



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms. Z Blaszczak  
**Respondent:** Quorn Country Foods Limited  
**Heard at:** Via Cloud Video Platform  
**On:** 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> May 2021  
**Before:** Employment Judge Heap  
**Members:** Mrs. K Srivastava  
Ms. L Woodward

## Representation

**Claimant:** Ms. D Janusz – Employment Adviser  
**Respondent:** Ms. C Jennings – Counsel  
**Interpreters:** Ms. I Zieba (4<sup>th</sup> May 2021 only)  
Ms. A Moranska (5<sup>th</sup> & 6<sup>th</sup> May 2021)

## COVID-19 Statement

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V – fully remote via CVP. A face to face hearing was not held because it was not practicable and no-one requested the same and all issues could be determined in a remote hearing.

# RESERVED JUDGMENT

The complaints of direct discrimination relying on the protected characteristic of race all fail and are dismissed.

# REASONS

## BACKGROUND & THE ISSUES

1. This is a claim brought by Ms. Zaneta Blaszczak (hereinafter referred to as “The Claimant”) against her now former employer, Quorn Country Foods Limited (hereinafter referred to as “The Respondent”) presented by way of a Claim Form received by the Employment Tribunal on 19<sup>th</sup> December 2019. The claim is one of direct discrimination relying on the protected characteristic of race and

comprises six acts which are said to amount to direct race discrimination. All acts of alleged discrimination are resisted by the Respondent.

2. The claim was the subject of a Preliminary hearing designed to clarify the claims and the issues which took place on 26<sup>th</sup> March 2020 before Employment Judge Butler. She identified the complaints advanced and made Orders for further information about the comparators relied upon. It did not appear that the Tribunal had received the details of the comparators relied upon as Ordered at the Preliminary hearing and Ms. Janusz confirmed the position in relation to those matters at the outset of the hearing.
3. It also transpired that there was an error in the record of the Preliminary hearing at paragraph 2.5 as to the precise allegation that the Claimant in fact advances and the date that that alleged event took place. Following discussion it is agreed that the following complaints are advanced:
  - a. That on 19<sup>th</sup> September 2019 Simon Ralph, the Respondent's Production Manager, offended and demeaned the Claimant by saying "you are useless and blind" and by throwing food products at her. In respect of this complaint the Claimant relies on three comparators – Cornel, Tincuta and Anna-Maria who are all Romanian nationals;
  - b. That in or around May 2019 Simon Ralph shouted, offended and demeaned the Claimant by saying "You are blind! As always, you cannot see anything! You are lazy and never check anything!" The Claimant relies on the same three comparators as those set out above;
  - c. That Simon Ralph mocked the Claimant's English proficiency by making her repeat phrases and corrected her when she was engaged in conversation with other members of the team. The Claimant relies on Cornel (a Romanian national) and Sasha (a Bulgarian national) in respect of for this complaint;
  - d. That the Claimant had asked Simon Ralph to provide her with a label to put on some products but whilst she had asked for a label in the singular he would have been aware that she needed a considerable number of labels but he only provided her with one because that was all that she had requested. The Claimant relies on a hypothetical comparator in respect of this complaint;
  - e. That the Claimant was given a disciplinary warning in August 2019 following a verbal complaint by another member of staff, Derek Martin, without being able to have the opportunity to explain herself and then being forced to sign a record of the meeting which she did not understand. The Claimant compares herself with Joyce, a Ghanaian national in respect of this aspect of the claim; and
  - f. Simon Ralph ignoring a complaint that she made about another member of staff, Monika Gruszczuk, in or around June 2019. In respect of this aspect of the claim the Claimant relies on Derek Martin, a British national or a hypothetical comparator in the alternative.

4. The Respondent had produced a list of issues following the Preliminary hearing which suggested that one of the matters that we had to determine was whether the Claimant's Polish nationality amounted to a protected characteristic. Given the provisions of Section 9(1)(b) Equality Act 2010 we raised with Ms. Jennings whether that was in fact an issue that required determination. She helpfully confirmed that it was not and that was not in issue.

### **THE CLAIMANT'S POSITION**

5. The Claimant contends that during the course of her employment with the Respondent (or at least from May 2019 onwards) she was subjected to direct discrimination because of the protected characteristic of race. She contends that she was treated less favourably than other members of staff were or would have been treated and that the reason for that difference in treatment is her nationality - namely because she is Polish - and/or that that treatment was on account of a lack of proficiency in the English language and the frustration of Simon Ralph about that.

### **THE RESPONDENT'S POSITION**

6. The Respondent contends entirely to the contrary.
7. The Respondent's position is that race was not a factor in any of the treatment of which the Claimant ultimately complains or otherwise that those matters did not occur as she contends that they did. It is also denied that the Claimant's grasp of English had anything to do with the matters which form the basis of the claim.
8. With regard to certain of the discrimination complaints, the Respondent also contended that the Employment Tribunal had no jurisdiction to entertain them as the Claimant had presented them outside the appropriate statutory time limit provided for by Section 123 Equality Act 2010.

### **THE HEARING**

9. The claim was listed for 3 days of hearing time which took place between 4<sup>th</sup> and 6<sup>th</sup> May 2021. It was originally set down for an attended hearing at the Leicester Employment Tribunal but the preference of the parties in view of the ongoing Covid-19 pandemic was for it to proceed via CVP.
10. It was determined that the hearing was suitable to proceed in that manner and so the claim was conducted as a fully remote hearing which enabled it to proceed in spite of the Covid-19 pandemic.
11. It is fair to say that, on the second day particularly, we had a considerable number of technical issues arising during the course of the hearing. However, we are satisfied that those were overcome and that they did not affect either the evidence or the fairness of the hearing.
12. However, whilst we were able to conclude the evidence, submissions and deliberations on the third day with time to give an ex tempore Judgment, as a Tribunal we elected not to do so on the basis that we could not be satisfied that it could be effectively delivered and without disruption over CVP using an interpreter (despite her considerable proficiency) and in view of the ongoing

technical issues. We therefore notified the parties that we would reserve our decision and the patience of the parties in awaiting our Judgment has been appreciated.

