Mr Yohannes and the claimant were keen to make it work. The claimant obviously impressed in his previous role sufficiently to be given this opportunity (and he subsequently excelled in this role). He was committed, hardworking and effective so Mr Yohannes was keen to dangle an incentive, both for this role and onward promotion and the claimant was clearly ambitious. Yet, this accord or understanding between the two did not reflect any contractual guarantee by the respondent and Mr Yohannes keen to maintain that ambiguity.
45. The Ethiopian Airlines Human Resources Management Procedures Manual of 1 January 2021, Human Capital Development, Talent Management Procedure section constrained the following [HB94]:
 - 7.3.4.3.3 AMs, MASs, TSMs for Europe/Americas/Asia should be selected from those in Africa unless there is an exception.
46. Prior to the expiry of the fixed term provision, the respondent did not contact the claimant to communicate any extension or alternatively discuss any posting elsewhere, either as a promotion or as a lateral move. On 1 December 2022 the claimant's fixed term assignment expired by effluxion of time. The claimant carried on working as a TSM at Manchester Airport, precisely the same role he occupied before the arrangement was due to end.

47. The claimant was invited to the Annual Area Managers' meeting in Addis Ababa, Ethiopia on 28 May 2022. The role of a sole TSM was regarded to be sufficiently senior to attend Area Manager's meetings for many purposes. The claimant was advised that the meeting was "a forum to introduce the new Executive management team... and is also an avenue to discuss vital areas of our business and operation..." So, the meeting was clearly very important as underlined by the claimant being told that he was "expected to attend the meeting in person" and, again to drive home the point, "Please be advised that no excuse is accepted at all and attendance in person is mandatory" [HB250-251].
48. On 11 May 2022 Taye Ewnetu Taye, Manager HR & Finance Commercial wrote to the claimant to say that the meeting was to introduce the new management to the Field Office Managers (which should have included the claimant at Manchester Airport) and that the meeting would be conducted in a "local language"¹ so the claimant was refused attendance from the meeting [HB250].
49. Although slightly out of sequence, the following year the claimant was similarly invited to the Annual Area Managers meeting, and told to plan accordingly, on 10 May 2023, as he was part of the "all Area Managers & one person TSMs" team [HB307-309]. The claimant chased accommodation and travel arrangements on 25 May 2023 and 30 May 2023, to be told by Medina Alemu that Anteneh, the newly appointed TSM for Manchester Airport, would attend in his place [HB306-307]. In fact, Mr Anteneh Fekadu, the new TSM, started his role on 2 July 2023, 5 weeks or so after this important meeting, so Mr Fekadu's substitution of the claimant would have been quite meaningless, particularly as (so far as well can tell) he had never visited the Manchester office.
50. Insofar as it related to the claimant, the respondent conducted its business affairs mostly in English. The claimant's interaction with his two UK-based Area Managers was always in English. However, business meetings, both in-person and online, would regularly lapse into Amharic and greetings, social chat and the other lubricants would be conducted in Amharic. The only dispute between the parties was how much this occurred, and we prefer the account of the claimant to that of Mr Woubishet and Mr Yohannes that this was a regular feature, although not sufficient to impede how the claimant conducted his duties.
51. In June 2022 the claimant identified some costs savings in respect of baggage labels. The claimant set out his proposal in an email to Tsegaye Wolde and an IT group and he copied this to various other senior managers [see HB256-261]. The total savings that the claimant identified had a potential to reach US\$512,463 per annum. The claimant was commended by Mr Mekonnen the next day by email, although not directly as the email was directed to Mr Wolde and copied to 4 others who had already been included in the email chain. In contrast Mr Yonas Tamrat made a suggestion in respect of land acquisition that saved the respondent 9,590,560 Ethiopian Birr, which Mr Woubishet assessed as £147,000 (and which considerably overstates the amount by over double or more).

¹ Amharic. Amharic is the second most spoken language in Ethiopia, but we believe, it is the most widely understood language in the country.

