EMPLOYMENT TRIBUNALS

Claimant: **Mr A. Onafowokan**

Respondent: **Lineside Logistics Southern Limited**

Heard at: **East London Hearing Centre**

On: **1, 2, 3, 7 and 8 December**
and 15 December 2020 (in chambers)

Before: **Employment Judge Massarella**
Members: **Mrs M. Legg**
Miss J. Isherwood

Representation
Claimant: In person
Respondent: Mr J. Jupp (Counsel)

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. **the Claimant's claim of direct race discrimination is not well-founded, and is dismissed;**

2. **the Claimant's claim of unfair (constructive) dismissal is not well-founded, and is dismissed.**

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was V (CVP). A face-to-face hearing was not held, because it was not practicable, and all issues could be determined in a remote hearing.

Procedural history

1. By a claim form presented on 13 September 2019, after an ACAS early conciliation period between 18 July and 18 August 2019 the Claimant, Mr Afolabi Onafowokan, complained of direct race discrimination and unfair (constructive) dismissal.

2. A preliminary hearing took place on 13 January 2020 before EJ Jones, at which the claims were clarified; the case was listed for a five-day final hearing.

The hearing

3. We had an agreed bundle of some 160 pages.

4. We heard evidence from the Claimant. We also had a statement from the Claimant's daughter, Ms Temilade Onafowokan, but she did not attend the hearing to give evidence. The Claimant explained that he did not feel it was right to call her, in part because she is at university, and in part for family reasons; further, he did not think it appropriate to put her through the experience of attending the Tribunal. Although we do not doubt the sincerity of his reasons, we do not consider that they explain satisfactorily why Ms Onafowokan could not attend the hearing, especially as it is being conducted remotely. Accordingly, the Tribunal concluded that it could not give weight to her evidence; it was, in any event, on a collateral issue only.

5. For the Respondent, we heard evidence from Mr Gurminder Dhanjal (Senior Operations Manager); Mr Danny Lewis (Supervisor); Mr Barry Turner (Senior Supervisor); Mr Rob Pengelly (Dagenham Engine Plant Internal Logistics Manager); and Mr Edvin Kotobelli (Supervisor).

6. Both the Claimant and Mr Jupp provided written closing submissions, supplemented by oral submissions, to which the Tribunal had regard.

Findings of fact

<u>The Respondent</u>

7. The Respondent is part of the Hamton Group of companies, and works alongside the Ford Motor Company at the Ford site in Dagenham. Lion, Tiger and Panther engines are assembled across two plants: the Dagenham Diesel Centre (DDC); and the Dagenham Engine Plant (DEP).

8. Ford workers carry out the assembly work on the production lines. The Respondent's employees provide support to them, ensuring that parts flow into the production system at the right time, and to the right place, and carrying out sub-assembly work in respect of manufacturing lines.

9. The Respondent's workers are referred to as 'operatives'; they are overseen by team leaders, who report to supervisors, who are overseen by managers, who in turn report to Mr Dhanjal.

10. There are three production lines for finishing engine blocks; two 'head lines' for engine heads; and two lines for cranks. Production lines are also referred to as machine lines.

11. When an engine block reaches the end of the block line, it is either taken to storage area 2C or, if it is destined for export to South Africa, to another storage area, on the other side of the kit line, referred to as 'Struandale' (after Struandale Engine Plant in Port Elizabeth). There was some disagreement as to whether the tugs coming in from the machine lines unloaded the blocks into a docking station, from which the reach truck drivers collected them to take

them to 2C/Struandale, or whether the tugs took the blocks directly to 2C/Struandale. Either way, it was not in dispute that the reach truck drivers, who worked under the team leaders, unloaded the blocks and stacked them, two high, in the relevant storage area.

12. Next to the storage area is an area known as 'head assembly', which is for engine heads which have come from the head machine line to have further work done on them. The reach truck driver is also charged with lifting the heads to the head assembly area.

13. There is then the kit line, on which operatives assemble kits of small parts in a box, which are needed for machine lines. It is a long, narrow line of steel rollers, which runs between the 2C and Struandale storage areas, which are both adjacent to it (about 3 metres away) and can clearly be seen from it.

14. Finally, there is an area called the piston loop, where rejected pistons are stripped down and reassembled.

15. In cross-examination, the Claimant denied knowing how Struandale operated. He claimed that he had 'not received training' in relation to this aspect of the Respondent's work. We found his evidence as to this implausible. Struandale was adjacent to the kit line, where he worked. Every three weeks he worked on afternoon shifts, which was usually when blocks were taken to Struandale.