### **WITNESSES**

13. During the course of hearing, we heard evidence from the Claimant on her own behalf. In addition to her evidence, we also heard from two of the Claimant's former colleagues with the Respondent, Paulina Wiewiora and Piotr Wiewiora.
14. We also heard from the following individuals on behalf of the Respondent:
  - Simon Ralph – Factory Manager for the Respondent and the line manager of the Claimant at the material time;
  - David Ralph – the Respondent's Production Director who was appointed to deal with the Claimant's grievance; and
  - Monika Gruszczyk – a former colleague of the Claimant whilst she was employed by the Respondent and who was the subject of part of the Claimant's grievance.
15. We make our observations in relation to matters of credibility in respect of each of the witnesses from whom we have heard below.
16. In addition to the witness evidence that we have heard, we have also paid careful reference to the documentation to which we have been taken during the course of the proceedings and also to the written and oral submissions made by Ms. Jennings on behalf the Respondent and the oral submissions of Ms. Janusz on the Claimant's behalf.

### **CREDIBILITY**

17. One issue that has invariably informed our findings of fact in respect of the complaints before us is the matter of credibility. Therefore, we say a word about that matter now.
18. We begin with our assessment of the Claimant. We did not consider the Claimant's evidence to be entirely credible. Particularly, we considered that she significantly embellished her evidence during the course of the hearing before us. That most notably manifested itself in what she said that Simon Ralph had called her. For the first time she alleged that he had said that she was "handicapped" which, as we remark further below, is so offensive a term to use in the circumstances that she described that we did not accept that she would not have made reference to it before. We therefore concluded that the Claimant was exaggerating her account for the purposes of these proceedings. We deal with other areas of evidence that we found to be unsatisfactory further below.
19. We similarly found issue with the evidence of Simon Ralph and we did not consider him to be entirely credible either. Particularly, his evidence in his witness statement set out that he had never shouted. He was asked at the outset of his evidence whether that statement was correct and he confirmed that it was. Despite that he accepted in cross examination that he did shout. He could not provide any convincing explanation as to why his statement was entirely different to his oral evidence.

20. We had no issues with the evidence of Mr. and Mrs. Wiewiora who we found gave straightforward, honest and credible evidence. Similarly, we did not find any particular issues with regard to the evidence of Monika Gruszczyk although it is clear that she and the Claimant did not get along at all during the time of their employment by the Respondent and both appeared to dislike each other.
21. We were not impressed with the evidence of David Ralph on behalf of the Respondent. He showed no insight into how shambolically he had handled the Claimant's grievance and we were far from convinced as to the credibility of his evidence that he had in fact undertaken any investigation at all.

### THE LAW

22. Before turning to our findings of fact, we remind ourselves of the law which we are required to apply to those facts as we have found them to be.
23. The Claimant's discrimination complaints all fall to be determined under the Equality Act 2010 ("EqA 2010) and, particularly, with reference to Sections 13 and 39.
24. Section 39 EqA 2010 provides for protection from discrimination in the work arena and provides as follows:

*(1) An employer (A) must not discriminate against a person (B)—*

*(a) in the arrangements A makes for deciding to whom to offer employment;*

*(b) as to the terms on which A offers B employment;*

*(c) by not offering B employment.*

*(2) An employer (A) must not discriminate against an employee of A's (B)—*

*(a) as to B's terms of employment;*

*(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*

*(c) by dismissing B;*

*(d) by subjecting B to any other detriment.*

*(3) An employer (A) must not victimise a person (B)—*

*(a) in the arrangements A makes for deciding to whom to offer employment;*

*(b) as to the terms on which A offers B employment;*

*(c) by not offering B employment.*

*(4) An employer (A) must not victimise an employee of A's (B)—*

*(a) as to B's terms of employment;*

*(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;*

*(c) by dismissing B;*

*(d) by subjecting B to any other detriment.*

*(5) A duty to make reasonable adjustments applies to an employer.*

*(6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay—*

*(a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or*

*(b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.*

*(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B's employment—*

*(a) by the expiry of a period (including a period expiring by reference to an event or circumstance);*

*(b) by an act of B's (including giving notice) in circumstances such that B is entitled, because of A's conduct, to terminate the employment without notice.*

*(8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.*

25. Section 13 EqA 2010 provides that:

*“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”.*

26. It is for a Claimant in a complaint of direct discrimination to prove the facts from which the Employment Tribunal could conclude, in the absence of an adequate non-discriminatory explanation from the employer, that the employer committed an unlawful act of discrimination (see **Wong v Igen Ltd [2005] ICR 931**).

27. If the Claimant proves such facts, the burden of proof will shift to the employer to show that there is a non-discriminatory explanation for the treatment complained of. If such facts are not proven, the burden of proof will not shift.

28. In deciding whether an employer has treated a person less favourably, a comparison will in the vast majority of cases be made with how they have treated or would treat other persons without the same protected characteristic in the same or similar circumstances. Such a comparator may be an actual comparator whose circumstances must not be materially different from that of the Claimant (with the exception of the protected characteristic relied upon) or a hypothetical comparator.

29. Guidance as to the shifting burden of proof can be taken from that provided by Mummery LJ in **Madarassy v Nomura International Plc [2007] IRLR 246:**

*“Could conclude’ ..... must mean that ‘a reasonable tribunal could properly conclude’ from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of ..... discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory ‘absence of an adequate explanation’ at this stage .... the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like..... and available evidence of the reasons for the differential treatment.*

*The absence of an adequate explanation for differential treatment of the complainant is not, however, relevant to whether there is a prima facie case of discrimination by the respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant. The consideration of the tribunal then moves to the second stage. The burden is on the respondent to prove that he has not committed an act of unlawful discrimination. He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim.”*

30. The protected characteristic need only be a cause of the less favourable treatment but need not be the only or even the main cause. A Tribunal when considering the cause of any less favourable treatment will be required to consider that question having regard not only to cases where the grounds of the treatment are inherently obvious but also those where there is a discriminatory motivation (whether conscious or unconscious) at play (see **Amnesty International v Ahmed [2009] ICR 1450.**)

### **The ECHR Code**

31. When considering complaints of discrimination, a Tribunal is required to pay reference to the Equality & Human Rights Commission Code of Practice on Employment (2011) (“The Code”) to the extent that any part of it appears relevant to the questions arising in the proceedings before them.