52. The claimant was entitled to a “transportation allowance”, which was effectively a company car allowance [HB232]. This was equivalent of US\$500 per month. On 25 August 2022 the claimant was advised of a reviewed car policy which reapplied previous standards on car provision. This provided for four types of provision based on Ethiopian Airlines taking ownership or leasing cars on behalf of employees and the email sought information from the recipients in respect of which option they wanted to proceed [HB262-263]. The claimant responded to this and set out the options for three different vehicles on 2 September 2022 [HB264-266].
53. The claimant was chased by Alemayehu Tadele (Sr Sales & Marketing Officer II) on 2 September 2022 [HB264-265] in respect of his company car and this email was copied to three senior officials at Ethiopian Airlines, including Mr Woubishet and Mr Yohannes. The claimant responded and Mr Tadele asked about leasing and finance option for which the claimant replied so at this stage there was no issues raised in the claimant’s secondment coming to an end and this was within three months of that secondment coming to an end.
54. The claimant then heard nothing further for just over two months until he received an e-mail (again to all Area Managers) dated 12 December 2022 from Mr Solomon Mekonnen [HB1102-1103]. The email instructed recipients to proceed with the leasing arrangements. The email attached a spreadsheet [HB1105]. The claimant’s TSM position was referred to at point 15 of the spreadsheet, which, the claimant contended, and we accept, identified him as a Manchester representative and confirmed that he had his own car. In respect of the new car that was to be provided the email quoted “When we have ET Appointee”. We find “ET Appointee” to be “Ethiopian Appointee” and reject the respondent’s contention that this meant “Ethiopian Airlines Appointee” for the reasons we set out below.
55. The 12 December 2022 email was sent to the claimant as he was part of the Area Managers’ group for this purpose. This email ought to have conveyed an inkling that the claimant’s role at Manchester Airport was coming to an end. We read the non-provision of the company car, irrespective that it was phrased in an ostensibly race discriminatory manner, as indicating that the claimant’s appointment may well be coming to an end.
56. The respondent resolved to replace the claimant as the TSM for Manchester on 13 January 2023 by Mr Fekadu, the former Area Manager for Oman [HB445]. The appointment of the claimant’s replacement was said to take effect 1 June 2023, which was 6 months after the expiry of the claimant’s appointment, although we note Mr Fekadu started later. Notwithstanding this document was not signed it indicates a finalised appointment schedule and that the process had been concluded. The form identifies that Mr Anteneh Fekadu, who was the Area Manager for Oman, had been appointed to the claimant’s position as TSM for Manchester. Significantly the claimant’s name appears nowhere on this list. There is not any reference to say that the claimant’s position was to be advised to be confirmed, nor it does not give any other indication of the claimant being a foreign assignment.
57. In any event the claimant was not formally told that his appointment was going to come to an end until 20 March 2023 at an unannounced Teams meeting, which was over 2

months later. The respondents subsequently provided confirmation of this meeting on 17 April 2023 [HB300] almost a month later.

58. The claimant immediately disputed the content of Mr Woubishet account of the meeting [HB298-300]; the duration and what had transpired in the meeting of almost one month earlier. Having heard from Mr Woubishet and the claimant we believe the claimant's version of events and, for the reasons set out above, reject Mr Woubishet version where this contrasts with that of the claimant. We do not believe Mr Woubishet was telling us the truth about what happened at this ten-minute meeting. The claimant's prompt response [HB298-299] represented an accurate account.
59. We regard it as significant that the minute of 20 March 2023 meeting [HB446-447] was drafted in such a way that it emphasised a change of employment terms which was misleading and subsequently manufactured in an attempt to pressurise the claimant into agreeing a variation of his contract. We say this because the "Agenda" quoted in the note was quite clear that the meeting was to discuss the change of employment terms for the claimant, that there was a discussion about the change of employment terms and that the claimant accepted these. The note goes on to refer to a discussion of change of employment terms say in the meeting minutes at point 2 and refers to, at point 3, that after discussion the employee confirmed acceptance of the new position and acknowledged his understanding of the terms of the transfer.
60. The respondent had no contractual authority to impose the transfer on the claimant because they had failed to follow their own contract. Nevertheless, the claimant adopted a constructive approach which recognised the fact that he was committed to this employment, and he wanted to agree a possible resolution. He went away worked out his figures and suggested an alternative salary for a return to Heathrow Airport.
61. The respondent sent the claimant an assignment letter on 1 May 2023 [HB302-303]. The claimant did not agree to these terms. Mr Woubishet declined the claimant's offer in respect of his salary proposals for a move to Heathrow Airport as a Manager Airport Services [HB305]. Mr Woubishet made the claimant a further offer on 8 June 2023 [HB311]. This was to include a 5% pay increase plus 10 days' allowance and a provision for relocating, which the claimant did not accept, so there appeared to be deadlock.
62. The respondent thereupon gave the claimant a final warning [HB315] on 27 June 2023. The respondent did not go through any fair process in the dealing with this warning. The respondent had not investigated the reason for the warning; the claimant was not forewarned about the warning; he was not interviewed. The warning lacked specifics about the claimant's purported shortfalls. The claimant was not offered the right of appeal. This final warning came out of the blue. So far as the ACAS Code of Practice on Discipline at Work is concerned, we cannot find any provision that the respondent seemed to have adhered to in respect of providing for fairness in this this final warning. Having heard the evidence, and in particular a complete lack of credible information and contemporaneous documentation from the respondent we find that this warning was a fabricated attempt to pressurise the claimant into backing down.
63. The next day Mr Woubishet offered the claimant to stay in Manchester as a Senior Sales Representative on the same pay and he was given 2 days to respond [HB316].