<u>The importance of the continuous running of the lines</u>

16. Because the Respondent is responsible for ensuring a continuous flow of materials and products into, and from, Ford's production lines, efficiency is key. If the Respondent causes delay to the production lines, it can be fined by Ford. The Respondent is permitted a very short delay per line per month (the Respondent said on average ten seconds; the Claimant a minute or two). Every week the Respondent's managers must make a presentation to Ford managers about the previous week. Improvement targets are agreed between the Respondent and Ford, which generally provide for annual improvement of between 7% and 9% annually. The Respondent works continually to identify potential savings.

17. Team leaders, such as the Claimant, were given radios so that, if issues arose which they could not resolve themselves, they could alert supervisors who would provide assistance, although the team leader's radio only enabled them to communicate with others within their own area of responsibility.

<u>The Claimant's role</u>

18. The Claimant commenced employment on 9 June 2014. He was initially engaged on a six-month contract.

19. Before 2015, he worked in DDC. On 21 April 2015, he was promoted to team leader. On 25 April 2015, he moved to DEP. He worked in different areas as a team leader. In around January 2019, he became team leader on the Panther kitting and machining line in DEP. His supervisor on 10 May 2019 was Mr Danny Lewis; Mr Barry Turner was the senior supervisor.

20. The Claimant's job description for the Team Leader role provided that he was: 'responsible for 100% On Time Delivery for feeding materials on [a] "Just In Time" basis to assemble operations in line with customer requirements'.

21. The Panther line was a new line, which had started in 2015. The Claimant was part of the launch team for the line. During that launch period, no one worked on the line; the members of the team, including the Claimant were shown all the processes in the operation of the line. That launch period lasted several weeks. The Claimant agreed that, as a member of the launch team, he was well-placed to have a full understanding of areas that he was responsible for, and indeed areas that he wasn't responsible for, although at other points in his oral evidence the Claimant denied knowing how some aspects of the operation worked. We found those denials to be implausible, given his experience as a team leader, including experience of a number of different areas since his promotion.

22. When the Claimant moved to become team leader on the kit line in January 2019, he was given training: the Claimant said six days, the Respondent two weeks. Although a considerable amount of time was spent on the issue of training in the hearing, the Tribunal accepts the distinction, made by Mr Jupp in closing submissions, between specific training and generic training: specific training being training required in order to know how to carry out a particular task; and generic training relating to more general points of principle. In relation to the most consequential issue in this case (whether the Claimant knew that he had to escalate problems to his supervisors, if he was unable to deal with them himself), we are satisfied that this falls into the category of generic training. We find that any team leader – indeed any responsible person in any type of work - ought reasonably to know how important it is to report a problem which has been drawn to his attention, if he cannot resolve it himself. In any event, we are satisfied that the Claimant had been specifically warned about the need to do so, as we will record below.

23. The Claimant worked a rotating shift, including early, late and night shifts. Usually, in the morning shift engine blocks were produced and put into storage area 2C; in an afternoon shift, engine blocks were produced and put into 2C, and also into Struandale for export. Unusually, on 10 May 2019, a decision was taken that blocks produced on Panther Line A should be taken to Struandale during the early shift, on which the Claimant happened to be working that day.

<u>Disciplinary warnings</u>

24. On 2 June 2015, the Claimant was issued with a six-month verbal warning. The offence was:

> 'stopping the line for 10 minutes due to the wrong parts being brought out and also not reacting quick enough.'

25. On 19 December 2016, the Claimant was issued with a performance improvement notice by his supervisor. That notice required the following improvement:

> 'a general improvement in the day-to-day running of the marketplace. Being more aware of instructions given to yourself and when necessary escalating problems to supervisors before it is too late.'

26. On 22 February 2018, the Claimant was issued with a first stage verbal warning, which expired on 22 August 2018, in relation to a failure to communicate information to a reach truck driver. The warning stated:

> 'during this time you MUST improve your level of communication and demonstrate this at an acceptable level.'

27. The Claimant did not appeal any of these warnings. Although they had all expired, and were not relied on by the Respondent as triggers for the demotion in 2019, they were relied on to demonstrate that the Claimant understood the importance of escalating problems to which he did not have a solution, before they became more serious.