### **FINDINGS OF FACT**

32. We ask the parties to note that we have only made findings of fact where those are required for the proper determination of the issues in this claim. We have inevitably therefore not made findings on each and every area where the parties are in dispute with each other where that is not necessary for the proper determination of the complaints before us and, particularly, it has not been necessary for us to address a number of allegations of alleged treatment by Simon Ralph that appeared for the first time in the Claimant’s witness statement.

33. The relevant findings of fact that we have therefore made against that background are set out below. References to pages in the hearing bundle are to those in the bundles before us and which were before the Tribunal and the witnesses.

The Respondent and the Claimant's employment

34. The Respondent is a producer of baked goods such as cakes, cookies and muffins and has a factory unit in Coalville, Leicester. It has a workforce predominantly made up of foreign nationals with, at the time that the Claimant presented her Claim Form, the bulk of the 21 strong workforce, some 11 members of staff, being Polish nationals (see pages 99 and 100 of the hearing bundle). In addition to Polish workers other members of the workforce are or have been from Romania, Bulgaria, the United Kingdom and Ghana. Other than a core workforce, it would appear that the Respondent has a high turnover of staff and, as we shall come to below, some staff members stay only a few days before leaving without notice.
35. The Claimant joined the Respondent as a Production Operative on 2<sup>nd</sup> July 2018 and remained in their employment until 27<sup>th</sup> September 2019 when her employment terminated by reason of her resignation.
36. At the material time with which we are concerned, the Claimant's line manager was Simon Ralph, the Respondent's Factory Manager who is responsible for production in the factory. Mr. Ralph is assisted in that role by Rafel Boinski who is the assistant manager. Mr. Boinski is a Polish national with whom Mr. Ralph has a good working relationship and whose opinion, it was clear from his evidence, he values.
37. The Claimant did not report any inappropriate or poor behaviour from Simon Ralph until May 2019 and we did not accept her evidence, which was not referred to in her witness statement or previously, that he had been cold with her from the outset of her employment. That evidence, it seems to us, was to plug a difficulty as to why Mr. Ralph would only take against her because of her nationality 10 months after her employment commenced.
38. However, we accept the Claimant's evidence that there were occasions, most notably in May 2019 and 19<sup>th</sup> September 2019, when Mr. Ralph shouted at her. Whilst the position of Simon Ralph in his statement denied that he had shouted at all, that was clearly not the case as he accepted in his evidence before us that he had done so. We did not accept his account as to why he had initially denied in his statement shouting at all as it was somewhat nonsensical. We took the view that he had been clearly trying to downplay any inappropriate conduct on his part at all.
39. However, we did not accept entirely what the Claimant told us in this regard either and we considered her account of what exactly was said by Simon Ralph to have been exaggerated. She contended that Simon Ralph had called her blind, lazy and useless as we have set out above. However, that was embellished during her oral evidence to say that he had also called her an idiot and handicapped. None of that had ever been suggested previously and in respect of the latter alleged comment, it is something that would clearly have



stuck in the mind had it been said because it is highly offensive on so many levels given the way in which she says that it was said.

40. We find it more likely that Mr. Ralph shouted at the Claimant and said either in words or terms that she was “lazy” and “useless” because we are satisfied that he did in fact believe that she was. In this regard, his evidence was that she would slow production either by slowing the line herself or asking others to do so and that she was frequently making mistakes and much more so than other members of staff. We accepted that the Claimant was slower than other members of staff and we find that Mr. Ralph did view her as being lazy.
41. It is clear that maximising production and production times was a matter that was central to Mr. Ralph and that he is intolerant of staff or things that slow the process down. He was not tolerant of those who made mistakes and had far less issue with workers such as Monika Gruszczuk who worked hard and did not make errors. Indeed, Mr. Ralph had a good working relationship with Ms. Gruszczuk and we accepted her evidence that he had never shouted at her. Ms. Gruszczuk is also a Polish national.
42. In the May 2018 incident Mr. Ralph became aware that there was a defect on a number of products. He felt that the Claimant should have noticed this much sooner and we find it likely that she has downplayed the incident and how many products had been packed defectively before she noticed it when giving her evidence before us. As the products would have to be repacked that would delay production and we are satisfied that Mr. Ralph was angry about that and he shouted at the Claimant using words to the effect that she was lazy and did not check things.
43. Whilst Mr. Ralph’s evidence on his shouting was that he would not shout at people but at the “situation”, we did not accept that. In all events, it is not clear how a member of staff having made a mistake and who was faced with shouting from Mr. Ralph would possibly have known that that was directed at a “situation” and not at them.
44. However, there is no evidence to point to the fact that the fact that Simon Ralph shouting at the Claimant – wholly inappropriate as that was – had anything to do with the fact that she was Polish or that she was not proficient in English. Indeed, the evidence of Mr. Wiewiora – who we considered to be one of the two most credible witnesses from whom we heard – was that Mr. Ralph shouted at “almost all employees” and that his conduct in that regard was directed at “more or less everybody” and that his actions were “random”. That is not indicative of the picture painted by the Claimant that only Polish nationals were shouted at or that she was shouted at because she was Polish. Moreover, the evidence of both Mr. and Mrs. Wiewiora was that the latter was never shouted at and neither was Monika Gruszczuk. Both Mrs. Wiewiora and Ms. Gruszczuk are Polish nationals and both were considered as good workers.
45. Whilst the evidence of Mrs. Wiewiora was that Mr. Ralph did not like the Claimant, she was not able to say why she thought that was and she gave no indication that it was because she was Polish or related to her language skills. Her evidence was that Mr. Ralph had never treated her badly or shouted at her.