We regard this as a demotion and presumably the carrot in response to the stick of the manufactured disciplinary sanction.

64. On 14 July 2023 the claimant sent Mr Woubishet his grievance [HB 333, 335-337].
65. The grievance was responded to and sent to the claimant on 29 August 2023 [HB352, 343-350]. The claimant's grievance was responded to by Mr Joseph Gill of Peninsula. Mr Gill did not attend the tribunal hearing, so we did not hear from him. That said, the grievance outcome did not appear to properly engage with the claimant's complaints. It lacked balance and read as a dismissive and cursory denial response.
66. The claimant resigned on 2 October 2023 and treated himself as constructively dismissed [HB370-371]. He resigned with immediate effect. He complained that Peninsula (who determined his grievance) were not independent but sought to justify the respondent's policies and procedures. He took issue with all points of the grievance outcome.

Our determination

67. In respect of less favourable treatment, we deal with issue 1 and issue 2 together and determine as follows.

Allegation 1(a)

68. The respondent has not identified any other relevant non-attender(s) nor provided documentation in respect of this attendance, so we accept that the claimant was the only Area Manager or TSM denied the opportunity to attend these important meetings.
69. Both meetings were annual Area Managers meetings (which included single-handed TSMs) so the meetings were for senior employees. The purpose of both meetings was for attendees to meet with the most senior managers in the respondent's organisation and be involved in reviewing the past year's performance and developing the company's strategy. The claimant lost the opportunity to meet with the new Group Chief Executive Officer and the top team. The meeting was said to be mandatory, and no other employee was excused from their invitation, so the claimant's non-attendance would have been conspicuous, and he lost a considerable opportunity to network with colleagues. We accept that this networking opportunity was especially important for the claimant as he never had received an overseas posting, and he had a limited sphere of influence.

Allegation 1(b)

70. The phrasing in the agreed list of issues suggests that the claimant was only occasionally permitted to attend company meetings, which we do not accept. So, the allegation is not trivial. The claimant participated in meetings by Microsoft Teams regularly. He also attended face-to-face meetings. He interacted with colleagues in the UK and elsewhere in addition to the types of meeting quoted in allegation 1(a) above (for which he did not attend on those two occasions). As the claimant's performance was so good, we find that the claimant fulfilled his duties without any significant problem.

71. That said, the claimant contended that meetings would regularly lapse into Amharic, and this was confirmed by Mr Yohannes. Mr Woubishet and Mr Yohannes both reported translating at meetings for the claimant when they sat next to him at in-person meetings in Ethiopia. So, there were clearly occasions when the claimant experienced meetings regularly held in Amharic or reverting/switching to Amharic. We do not find this surprising as Amharic is one of the principal languages spoken in Ethiopia and is the working language for the government and much of business in Ethiopia. So far as we could ascertain, this respondent was not a racially diverse employer, particularly at the senior levels. The vast bulk of senior officials were Ethiopian. We accept that it is natural or instinctive that most of the participants at business meetings either in or involving predominately Ethiopian participants would choose to speak the language of the country that they came from and/or were located or worked from and, furthermore, the language of most of the participants. Yet this is a respondent that chose to operate in the UK, where English is the predominate language, and with the attendance of a senior English-speaking employee. The issue for the Tribunal is one of ability to participate in the dialogue and appropriate translation, where necessary.
72. There was no system of providing interpreters for any non-Amharic speakers, there was no formal buddying system. There was an ad hoc arrangement which relied on the courtesy of colleagues. The fact that there were no formal complaints and specific incidents quoted suggests to the tribunal that this casual approach allowed the system functioned – to a degree. Nevertheless, in the context of this employment, we accept that the claimant was denied the normal social lubricants that aided proper integration and advancement, and he would have been perceived as, and remained, an outsider. The claimant said, which we also accept, that there were occasions when he was left significantly disadvantaged because he did not know what was going on at various meetings.
73. Mr Yohannes referred to the claimant speaking basic Amharic because he had visited Ethiopia on a number of occasions, he had holidayed there, and he had worked for the respondent for some time. This was not put to the claimant in cross-examination and it was not contained in Mr Yohannes' statement. We would expect the claimant to pick up some words but that does not absolve the respondent of their obligation not to provide for adequate interpretation or language training. Therefore, we find that this allegation did occur, that it was a disadvantage to the claimant. The respondent had never offered the claimant any systematic or adequate translation service, language development opportunities and that the respondent appeared uninterested in addressing the claimant's perceived and/or real disadvantage. We see this allegation more as a reflection than a cause of the respondent's poor treatment of the claimant.