Alleged segregation by Danny Lewis (Issue 2(h))

28. The Claimant alleges that Mr Lewis held meetings with the other team leaders, asking them to meet him, but without including the Claimant. Mr Lewis denied excluding the Claimant from meetings with team leaders. Indeed, he denied holding meetings with team leaders. He explained that it was not ordinarily possible to take them away from their duties long enough to hold a meeting. We found Mr Lewis's evidence as to this credible. Furthermore, the allegation was generalised: apart from identifying that this alleged treatment occurred during the time when he was supervised by Mr Lewis, the Claimant identified no specific date on which it occurred; nor did he mention this treatment in the various meetings we deal with below, when he might have been expected to do so. We also note that the Claimant had to be reminded by the Tribunal to cross-examine on this issue, which suggested to us that it was not an allegation by which he set great store.

29. We find that the alleged segregation did not occur.

The incident on 10 May 2019

30. On 10 May 2019, the Claimant started work at 06:24. His shift was due to end at 14:30. However, he and his family were going away on a short break that day and, some weeks before, he had sought, and been given, permission by Mr Lewis to leave at 13:00.

31. When the Claimant arrived, he had a discussion with Mr Lewis about what would happen during his shift. Mr Lewis told him that the main assembly line was not running that day (this is referred to as a 'down day'). As a result, the kit line was also not running, but the Claimant was responsible for ensuring that it was cleaned. He had fewer operatives working for him on that shift (around three or four, rather than nine); he had one operative working on pistons, rather than three. One of the machine lines (Panther Line A) was running, and was producing blocks for Struandale. Although the Claimant denied that Mr Lewis told him this the beginning of the shift, we are satisfied that he did: it was unusual that blocks were being produced for Struandale on an early shift, and we think it likely that Mr Lewis mentioned it specifically, in

the course of explaining to the Claimant what would, and would not, be happening during his shift.

32. Mr Lewis also told the Claimant that a reach truck driver, Mr Foussini Sahonune, had been assigned to work under him. Later in the morning Mr Turner spoke to the Claimant, and told him that Mr Sahonune would be working on the machine line as well, unloading blocks into the Struandale marketplace.

33. We heard a great deal of evidence as to who was responsible for Struandale. We are satisfied that the Claimant had been told that he was responsible for Struandale that day. However, we do not think much turns on it. Even if the Claimant was not formally responsible for Struandale, he was the only team leader physically working in that area on that day, and he was responsible for Mr Sahonune, who was working under him. As a matter of common sense, he had a duty to escalate to his superiors any problems which were drawn to his attention by Mr Sahonune during that shift, whether in relation to Struandale or anything else.

34. We find support for that conclusion in the note of the investigatory meeting in which Mr Lewis specifically said that 'Struandale is nothing to do with assembly, but we rely on the team leaders to escalate to us if they have issues with areas or space.' To that, the Claimant replied: 'yeah I know that, I admit to not escalating it.' By that admission, the Claimant acknowledged that he was culpable to some extent.

35. At a certain point during the Claimant's shift, Struandale became full. Because of that, there was nowhere to put the parts coming off the machine line, and Panther Line A had to stop. All the evidence, with the exception of one document, suggests that the line stopped at around 11:00 and was out of action for around two and half hours. The one document which suggests that it may not have stopped until 12:45 is a version of the appeal notes, which was provided to the Claimant, but which was subsequently edited by Mr Pengelly (the appeal officer) to remove a reference which suggested that he believed the line had stopped at 12:45. Although we found it highly unsatisfactory that this reference had been edited out of the notes after the event, we accepted Mr Pengelly's account that the reason he had done so was because it did not correctly record what he had said, which was to the effect of: 'let's assume the line did stop at 1245, do you agree that you should have escalated it?'

36. It was put to the Claimant more than once by Mr Jupp that he knew that the consequence of Struandale becoming full was that the line which fed it (Panther A) would stop. He was resistant to that proposition, but eventually accepted it. That was a sensible concession. It appears to us that any experienced team leader must have known, as a matter of common sense, that if the end of the line becomes blocked for want of storage space, it is bound to have a knock-on effect up the line, including stopping the line.

37. At a certain point Mr Sahonune told the Claimant that Struandale was full, and that the line had stopped. There is a dispute as to when that happened: in the notes of the investigatory hearing, Mr Sahonune is recorded as saying that he told the Claimant at 11:00; the Claimant maintained that Mr Sahonune spoke to him around 12:45, shortly before the end of his shift. The only direct

evidence that the Tribunal had as to this was from the Claimant, and he was adamant that he was told at 12:45. We noted that Mr Sahonune is still employed by the Respondent, yet was not called to give direct evidence to us as to when he told the Claimant. For that reason, and on the balance of probabilities, we prefer the evidence of the Claimant as to this. However, it is important to record that the Respondent took a different view: it accepted Mr Sahonune's account, and believed that the Claimant knew from 11:00.