46. It is clear to us from that evidence, and also the evidence given by Simon Ralph, that the shouting manifested itself when there were errors in production and was directed at those who he perceived – rightly or wrongly – to be responsible for them. On a number of occasions in his evidence Mr. Ralph referenced his concerns about a cessation or slowing down in production and how errors cost the Respondent money.
47. We find that his ire was directed at those who he considered had made mistakes, irrespective of their nationality. That included having taken Cornel, a Romanian national, to task for errors which he had made. We accept that that included an occasion when Mr. Ralph had initially believed the Claimant had been to blame because she was working on the production line at the time that the mistake came to his attention whilst Cornel was elsewhere. When Mr. Ralph discovered that Cornel was responsible we accept that he spoke to him about it and made plain that mistakes costs the Respondent money and that it could not happen. The Claimant accepted in cross examination that she would not have known if Cornel had been spoken to or not.
48. There is no evidence before us that the Claimant's other comparators, Tincuta and Anna-Maria, ever made any mistakes and we did not accept her vague account in her witness statement that they had made mistakes when packing muffins in either July or August 2018 or her equally vague oral evidence in cross examination. Moreover, the Claimant accepted in her evidence that she would not have known if others had made mistakes and, if so, if they had been taken to task by Mr. Ralph for that. We accepted his evidence that if there had been mistakes made then he would have reprimanded them. Given his emphasis on production, we have little doubt that that would have been the case.
49. We should observe here that our findings above do not condone the actions of Simon Ralph. Indeed, far from it. We are frankly appalled that someone in a management position would consider it appropriate to shout at members of staff in such a way. We have considerable sympathy with the Claimant and others who found themselves on the wrong end of Mr. Ralph's temper. It is perhaps little wonder that a number of members of staff leave after a short period of time and without working their notice having concluded that the job was "not for them". It is concerning that Mr. Ralph gave that evidence without any apparent insight that his actions may well be the reason why staff reach the conclusion that the job was "not for them".
50. We should also say that although we accept that Simon Ralph shouted at the Claimant on 19<sup>th</sup> September 2019, we do not accept that he threw muffins at her as she alleges. On that date it is common ground that an error, whether caused by the Claimant or not, resulted in muffins that had been put through the production line and packaged having to be repackaged.
51. We find it more likely than not that in shouting at the Claimant Mr. Ralph called her "useless" or words to that effect. As we have already said above, we do not accept that he threw anything at her. Her evidence as to what happened in that regard was unsatisfactory and changeable. The first impression that she gave was that Mr. Ralph was deliberately throwing products at her body so that they hit her but that later changed that the products that he was throwing into a basket in close proximity to her had hit her hands. We find it more likely that Mr. Ralph was sorting through the items of product that the Claimant had packaged so see

which needed to be repacked and he had tossed those which had errors into a re-wrap basket located near to her. We do not find that he threw any products at the Claimant as she alleges but we find it more likely than not that he was angry and tossed them in temper. Again, that was plainly inappropriate conduct for a manager.

### Proficiency in English

52. The Claimant contends that Mr. Ralph would mock her use of the English language and correct her. She also contends that the fact that she had poor English language skills was the reason that he did not like her and shouted at her and the like.
53. We do not accept that. We are satisfied that the Claimant did not have poor English language skills as she contended and we accepted Mr. Ralph's evidence that he did not, in the main, have difficulties in understanding her. If he did or if he could not hear properly because the factory environment was noisy then he would have asked her to repeat what he had said so that he properly understood but we accept that that was not a common occurrence.
54. Indeed, we find that her language skills were much more proficient than a number of other members of staff and that included Mrs. Wiewiora and Monika Gruszczyk. Both of course gave evidence, which we accepted, that Mr. Ralph had no issue with them and never shouted at them.
55. We also accepted the evidence of Mr. Ralph that much of the workforce are not proficient in English and this is not and never has been an issue. Indeed, there are member of staff who act as interpreters for others when the need arises and for Polish members of staff this is often Mr. Boinski or the Respondent's Technical Manager. The Claimant accepted in cross examination that she had never needed someone to interpret for her at work and we accept that she was more proficient in English than her evidence suggested. She also accepted that she did not know what happened with other employees and whether Mr. Ralph asked them to repeat things or not.
56. We also accepted Mr. Ralph's evidence that members of staff will often ask him for assistance and if they are pronouncing things correctly and that that is the only time that he would correct what anyone was saying. We also accepted that he is also learning Polish so that he can communicate more effectively with the workforce and that Polish members of staff also help him by correcting his pronunciation.
57. The Claimant contended that she was regularly mocked by being asked to repeat phrases and corrected whilst in conversation with others, but her witness statement was silent on examples of when she says that Mr. Ralph did that. When asked about that by the Tribunal her evidence only provided detail of two incidents when she says that that took place despite her indication in cross examination that it had been the case on many occasions.
58. The first of those was that she was asked to repeat what she had said when she asked to go home because she was unwell and the second was that Mr. Ralph had interrupted her conversation with another member of staff and corrected her pronunciation of the word "plum". We found it somewhat unusual that that

evidence only came out for the first time at the hearing despite the Claimant at all times being professionally represented.