Allegation 1(c)

74. This allegation is broken down into two parts: the provision of the company car and the way it was conveyed. The claimant was not provided with a company car. Other managers were provided with company cars, and the claimant was excluded. The respondent contended that "When we have ET Appointee" mean "an Ethiopian Airline Appointee" or "an Ethiopian Airline Group Appointee". We reject this explanation. It did not make sense to us. The claimant was an Ethiopian Airline employee or appointee, he was not appointed or employed by any third-party company and his employers

knew that he was their appointee. Furthermore, the new arrangements applied to all Ethiopian Airline company's employees so it is difficult for us to understand when the document is aimed towards Ethiopian Airline employees/appointees why it would proceed to say when we have an Ethiopian Airline appointee i.e. a future act.

75. The claimant said that he challenged the comment and the non-provision of the car as race discrimination and was advised to let it go. Nevertheless, he raised this in his grievance a few months later. So, he was clearly discontent with the respondent's comment; he raised it at the time and was told not to pursue it. It was reasonable for the claimant to infer that he was not going to be provided with a car from this spreadsheet, so we reject the contention from the respondent, and from Mr Yohannes in particular, that the claimant was at fault for not following this up. It was quite clear from this document that the car was going to go to the claimant's Ethiopian replacement. The email also refers to the addendum being signed off. So, we determined there was no other way to read this other than the claimant was not going to be given a company car. A key question for the tribunal to resolve was whether the referral to an "ET Appointee" was a referral to an Ethiopian appointee or whether it was a reference to an Ethiopian Airline Group appointee/employee.
76. We did not hear from Mr Mekonnen, the author of the email (and/or the compiler of the spreadsheet, if that was different), and that is a hugely significant omission, notably as we were not given a satisfactory explanation from their non-attendance. We found it was odd that the respondent did not provide the company car to the claimant along with everyone else and then transferred the new car to the new incumbent in due course, particularly as it was around nine months before Mr Fekadu took up his appointment and this could be one less matter for the new Ethiopian appointee to deal with.
77. We were not taken to any documents in a rather extensive hearing bundle where "ET" is shorthand for Ethiopian Airline Group employee. We looked through the bundle ourselves. We note that from page 315 that "ET" appeared with a number and was used to denote a flight number, but this was a discrete reference, so we discounted that. The claimant has used ET to refer to "Ethiopians" in an e-mail where he compared local employees to Ethiopian employees posted to the UK as far back as 17 December 2018 [HB239] and this usage was not queried or challenged. In various emails the respondent referred to the company as Ethiopian Airlines, and so far, as we could see, the respondent did not use ET as an abbreviation for Ethiopian Airlines. The respondent did use the abbreviation "ETG" for Ethiopian Airline Group at page 251 in the hearing bundle. So, as we say above the gaps in the respondent's provision of documentation was troubling. The claimant put this complaint full square in his grievance [HB336], yet the person appointed to resolve the grievance avoided getting to grips with the issue and determined that the claimant was not prevented from requesting a company car if he wanted to, which was Mr Yohannes' point, and is not a credible response.
78. Given that the policy only ever applied to Ethiopian Airline Group employees we are not convinced that there was a need to identify the car recipient as an Ethiopian Airline Group employee/appointee. So, we accept the claimant's interpretation that this document referred to the car being made available to an Ethiopian employee and not an Ethiopian Airline Group or ETG appointee.

Allegation 1(d)

79. The claimant referred to a comparator of Pakistani heritage in his contention that he was subject to an unfair – and discriminatory on the grounds of race – pay structure. We identified the claimant's comparator as Mr Mohamed Bilal Ali who was paid £16,000 to £17,000 more as a Local Sales Manager, based at London Heathrow. Mr Ali's role was solely limited to sales, and his role was significantly different from the role of the claimant. The "Traffic" part of the claimant's Traffic and Sales Manager role dealt with boarding, processing passengers, luggage, dealing with passengers, customer relations, passenger queries, everything to do with passenger travel from two hours before the gate opened until an hour after the aeroplane departed. This was a large responsibility and a significant part of the claimant's role. Mr Ali did not undertake these "Traffic" duties. In addition, Mr Ali had a target of £100million according to Mr Yohannes of which the claimant's target of £15-20million was incorporated. The claimant's role was considerably wider, and significantly different, than that of Mr Ali. Mr Ali was solely responsible for sales and the claimant occupied a dual role with a major part incorporating traffic and airport management.
80. The respondents' grievance outcome [HB342-350] supported the claimant's contention that he was subject to an unfair pay structure. Joseph Gill from Peninsula was superficial, dismissive, illogical and contradictory in his grievance findings. He said that the claimant was remunerated in accordance with Head Office pay structure – where no head office pay structure existed or applied. Mr Gill recommended that the claimant's salary now be structured in accordance with the UK pay structure where again, so far as we could see, none existed. We have not been provided with a copy of any pay structure or any details of pay in respect of Mr Ali, although the claimant did not contest pay differentials between the two. So, whilst we can infer that pay was arbitrary, secretive and possibly unfair, it is not possible to see this as tainted by discrimination on the grounds of race.