38. When the Claimant found out about the problem, he took no action to address it. On the contrary, he deliberately withheld the information from his managers: when he went up to the office at the end of his shift, he saw Mr Lewis, who asked him whether there were any problems; he said that there were not.

39. At the interview between the Claimant and Mr Lewis, the notes record the following [*original format retained*]:

> 'Lewis: When an operator comes up to you, raises an issue, as a team leader it is your responsibility to deal with the issue. If you don't know what to do, then you need to escalate the issue to a supervisor, we can't just leave it.
>
> Claimant: I know you're right, I hold my hands up and I should have escalated the issue, I didn't know it was a big issue.
>
> Lewis: If Foussini raised the issue with you at 12:45, when you came upstairs to the office at 13:00, Rob, Frank and myself was in the office and I said to you is there any issues and you said everything is good and there is no issues.
>
> Claimant: I had a taxi waiting outside and I was in a rush.'

40. The records show that the Claimant left the site at 13:19. He had a taxi waiting for him to take him to his sister's house, where he met his family and they left to drive to the airport for a short holiday in Greece.

41. The Respondent was unable to explain why no one else in the plant noticed and/or reported the fact that the line had stopped. Mr Dhanjal confirmed that there was never a time when the line was unattended, and one of the Ford operatives would undoubtedly have noticed that it had stopped. There was a Ford manager with specific responsibility for that line, and that manager reported to group leaders. Moreover, there were Ford supervisors who would have been in the vicinity. Mr Dhanjal 'could not comment' on why Ford employees did not deal with the problem, and accepted that, if any of them had acted promptly, the Ford team would have notified the Respondent quickly.

42. Further, we heard evidence that part of the reason why so many blocks were coming off the line, which led to Struandale becoming full, was because Ford decided to 'overbuild' on that day. Mr Dhanjal explained that that meant build too many blocks. That was a decision taken by the customer, over which the Respondent had no control.

43. Mr Dhanjal confirmed that the Respondent was not fined for the stoppage. It was suggested that no fine was levied, because Ford was content with the

remedial action taken by the Respondent after the event. When probed as to what action that was, it emerged that it was nothing more than some remedial training. We infer that the reason why there was no fine was because Ford would have been in a weak position to do so, given the apparent failure of its own employees to address the issue.

44. The Respondent had another team leader, Mr Ian Andrews, who had responsibility for Panther Line A. However, he was situated at the opposite end of the plant from Struandale and Panther Line A, unloading trailers arriving into the plant, and sending tug drivers with rough blocks to deliver to the machine lines. He was extremely busy: he had to feed a large number of lines, overseeing operatives unloading four different trailers, coming in three times a shift. We accept that he may have had no awareness of the line stoppage.

45. We record these matters because it is plain that the Claimant was in no sense solely responsible the line stoppage. However, he was responsible for the fact that, when the stoppage came to his attention, he did not escalate the problem to his supervisors.

<u>The telephone call from Mr Dhanjal on 10 May 2019 (Issues 2(a) and 2(b))</u>

46. When Mr Dhanjal found out about the line stoppage, he telephoned the Claimant. The Claimant says it was around 14:30; Mr Dhanjal that it was twenty minutes or so after the Claimant left, i.e. around 13:40. We think Mr Dhanjal's account is more likely; the timing fits better with the discovery of the stoppage by management.

47. We do not accept Mr Dhanjal's evidence that he phoned the Claimant in order to 'very quickly try to establish what had gone wrong' and 'to hear what the Claimant had to say', in part because other evidence suggests that he would not have been able to hear what the Claimant had to say. It was Mr Lewis who dialled the Claimant, and his evidence was that he passed the phone to Mr Dhanjal because he could not hear the Claimant.

48. We find that Mr Dhanjal phoned the Claimant to give him a dressing-down, and to show the Ford Production Manager, who was nearby, how seriously he took the issue. We accept the Claimant's evidence that Mr Dhanjal shouted at him, reprimanded him for not reporting the line stoppage, and said words to the effect that the Claimant's job was on the line. We do not think he specifically mentioned the possibility of demotion.

49. There was a dispute as to whether the Claimant was in his car when he received the call, and whether his family overheard it. We do not consider it necessary to resolve this dispute, given our findings as to how Mr Dhanjal behaved. Whether or not the conversation was overheard by the Claimant's family, we have no doubt that he found it a very unpleasant experience, and that he worried about it while he was on holiday.