59. We accept the evidence of Mr. Ralph that when members of staff ask if they can go home he asks them if they are saying that they want to go home so that there can be no suggestion that the Respondent has sent them home and therefore might be liable to pay them. Whilst we did have some doubts about the credibility of some aspects of Mr. Ralph's evidence, we accepted this part and, particularly, it chimed with our views of him as someone who values the fiscal position of the Respondent rather more than the welfare of his workforce. We accept that this is what happened to the Claimant when she said words to the effect "I go home" and Mr. Ralph asked her "are you saying that you are going home" or words to that effect.
60. As to the "plum" incident we did not accept that that happened and reject the Claimant's evidence on that point as further embellishment.
61. We find it more likely than not that the Claimant had seen Mr. Ralph correcting others, at their request, and has embellished the position with regard to her asking to go home for these proceedings. The Claimant and others described Mr. Ralph as being "pretentious" and that would fit with him being seen to correct others.
62. We do not accept that Cornel or Sasha often mispronounced words and spoke English poorly but that Mr. Ralph laughed and joked with them about it. The Claimant's oral evidence changed on that and that it was the case that Mr. Ralph would ask them for clarification but in a nicer tone than he would use for her.
63. Aside from the fact that we have no details about any specific incidents involving Sasha and Cornel, that simply does not fit with the Claimant's central contention that Mr. Ralph took issue with her because she was not proficient in English. If his frustrations were about her communication skills then we cannot see that those frustrations would not also manifest themselves with other staff from other nationalities who had a poor grasp of the English language.
64. Both the Claimant and Mrs. Wiewiora gave evidence about Mr. Ralph mocking another Polish member of staff, Tomaz, when he did not understand what he had said. The evidence on that point was vague, however, and we were not able to properly get to the bottom of what it is that was said to have happened. We are satisfied, however, that Tomaz is a longstanding member of staff having worked for the Respondent for over 11 years and that he had a good working relationship with Mr. Ralph. We do not find that this lends weight to a suggestion that Mr. Ralph has issue with those who are not as proficient in English or that he dislikes Polish nationals.

#### The Claimant's complaint about Monika Gruszczuk

65. In or around June 2019 the Claimant spoke to Mr. Ralph about Monika Gruszczuk. That complaint was that Ms. Gruszczuk kept criticising her work and she did not think that that was right because she was her peer rather than a supervisor. We are satisfied that the criticism in that regard was because the Claimant was a slower worker and made mistakes. Ms. Gruszczuk was longstanding member of staff, who often took a lead on the floor, and was vocal

about her view that the Claimant was slow and made mistakes. The Claimant did not like her criticism and we find that there was some degree of animosity between them as a result.

66. After hearing what the Claimant had to say Mr. Ralph formed the view that that was a matter of a clash of personalities between the two and he saw no need to take any further action about it. Particularly, he considered Ms. Gruszczuk to be a good worker and that was not his impression of the Claimant and he agreed with the criticisms that had been made of her work. We accept, however, that he spoke to the Claimant about the position and told her that if she wanted to pursue it further then she could raise a written grievance. That was because he did not consider that there was anything in the Claimant's complaint but if she disagreed then as a formal grievance it would go to the next level of management to investigate.
67. Again, we considered this aspect of the Claimant's evidence to be embellished because for the first time before us she also claimed that as well as saying that she needed to put things in writing Mr. Ralph also told her that she needed to have two witnesses to back up her complaints. We do not find that he told the Claimant any such thing.
68. The Claimant did not ask him to take any formal action or raise a grievance. We did not accept her evidence that she was prevented from raising a written grievance because of a lack of English proficiency because we accept that both she and others were aware that grievances could be raised in Polish and translated by the Technical Manager or that Mr. Boinski could have assisted her to formally raise her complaints. We do not find that Mr. Ralph told her that she had to put things in writing knowing that she could not or that there would be difficulties in her doing so because he was also aware of the above forms of assistance and that grievances were often translated.
69. The Claimant compares herself with Derek Martin who she says raised issues with the Respondent about her pace of work and that she was slow. The Claimant's evidence about this matter was muddled to say the least. Her oral evidence was that Derek Martin had not made his complaints to Mr. Ralph as we had originally understood to be the case because he was off work that day. She said that Mr. Martin had complained about the way in which she was working and that she had disagreed with him and he had gone to work elsewhere. It remained unclear who, if anyone, Mr. Martin had complained to as her evidence was that she thought that he had complained to a manager but that position appeared to us to be uncertain. Indeed, she accepted that it was an assumption on her part and that she could not be one hundred percent certain what had in fact happened. Therefore, we are not satisfied that, even if there was a complaint, that was a matter which caused disciplinary action to be taken against her.
70. However, even if the circumstances were comparable there is nothing at all, other than the Claimant maintaining that position, to suggest that her nationality had anything at all to do with the matter.

Disciplinary proceedings in August 2019

71. Mr. Ralph had received complaints about the Claimant's work from other members of staff such as Monika Gruszczyk. Mr. Boinski had also reported his own opinion that the Claimant was a slow worker and that she often made mistakes. That latter report was what prompted the disciplinary action being taken and not any complaint from Derek Martin as the Claimant originally alleged.
72. Mr. Ralph had himself already formed the view that the Claimant was lazy and he therefore determined that he would initiate disciplinary proceedings against her and he met with her on 5<sup>th</sup> August 2019. A record of the disciplinary interview with the Claimant appears in the hearing bundle at pages 90a and 90b. The disciplinary proceedings were not dealt with in a particularly professional or acceptable manner and certainly not in accordance with the ACAS Code of Practice on Grievance and Disciplinary Procedures which the Respondent's management team would do well to familiarise themselves with.
73. The Claimant does not appear to have been given prior notice of the disciplinary meeting nor was she furnished with written details of what it was designed to address. Instead, Mr. Ralph dealt with that explanation during the hearing itself.
74. The following issues were raised at the disciplinary hearing:
  - a. That the Claimant was making mistakes despite having been given instructions by Mr. Ralph;
  - b. That Mr. Ralph had been told that the Claimant had informed other members of staff that she worked to her own pace rather than the pace of the work;
  - c. That she did not keep up with the work in the same way that other staff did; and
  - d. That she was taking too many drink breaks as Mr. Ralph regularly saw her in the canteen.
75. The Claimant was asked for her comments in relation to Mr. Ralph's observations. She commented that she understood what had been said but that it was "normal" and that she considered that there were too many supervisors on the shop floor.
76. We are satisfied that the Claimant did understand, contrary to what she originally asserted, what was being said during the course of the hearing and that she did have an opportunity to comment. Moreover, if the Claimant had had any difficulties in understanding what was being said then she could have asked Ms. Balicka who was present as an interpreter if one was required. We accept that she did not need to ask Ms. Balicka to assist her during the hearing and she accepted that position in cross examination.
77. The Claimant was told by Mr. Ralph at the hearing that "things must improve". She accepted that he asked her if she understood what had happened at the hearing. If there was therefore anything that she did not understand that was her opportunity to say so, but she did not in fact ask anything.
78. The outcome of the disciplinary hearing was that the Claimant was given a verbal warning. We were not satisfied that she received a written record of the