Issue 1(e)

81. The savings proposed by Mr Tamrat was considerable and he was rewarded with a company-wide email from ET News on 19 July 2023. Mr Tamrat was provided with a recognition certificate by the Group Chief Executive Officer and was given prize money in the presence of all executive management. The claimant's saving to the company was immensely more yet he was not afforded the same or comparable treatment of his Ethiopian colleague. The claimant's achievement was not publicised; he was not given a recognition certificate; he did not meet the CEO nor was he given prizemoney.
82. We appreciate that the claimant worked some considerable distance from Addis Ababa, but we adjudged his extras savings for the respondent would surely afford the cost of an airline ticket to Addis Ababa for the appropriate reception similar to that given to Mr Tamrat and we note that the claimant did go to Addis Ababa for work on various occasions.
83. The respondent's representatives contended that there were some staff departures from the cost savings team which accounted for the differential treatment between the claimant and Mr Tamrat. Yet we were not provided with any corroboration of this or evidence of the circumstances. The respondent representatives also contended that

by the time the claimant had left his reward had progressed through the approval scheme but again we were provided with no contemporaneous details of this. He was not paid anything after he left. We regarded this as a lame attempt for an after-the-event justification. Given what we say above, this is a respondent, the representatives of whom, we are reluctant to believe without direct contemporaneous corroborative material.

Comparators: issues 3, 4 and 5

84. As stated above, in respect of allegations 1(a), 1(b) and 1(c) the comparators are similar. The claimant was the only person excluded from the meetings of 28 May 2022 and 2-3 June 2023. He was the only TSM (or AM) who did not speak Amharic. He was also the only TSM not provided with the company car. For 1(a) and 1(c) his comparator would be a TSM (or possibly an AM) from a non-white British or Ethiopian background; for 1(b) the possibility of an AM comparator would not apply.
85. For allegation 1(d), Mr Ali was neither a TSM nor an AM so he cannot be advanced as a direct comparator under s23(1) EqA, because his role was as a local sales manager and this role was substantially different. In addition, Mr Ali's was not ascribed a 4-year appointment unlike the claimant, the respondent claimed that he was on a permanent appointment (although again no documentary proof was available). Of huge significance was that the respondent contended, and the claimant accepted, that Mr Ali was, in fact, a British citizen, of Pakistani heritage. His Pakistani heritage may have made a difference had this been a Pakistani or South Asian airline, but we could not see any relevance of his Pakistani heritage to an East African airline. Mr Ali was a *local employee*. He is not a correct comparator. We considered constructing a hypothetical comparator, but the allegation rests on a comparison with Mr Ali. We were unable to construct a hypothetical comparator. This is because the claimant was the only UK employee in a TSM role. Mr Dyke described the claimant as "Mr Manchester" to reflect his role and influence. There was no equivalent "Mr London". The Area Manager who was responsible for London Heathrow oversaw the whole of the UK and Ireland operation and sat above a TSM role and so far as aspects of the claimant's role this was divided between Mr Ali (in small part) and the AM and Airport CAP Manager (in most part). Consequently, allegation 1(d) fails.
86. Regarding allegation 1(e), Mr Tamrat was not referred to as a TSM (or AM) in the Appointment for Foreign Assignment [HB445] nor in the claimant's exhibit 6 document nor in any other relevant correspondence that we could see. So far as Mr Yohannes and Mr Woubishet knew Mr Tamrat worked in head office and the claimant did not think he was a TSM or AM. That said, irrespective of his job, we think that Mr Tamrat could be a direct comparator because TSM were not exempted under any reward scheme and we could not see any exclusions for TSMs from reward or praise for cost savings initiatives.
87. The reason given for the first exclusion (May 2022) was on the basis of language, or Ethiopian in respect of 1a that person would not have been excluded from the meeting. This claimant was excluded for the reason given i.e. he did not understand or could not converse in the local language (Amharic).