<u>Alleged excessive monitoring by Mr Lewis (Issue 2(g))</u>

50. The Claimant flew back into the country very early in the morning of 13 May 2019, and started work on the evening of the same day.

51. The Claimant originally alleged that Mr Lewis had monitored him excessively since becoming a supervisor, and that it became worse from 18 July 2019 onwards. In cross-examination he accepted that that date must be wrong: Mr Lewis ceased to be his manager on 21 May 2019. The Claimant then adjusted his case, to suggest that the excessive monitoring took place after he returned from holiday, between 13 and 21 May 2019.

52. The Claimant alleges that Mr Lewis would come down to the area where he was working and stare at him, watching what he was doing for between 20 to 30 minutes. He alleges that this happened on every shift when Mr Lewis was his supervisor.

53. Mr Lewis's explanation was that, because there had been issues with the kit line (for example, boxes getting stuck at certain points on the line), he had been made 'champion' of the line, which involved observing the area causing any issues, and putting in place interim corrective actions, which might lead to permanent solutions. We accept that evidence: Mr Lewis's account was clear and concrete; by contrast the Claimant's evidence was confused, in particular in relation to the chronology. Insofar as there was monitoring, it was not excessive, and it was not designed to target the Claimant.

<u>The disciplinary process</u>

54. Mr Sahonune attended an investigation meeting with Mr Danny Lewis on 16 May 2019. He told Mr Lewis that he had reported to the Claimant at around 11:00 that the area was full. His evidence was that the Claimant said:

> 'he didn't know what to do about it and to leave it and go back to head assembly as it wasn't his area and he is finishing at 13:00'.

55. On 20 May 2019, the Claimant attended an investigation meeting which was conducted by Mr Danny Lewis. The Claimant was represented by his trade union representative, Mr Dean Lewis. At the beginning of the meeting Mr Danny Lewis gave the Claimant the option to adjourn the meeting for up to 48 hours, but the Claimant said he wished to proceed.

56. As we have already recorded, in the course of the meeting, the Claimant accepted that he should have escalated the issue.

57. On 20 June 2019, the Claimant was invited to a disciplinary meeting. We are satisfied that he was fully aware that the subject of the disciplinary meeting was his conduct on 10 May 2019.

58. The hearing took place on 21 June 2019, and was conducted by Mr Barry Turner. The Claimant was again accompanied by Mr Dean Lewis. There are no notes of the disciplinary hearing. The Tribunal found Mr Turner's explanation for this – essentially, that nothing new arose at the disciplinary hearing, which had not already been covered the investigatory hearing – very unsatisfactory. Notes of a disciplinary meeting are always important, even if only to show that the position did not change greatly as between the investigatory and disciplinary meetings: that in itself can be important information. It is also important for notes of a disciplinary meeting to be available to a manager charged with carrying out an appeal.

59. The meeting was adjourned to 25 June 2019, because Mr Turner wanted to make some further enquiries of Mr Dave Clark, a team leader on another shift.

The dismissal

60. We accept Mr Turner's evidence that he regarded the Claimant's conduct as so serious that he considered dismissal as a possible sanction. However, because he knew that the Claimant had performed well as an operative, he chose to impose a lesser sanction. On 25 June 2019, he gave his decision, which was that the Claimant should be demoted, and have his team leader responsibilities removed. The Claimant's salary was reduced from £33,000-£25,000, to take effect four weeks after the demotion; Mr Turner decided that the Claimant's team leader pay should be protected for four weeks, starting on 1 July 2019, to allow his appeal to be dealt with before any pay loss was incurred.

61. The Claimant alleges that he was blamed for actions which fell outside his area of responsibility. We reject that argument: the requirement to escalate problems of which he became aware, and which he could not deal with himself, was within his area of responsibility, as he himself acknowledged at the investigation meeting. He failed to do so, and for that he was disciplined. Nor did he require training to understand that responsibility; in any event, he had been expressly notified of it by way of the warnings referred to above.

62. On 26 June 2019, the Claimant's trade union representative, Mr Dean Lewis, wrote to Mr Dhanjal, stating that he thought the decision had been the right one, but that he sympathised with the Claimant, who was finding it difficult to accept.