disciplinary interview which was completed by Mr. Ralph but he certainly did not write to her afterwards to confirm the outcome and she did not have specific attention drawn to her right of appeal. That was only mentioned in standard small type at the start of the disciplinary interview notes and as she did not receive a copy, the Claimant would not have been aware of the position.

79. The Claimant signed the note of the disciplinary interview. We did not accept her evidence that she was forced to do so or that any comment was made that she would not be allowed to leave the meeting until she had done so.
80. The Claimant compares herself with a Ghanaian national, Joyce, who she says also made mistakes but was not disciplined. However, we accept the submissions of Ms. Jennings that Joyce is not an appropriate comparator as she was only in her probationary period rather than a more experienced operative like the Claimant and during that time Mr. Ralph provides some leeway for the new member of staff to be trained and learn the job so that disciplinary action was not appropriate.
81. Moreover, despite the somewhat shambolic way in which the disciplinary proceedings were conducted, there is no evidence at all that that had anything to do with the Claimant's nationality other than her insistence to that effect. We are satisfied that the reason that the warning was given was because Mr. Ralph did view the Claimant's performance as being poor and that was of concern to him given his emphasis on production being maximized at all times. We are satisfied that any experienced production operative who Mr. Ralph perceived as being deficient in their performance and who was slowing down production on a regular basis as he thought that the Claimant would have been treated in the same way.

#### Labels incident

82. Although we have no date of this particular incident, there was an occasion when the Claimant went to ask Mr. Ralph for some labels for a particular product on which she was working. Those labels are affixed to the boxes of products once they have been packaged. It is common ground that the Claimant asked for a label in the singular. Mr. Ralph was responsible for printing and distributing the labels to all members of staff.
83. The Claimant contends that Mr. Ralph would have been aware that she needed a number of labels and that only gave her one to mock her for her lack of proficiency in English. We do not accept that. We are satisfied that Mr. Ralph had no idea that the Claimant needed more than one label and that it was not uncommon for a single label to be asked for in certain production circumstances. Indeed, the Claimant accepted in cross examination that on occasions a single label might be required. Mr. Ralph, we accept, gave her one label because he thought that that was what she needed because that is what she had asked for.
84. We consider that the Claimant has also embellished this aspect of her evidence as her witness statement referred to Mr. Ralph having given her the label with a "malicious smile". That was not in the Claimant's grievance (which we say more about below) nor was it referred to in her Claim Form. We find that that aspect of the matter was embellished to support her contention that Mr. Ralph had acted deliberately.

85. Moreover, we also found the Claimant's evidence to be embellished as to a matter that she raised for the first time under cross examination that Mr. Ralph had returned to her after a short time and placed a roll of labels on the table saying that she should have asked for more. That was not in the Claimant's grievance, her Claim Form or her witness statement and it is a surprising and unexplained omission. Although Ms. Wiewiora was present during that incident she did not recall Mr. Ralph having returned to place more labels on the table and we do not find that he did so. We consider that again the Claimant has embellished her story to bolster her position that Mr. Ralph was acting maliciously and deliberately.
86. Finally, we note that if Mr. Ralph had acted deliberately in giving the Claimant a single label then that would have slowed production. Given his emphasis on the speed of production we simply do not accept that Mr. Ralph would have done that.

#### The Claimant's resignation and grievance

87. Following the incident on 19<sup>th</sup> September 2019 the Claimant did not return to work. She visited her General practitioner and we understand that she was told to complete a form online to certify herself as being unfit for work, although we were not able to get to the bottom of what that online form was said to be.
88. The evidence of Simon Ralph was that the Claimant did not report her sickness absence to him. Despite that, he took no steps to contact her to find out why she had not reported into work. His evidence was that he believed that she had left employment, although she had given no indication on 19<sup>th</sup> September that that was going to be her intention. Mr. Ralph's evidence was that he would not contact staff who did not attend work because the onus was upon them to contact the Respondent and he would just assume that they had left because employees often left without working their notice. He gave the example of a recent member of staff who had left employment after six days and had said that they were leaving immediately because the job was not for them.
89. However, that is a quite different situation from a member of staff who had been employed for well over a year who had failed to attend work with no previous indication that she did not intend to return. We find it quite astounding that Mr. Ralph took no steps to find out what had happened and if there were any welfare issues in respect of the Claimant. Again, we find that to be a manifestation of the focus of Mr. Ralph being entirely on production and without considering employee welfare.
90. On 27<sup>th</sup> September 2019 the Claimant wrote to the Respondent to resign from employment with immediate effect. At the same time she also wrote a detailed letter of grievance (see pages 92 to 99 of the hearing bundle). It is notable that the grievance letter made complaints about both Mr. Ralph and Monika Gruszczyk and she raised that the latter often made comments that she made mistakes and did not work fast enough. We are satisfied that that was Ms. Gruszczyk's genuine view of the Claimant's performance. Moreover, the Claimant also accepted in her grievance letter that she made mistakes (see page 94 of the hearing bundle).