Burden of Proof: issues 6 and 7

88. Are there facts from which the Tribunal could decide in the absence of any other explanation that the respondents discriminated against the claimant? If we needed “something more” following *Madarassy et al* then this arose from the respondent’s HR manual [HB94] in which they clearly favoured Ethiopian employees above any other candidates for senior appointments. For a modern transnational company this represents a surprisingly narrow and prejudiced outlook. This, no doubt, accounts for why the claimant was not offered a similar overseas appointment or promotion. The claimant was the only senior manager in the respondent’s organisation from a non-Ethiopian background and nothing in the approach of the respondent’s witnesses indicated an attitude towards him that was free from such racial bias.
89. For 1(a) and the meeting of 28 May 2022, the claimant was excluded from the meeting because it was decided that the meeting would proceed in Amharic and the claimant was the only senior member of staff who did not speak this language. The respondent did not see fit to engage an interpreter or organise some formal buddying scheme as presumably the previous ad hoc arrangements were deemed not to work for this meeting. Or it might even be that the organisers perceived that the new CEO would not want to interact with any non-Ethiopian senior employees. We note that this is a company owned by the Ethiopian government (as identified by Judge Cookson). It is obvious to us that the claimant was thereby discriminated against on the grounds of his race. He succeeds in respect of this part of his allegation of direct race discrimination.
90. The situation differed in respect of 2-3 June 2023 meeting. The reason the claimant was not permitted to attend the Area Managers’ meeting in this instance was because he was serving out the end of his posting. He was due to be replaced by Mr Fekadu. The evidence that Mr Yohannes gave about dates the claimant was actually in post was not correct. The claimant was engaged as a TSM for Manchester Airport on 2 and 3 June 2023 because his replacement had not arrived. However, we determine that it was for this reason, i.e. because he was being “moved on” that the claimant was not invited to this meeting. Therefore, this part of the allegations not upheld.
91. In respect of allegation 1(b), the claimant satisfies the first strand of the *Barton/Igen* test identified above. The respondent has not satisfied us that unlawful discrimination is not permitted. It would be very easy to either engage an interpreter or alternatively nominate a translator for meetings, particularly as most senior Ethiopian employees spoke very good English. However, the respondents did not choose to implement this measure, so we find that they conducted themselves in such a race discriminatory manner.
92. In respect of the company car at allegation 1(c), the claimant applied for (or at least sought) a company car in circumstances where comparable managers were provided with a company car. As stated above, we determine that the claimant was not given the company car because his appointment was due to end. However, we are particularly concerned about the reason conveyed by Mr Mekonnen as he conveyed motives, ostensibly, discriminatory on the grounds of race. So, in respect of the underlying allegation, we do not believe the claimant was denied a car on the grounds of his race but we do believe that this was conveyed to him in a racially discriminatory manner. It was insulting to be told he could not have the car because, in effect, he was

not an Ethiopian, notwithstanding the overriding reason was that his appointment had come to an end. So, the claimant succeeds on this allegation to a limited extent. The respondent should not draw comfort from its partial success on this point because the comment reflected concerning attitudes (if not underlying reasons) that were infected by biases contaminated by views on race.

93. The claimant did not succeed in respect of allegation 1(d), so we analysed this no further.
94. Again, for allegation 1(e), the first strand of the *Barton/Igen* test is satisfied, the respondents accepted that they did not pay the claimant any prize or gratuity or recognise him in any way comparable to Mr Tamrat. The claimant sent the original e-mail on 9 June 2022. This was acknowledged the following day. The claimant worked for the respondent up to October 2023. So, there was no tangible movement towards the claimant's celebration or reward in one year and four months. We deduce from this if there was no effort to reward the claimant in one year and four months then we reject the respondent's contention that this was all in motion. That is a hollow response and an attempt to mislead us. We resoundly reject the respondent's explanation in respect of staff changes. This had no credibility. Therefore, we find allegation proved.

Indirect discrimination

95. The claimant relies upon a PCP under 8a that employees are moved around and assigned to a new base after a four-year period. The fact the claimant was told he was going to move after 4½ years, demonstrates that respondent had little regard to the contractual basis of this policy. However, the claimant was a senior employee and his appointment to Manchester Airport was conveyed to him as on a four-year period. Both Mr Yohannes and Mr Woubishet said that they moved around on a four-year period, and we have seen documentation on foreign assignments [HB445] notwithstanding we heard evidence that this only includes employees who were Ethiopian. A PCP can cover both formal and informal working practices, see *BA plc v Sturmer* [2005] IRLR 862. This was more than an informal working practice so the PCP would appear an accurate description of the respondent's intent or inclination, notwithstanding the respondent did not actually get around to following its own procedure in the claimant's case.
96. In respect of issue 8b, meetings were not always held in Amharic as official meetings were supposed to be held in English, so strictly speaking this is PCP is not fully accurate. Certainly, the important meeting of May 2022 was held in Amharic, so as to introduce the new senior management. Furthermore, we are satisfied that meetings often lapsed into Amharic, as the claimant's colleagues were often able to translate. We accept that speaking Amharic was, at least, an important social lubricant for senior colleagues and the claimant was put to disadvantage because he was unable to converse fully in Amharic.
97. For issue 8c, we were taken to the Ethiopian Airlines Human Resources Management Procedures Manual on staff management [see HB94] and in particular the infamous section 7.3.4.3.3. This provision was illuminating as to how this respondent addressed

staff retention, promotion and the avoidance of race discrimination. This did not appear consistent with their equal opportunities policy [HB91].

98. Final approval, under section 7.3.4.4.2 lay with the group CEO so the apparent race discriminatory approach was enshrined and went all the way to the top of the organisation. So far as we could tell, this PCP was put in place after the claimant had been hired.
99. The claimant needed to show that the PCP was to the disadvantage of staff of white British ethnic staff. No statistics were proffered but we accept the claimant's evidence that he was the only white British employee of TSM grade or above. Given the above PCPs, we accept that the net effect was that there were either no advancement or very limited prospects of advancement for such persons given the terms of the PCPs.
100. The PCP clearly put the claimant at a demonstrable disadvantage particularly as the claimant was not considered for any of the other 17 positions considered for the appointment of foreign assignments in January 2023 [see HB445].
101. Although he disputed the PCPs Mr Akram did not argue that they were proportionate means to achieving a legitimate aim. Mr Dyke contended that the PCPs amounted to indigenisation of personnel, which he said might be understandable but was nevertheless illegitimate as it prejudiced the claimant from proper career advancement. We think that indigenisation overstates a point in which a distinct bias or preference has been shown towards staff from a definitive ethnic origin. To illustrate the point, it would not be acceptable for a British-based airline to treat employees of black Ethiopian ethnic origin in such a way, so it is equally unacceptable for the respondent to treat the claimant in such a manner.
102. Accordingly, we find that the respondent had indirectly discriminated against the claimant.

Constructive dismissal

103. In respect of constructive dismissal, the list of issues is unhelpful because the parties were not able to properly identify the key elements of a constructive dismissal themselves. The basis of the constructive dismissal was clearly set out on the Claim Form [HB2-22] and specifically in the particulars of claim. The claimant contended that the respondent had breached the implied terms of trust and confidence. He relied on the matters raised in the grievance and that the final straw was the dismissal and disregard of that grievance, he referred especially to the alleged discriminatory conduct identified above as alleged direct and indirect discrimination. The claimant contended that he was discriminated against and also, he was issued with a warning letter on 27 June 2023 in respect of flight delays without any substantively fair process being followed and the claimant also referred to unfair pay structure, holding meetings in Amharic, excluding the claimant from meetings and others issues raised under direct and indirect discrimination.
104. We address all of the issues in respect of 14(a) above, save as to the following additional matters.

105. In respect of the claimant's long working hours, we accept the claimant was working seven days a week, almost every single week, due to insufficient staff at Manchester Airport. The claimant worked almost every weekend. He gave very clear evidence, and this was corroborated by Miss Steele who confirmed that the claimant would send e-mails as late as 2am. Indeed, it is significant that Mr Woubishet was keen to employ Miss Steele directly, but Miss Steele declined such opportunity because she feared that her hours would be too long, particularly as she anticipated the claimant's replacement would not want to or be able to work the hours the claimant had worked. She feared that a lot of the claimant's work might come down to her and she would not be able to cope. The respondent denied that the claimant worked long hours. Mr Yohannes' statement referred to time logs, yet the respondents were not able to produce any authoritative time logs to suggest that the claimant did not work the hours he claimed. The respondents' position was quite puzzling. The respondent commended the claimant's commitment and effectiveness, yet they denied that he worked long hours. The claimant was effective in his job because he said he worked the long hours to get through the demands placed upon him. This is consistent with the contemporaneous documents, and we believe the claimant. It was against this background of working hard and working effectively that when the respondent attempted to move the claimant he resisted. His grievances previously bottled up, poured out. Against this hard work and immense dedication Mr Gill's rejection of this strand of the claimant's grievance was as insulting as it was untrue.
106. The claimant's vacation operated differently to other TSM colleagues because, we accept, differing regulation applied to different country's locations. That said the claimant was restricted to take a minimum of five days leave per period and no more than two periods of leave per year so as not to disrupt the local operation. This is a very restrictive leave pattern, in its own right and one which did not appear to apply to colleagues. In addition, claimant did not receive sick leave unlike his Ethiopian colleagues.
107. The claimant had worked for the respondent for 19 years. He was given two options either to stay in Manchester in a downgraded role, albeit with the same salary minus the car and, more importantly, minus the prospects he believed he had as demonstrated by the respondent's stated preference for Ethiopian selection. The alternative was to move to London Heathrow in a downgraded role. We accept that a London position was prestigious within the company, as advanced by Mr Woubishet and Mr Yohannes. However, the role offered in London in comparison with the role the claimant enjoyed in Manchester was nowhere near of the same value. We regard the role at London Heathrow as downgraded because, as Mr Dyke put it, the claimant was, in effect, "Mr Manchester" as far as Ethiopian Airlines were concerned. He set up the Ethiopian Airways operation in Manchester, and he had run that successfully for more than four years. The respondent recognised the job that the claimant had done and had praised him for it. The London job was not of the same status. The claimant did not have the same responsibility and authority, and he did not have the opportunity to shine. Mr Yohannes recognised the claimant's autonomy in Manchester and that was not autonomy he would have enjoyed in London. We are entirely persuaded that, as demonstrated by the claimant, the London role was not financially viable and represented a significant overall cut in pay taking into account the difference in the cost of living.