91. Although the way in which that grievance was handled is not relevant to the treatment of which the Claimant complains in these proceedings, we cannot let it pass without comment that it was nothing short of shambolic and, indeed, it is the most poorly handled grievance process that this Tribunal, who collectively have a number of years of experience, have ever come across.
92. First of all, the grievance was passed to David Ralph, the Production Director, to deal with. Whilst David Ralph indicated that he believed this to be appropriate because the grievance was about his direct report and he was familiar with the staff in the production department, it completely overlooked the fact that the grievance was a complaint about his own son. Mr. Ralph had not and did not appear to countenance that he could not possibly be seen as being independent in those circumstances as required by normal principles of fairness and the requirements of the ACAS Code of Practice on Disciplinary & Grievance Procedures. Moreover, he also did not appear to have given any thought that those who he said that he had interviewed in connection with the grievance (although in fact we are not satisfied that he had in fact interviewed anyone) might well be reluctant to criticise his own son in their accounts to him.
93. Moreover, whilst David Ralph's evidence was that he had had training in dealing with grievances and was following an appropriate procedure, it was impossible to discern what that procedure in fact was. Whatever procedure Mr. Ralph may have thought that he was following, it was certainly not the Respondent's grievance procedure nor was it ACAS Code compliant.
94. There were other glaring issues as to the way in which the grievance was dealt with which were entirely inappropriate and those included the fact that:
  - a. The Claimant was not invited to a meeting to discuss the grievance. Whilst Mr. Ralph contended that that was because she was no longer available because she had resigned, it is of course common for former employees to raise post termination grievances and that does not absolve their former employers from affording them the opportunity of a grievance meeting. Mr. Ralph made no effort at all to even attempt to contact the Claimant about the content of her grievance let alone to ask to meet with her;
  - b. We were far from convinced from the evidence of David Ralph that he had actually undertaken any investigation at all and that he had spoken to those operatives who had been named in the Claimant's grievance. Even if he had, he retained no notes of those discussions nor did he make any actual findings about the incidents that the Claimant had complained of as would have been both necessary and appropriate to deal with the grievance. He simply reached a seemingly unsupported conclusion that whilst Simon Ralph had agreed to improve his man management skills, it "*must be clearly stated that Simon treats everyone the same*";
  - c. Whilst David Ralph's evidence was that he had spent two or three days investigating the grievance, we found it more likely than not that he produced the outcome on the same day as the Claimant submitted it. We did not find his explanation convincing that the fact that the outcome was dated 27<sup>th</sup> September 2019 to be on the basis that that

was the heading used relating to the complaint that the Claimant had submitted that day;

- d. Whilst the whole point of the grievance was to allow the Claimant to ventilate and have her complaints investigated and determined, she was never communicated with about the matter at all save as for a brief indication that Mr. Ralph had been tasked to investigate the matter. He referred to the investigation as being an “internal investigation” and it is clear that the outcome was never communicated to the Claimant at all. That was a breach of the Respondent’s own grievance procedure and the ACAS Code of Practice; and
  - e. The Claimant was never offered a right of appeal against David Ralph’s decision.
95. Again, it seems to us that the sort of failings here are indicative of a lack of appropriate emphasis on employee relations and a failure to take such matters seriously.
96. We would also observe that sending Simon Ralph on assertiveness training – which was the recommended course that David Ralph considered appropriate - also seemed to be a someone odd step given that that was the last thing that he would appear to have needed. We would observe that training in employee relations would have appeared to have been much more appropriate.

### **CONCLUSIONS**

97. Insofar as we have not already done so within our findings of fact above, we deal here with our conclusions in respect of each of the complaints made by the Claimant.
98. We begin with the first allegation that on 19<sup>th</sup> September 2019 Simon Ralph offended and demeaned the Claimant by saying “you are useless and blind” and by throwing food products at her. As we have found above, we are satisfied that it is more likely than not that Mr. Ralph shouted at the Claimant and called her useless during this incident because she had made further mistakes with packing products that then had to be re-packaged. We do not accept, however, that he threw any products at her but that he was instead throwing them back into the re-packaging basket in temper and that basket was located closely to the Claimant.
99. The first question is whether the Claimant was subjected to detriment. That question can be answered very simply as it is plain that shouting at someone and calling them useless cannot be described in these circumstances other than detrimental treatment.
100. The next question is whether the Claimant was treated less favourably in that regard. The Claimant relies on three comparators – Cornel, Tincuta and Anna-Maria who are all Romanian nationals and who she says were not taken to task for their mistakes. We have accepted that Cornel was taken to task for mistakes and there is no evidence that Tincuta or Anna-Maria made comparable mistakes for which they were not reprimanded. That is only the Claimant’s vague assumption. From the evidence that we have, being reprimanded by Mr. Ralph would generally involve shouting.

101. However, we are satisfied from the evidence of Mr. Wiewiora that Mr. Ralph shouted at almost everyone and that was not exclusive to Polish members of staff or to those who had poor English language skills. Indeed, neither Mrs. Wiewiora or Monika Gruszczyk were shouted at by Mr. Ralph. The difference between them and the Claimant was that they did not make mistakes or, at the very least, not frequent mistakes.
102. The Claimant contends that she was shouted at either because she had poor language skills or because she was Polish. If it is the former then it is difficult to see how that could amount to race discrimination when many other workers, Cornel included, had a poorer grasp of English than the Claimant. In all events, we do not accept that that was the reason that Mr. Ralph shouted and that the “reason why” he engaged in such conduct, inappropriate as it was, was because the Claimant was slow and made mistakes which reduced the production speed in which Mr. Ralph was so invested.
103. We also do not accept that the Claimant was shouted at because she was Polish. The burden is on the Claimant to prove facts from which we could conclude, in the absence of any reasonable explanation to the contrary, that her nationality was the reason for the treatment of which she complains.
104. No such facts have been adduced and the evidence of Mr. Wiewiora was that Mr. Ralph shouted at almost everyone and as such appears to us to be an indiscriminate shouter, regardless of the nationality of the target of his ire. Again, this is a complaint which can be answered in looking at the “reason why” Mr. Ralph shouted and again that was because the Claimant was a slower worker and made mistakes.
105. It follows that the shouting was not because of the Claimant’s race and this allegation therefore fails and is dismissed.
106. The second allegation is that in or around May 2019 Simon Ralph shouted, offended and demeaned the Claimant by saying “You are blind! As always, you cannot see anything! You are lazy and never check anything!” The Claimant relies on the same three comparators as those relied upon for allegation number one.
107. We have found as a fact that Mr. Ralph said words to the effect that the Claimant was lazy and did not check things but we do not accept that he went any further than that. Those actions amounted to a detriment for the same reasons as we found in respect of the first allegation. Those words accorded with his view of the Claimant as being slow and slowing the line and his position that she should have noticed errors much sooner.
108. However, for the same reasons as we have already given in respect of allegation number one, we are satisfied that this incident was not because of the Claimant’s nationality or her proficiency in the English language. The reason for the treatment, inappropriate as it was, was because of the Claimant’s mistakes. We are satisfied that anyone who made mistakes, irrespective of race, were shouted at in the same way.
109. This allegation therefore also fails because the treatment was not because of race.