108. The claimant said that he did not raise a grievance before because such was the culture in the respondent company that grievances would be unwelcome and the fact that the claimant had not hitherto raised a grievance and that the respondents had not dealt with the grievance and the manner in which they dealt with the grievance convinces the Tribunal that this is not a company that responds easily or objectively to internal complaints. The claimant's resistance in towing the line was met with trumped-up, false allegations and a wholly inappropriate final warning. This was not an employer that tolerated dissent.
109. Additionally in the claimant's grievance he highlighted that the minutes of the meeting of 20 March 2023 were totally incorrect in terms of duration of the meeting and the meeting contents and more importantly that the claimant had agreed to take the new post and that he had thanked management for offering it to him. We find that these minutes were not an accurate depiction of this meeting and significantly, that this was both misleading at the time and of such magnitude that it inevitably damaged the relationship between the employer and the employee.
110. Nevertheless, the claimant came forward with a list of cost-of-living issues [HB328] which illustrates he could not afford to relocate to London on his current salary. But this also demonstrates the claimant's willingness to adopt a constructive attitude and negotiate with the respondent. Not giving the claimant what he wants was not a constructive dismissal. However, the respondents had taken away the claimant's job and given this to a colleague from Oman. The claimant's option was to accept the demotion in Manchester or a move to a demotion in London. The claimant sought to make the best of the situation and sought to mollify some of the harsher aspects of his options to no avail.
111. It is significant that the claimant did not feature in the appointment for foreign assignment [HB445] so despite the claimant's 19 years' working hard in an exceptional appointment according to Mr Yohannes, working long hours and his success, he did not feature in the respondents' planning for redeployment. The claimant did not know this at the time because he had not seen that document but it is indicative to the Tribunal how the respondents treated the claimant and the claimant also knew that he was to a large extent "up in the air" until he was found an appropriate position and he sought to make the best of the situation. Although the respondent shifted their position [HB 311], this was not sufficient for the claimant and did not reflect an affirmation of the contract.
112. Given all of the above, the claimant's uncertainty following the expiry of his fixed term appointment, the unlawful discrimination as identified above, the long hours, removal of the claimant's job together with the ensuing uncertainty and the crass rejection of the claimant's grievance represent various fundamental breaches of contract. This was individually and cumulatively conduct which, as *Woods v WM cars* put it was such that the claimant could not be expected to put up with.
113. The last straw was the rejection of the claimant's grievance, this was a fundamental breach of contract in itself, but it was also the respondent's opportunity to put things right and attempt to re-establish a positive working relationship. This did not happen, so the grievance response contributed, fatally, to the shattering of trust and confidence.

114. The respondent did not argue with any force that the claimant had affirmed the contract. The claimant was sent grievance outcome on 29 August 2023, and he resigned on 2 October 2023. This was a little over one month later. The claimant had been employed by the respondent for almost two decades and had devoted huge time and effort into this employment including relocating to a new city. He obviously needed some time to take stock and think through his options so one month in the circumstances did not affirm the contract.
115. We determine that the claimant also succeeds on the constructive dismissal element of his claim.

Approved by Employment Judge Tobin
11 December 2025.

SENT TO THE PARTIES ON

15 December 2025

FOR THE TRIBUNAL OFFICE