110. The next allegation is that Mr. Ralph mocked the Claimant's English proficiency by making her repeat phrases and corrected her when she was engaged in conversation with other members of the team. The Claimant relies on Cornel (a Romanian national) and Sasha (a Bulgarian national) in respect of for this complaint.
111. We are satisfied that this allegation fails on its facts as we do not have any evidence that the Claimant was mocked in the way that she contends. The only incident that we accept occurred was that when the Claimant said words to the effect of "I go home" and Mr. Ralph asked her if she was saying that she wanted to go home.
112. We do not find that that was done to mock the Claimant or that Mr. Ralph would have treated any other member of staff of a different nationality who made the same enquiry any differently. The "reason why" Mr. Ralph made this enquiry was not because the Claimant was Polish or that he had any issue with her language proficiency but it was because he wanted to avoid the suggestion that the Respondent had sent anyone home and might therefore be liable to pay them.
113. This allegation of discrimination therefore also fails and is dismissed.
114. The fourth allegation of discrimination is the incident with the labels where the Claimant says that Mr. Ralph only gave her one label when he knew that she needed more and acted in that way so as to mock her.
115. We are satisfied that this part of the claim fails on its facts as the reason why Mr. Ralph gave her one label was because that was what she asked for and what he therefore thought that she needed. As we have set out above, we did not find him to have done so with a "malicious smile" or that he later put more labels onto her table so as to mock her. We are satisfied that any member of staff, irrespective of their nationality, who had asked for one label would have been given just one label and that Mr. Ralph had not been aware that she needed more.
116. This allegation of discrimination also fails and is dismissed.
117. The next allegation of discrimination is that it is said that the Claimant was given a disciplinary warning in August 2019 following a verbal complaint by another member of staff, Derek Martin, without being able to have the opportunity to explain herself and then being forced to sign a record of the meeting which she did not understand. The Claimant compares herself with Joyce, a Ghanaian national in respect of this aspect of the claim.
118. Firstly, we are satisfied that the disciplinary action against the Claimant was not initiated by complaints from Mr. Martin but instead as a result of observations made by Mr. Boinski which he reported to Mr. Ralph and of Mr. Ralph's own views of her work.
119. We are satisfied that the Claimant was given the opportunity to explain herself as recorded in the interview note and the real issue was that Mr. Ralph did not accept those representations.

120. We are also satisfied that the Claimant understood what she was told during the meeting and that she was not forced to sign the record. If she had not understood anything, she could have asked for explanation or translation, but she did not need to do either.
121. Whilst we accept that being subjected to disciplinary action was such as to subject the Claimant to detriment, we do not accept that she was treated less favourably than her comparator. The Claimant was a relatively experienced production operative unlike Joyce who had only been with the Respondent for a short period and was still within her probationary period and being trained. Some errors during that period were therefore tolerated and not subject to disciplinary action.
122. However, again the Claimant has in all events adduced no facts from which we could have inferred that she was subjected to disciplinary action because she was Polish or because of her proficiency in English. We are satisfied that the "reason why" the Claimant had disciplinary proceedings taken against her was because of the views of Mr. Boinski and Mr. Ralph that her performance was poor.
123. This aspect of the claim therefore also fails and is dismissed because the treatment complained of was not because of the Claimant's race.
124. The final complaint of discrimination is the allegation that Simon Ralph ignored a complaint that she made about Monika Gruszczyk and the Claimant relies on Derek Martin, a British national or a hypothetical comparator in the alternative.
125. We do not accept that the Claimant's complaint was ignored. We are satisfied that Mr. Ralph did not agree with the Claimant but he told her that she could submit a written grievance if she wanted to advance the matter further. In those circumstances the grievance would then be passed to more senior management to investigate.
126. Whilst the Claimant compares her treatment to that of Mr. Martin, we are satisfied that Mr. Martin did not make the complaint about her which led to the disciplinary proceedings to which we have referred above. He is not therefore an appropriate comparator because there is no evidence that he made any complaint about the Claimant or that that was in any way advanced by the Respondent.
127. The Claimant relies in the alternative on a hypothetical comparator. That comparator would be someone who was not Polish but who had made a verbal complaint which Mr. Ralph did not agree had substance. The Claimant has not adduced any facts from which we could conclude that a person of any other nationality would have had their complaint dealt with in any other way. It follows that this part of the claim also fails and is dismissed.
128. For all of those reasons, the claim fails in its entirety and it is dismissed.

Jurisdiction

129. On the basis that we have dismissed all of the Claimant's complaints on their merits it is not necessary to make any determination in respect of the matter of jurisdiction.

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Employment Judge Heap

Date: 13<sup>th</sup> July 2021

JUDGMENT SENT TO THE PARTIES ON

20 July 2021

FOR THE TRIBUNAL OFFICE

Note:

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