63. Although the Respondent now accepts that the Claimant was demoted, that was not the position earlier in these proceedings, even up to the point when the witnesses drafted their statements. Presumably having realised that there was no power of demotion in the Claimant's contract of employment, a number of witnesses give evidence that he was not demoted, but merely had his team leader responsibilities taken away from him. The disciplinary record which Mr Lewis completed on 27 June 2019 gave the lie to that: it explicitly recorded a sanction of demotion. The Tribunal records its disapproval of the fact that the Respondent sought initially to mislead it on this issue.

Mr Young

64. The Claimant alleged that Mr Peter Young also had a line stoppage, but was not demoted. He is white British. In his evidence, the Claimant did not identify a specific occasion on which Mr Young had been responsible for a line stop. When asked by the Tribunal how he knew about this, the Claimant could only say that he had 'heard it on the radio'. The Respondent had made enquiries and Mr Turner produced documents, which did not support the Claimant's case. The Claimant's legal representatives had not made any application for specific disclosure in relation to any period not covered by those documents. On the evidence before us, we make no finding that the incident occurred, and Mr Young falls away as a comparator for the purposes of the Claimant's race discrimination case.

The allegation that the Claimant was replaced as team leader (Issue 2(d))

65. The Claimant alleged that, on 9 July 2019, he was replaced by Mr Lewis as team leader, despite the fact that the investigation was still ongoing. That did not occur. The Claimant worked on A shift throughout the investigation period, and was not replaced as a team leader during that time. Around the time of the disciplinary hearing, the Claimant asked to be moved to C shift. He started on that shift on 24 June 2019, and worked three rotating shifts. By 9 July 2019, the Claimant reported to a different supervisor, and was no longer supervised by Mr Lewis.

The appeal (Issue 2(k))

66. The Claimant appealed his demotion on 27 June 2019. An appeal meeting took place on 16 July 2019, conducted by Mr Pengelly. Mr Dean Lewis again attended as the Claimant's trade union representative. On 18 July 2019, the Claimant attended a further meeting with Mr Pengelly, who informed him that he had decided to uphold the decision.

The alleged grievance (Issue 2(c))

67. The Claimant alleges that he raised a grievance on 18 July 2019, the same day as the second appeal meeting. There was a brief document in the bundle, signed and dated by the Claimant. His evidence was that he gave it to Mr Pengelly, but he was unclear whether he drafted it before or after the meeting. The Claimant stated that his trade union was aware of the grievance

68. The Respondent maintains that no such grievance was received. We accept that evidence. Had the Claimant lodged a grievance, of which his union was aware, we have no doubt that either he or the union would have chased it up, if it was not acted on. They did not do so. We think it more likely that the Claimant drafted the grievance, but did not submit it.

The move to DDC in August 2019

69. The factory shut down for the summer between 22 July and 12 August 2019. Just before the shutdown, the Claimant went to Mr Pengelly and asked to be moved to DDC. On 19 August 2019, Mr Pengelly wrote to Mr Michael Parker, following up his request:

> 'As I said on the phone, Seyi feels embarrassed to be around his fellow colleagues as they all know he has been demoted plus he wants/needs permanent days so that he can get a second job.'

70. On 21 August 2019, Mr Pengelly wrote to the Claimant, confirming that, from Monday, 19 August 2019 he had been moved to DDC, in a dayshift only position, in accordance with his request. He wrote:

> 'As a result of this your rate of pay will change to £11.39 per hour in line with day shift operator rate from Monday 26th August.
>
> As you know, DDC is a mature and stable operation so as a result it is imperative that you learn and understand the necessary jobs and get up to the right speed and skill level in order to remain in DDC and in a dayshift only role.'

71. With effect from 26 August 2019, the Claimant's team leader payment was removed, and his hourly rate changed to the rate for a day shift operator. That was a lower rate (around £22,000) than the salary which he would have earned, had he remained doing a rotating shift.

Criticism of the Claimant's rate of work in DDC (Issue 2(i))

72. The Claimant moved from DEP to DDC on 17 August 2019 as an operative, and was deployed onto Mr Kotobelli's shift. Because the Claimant had previously worked in the plant, he was given familiarisation training, rather than the full training given to new entrants. Familiarisation training lasts 2 to 3 days. The Claimant accepts that it took him around 4 to 5 days to complete it.

73. On the second or third day of training, his team leader, Mr Terry Card, told him that he was working too slowly. The Respondent does not deny this. Mr Kotobelli explained that this is the fastest of the lines in the plant, and there was no tolerance for people who were unable to keep up with the required pace of work. The Tribunal accepts that evidence.

74. The Claimant alleges that, when he took issue with this criticism, Mr Card told him to 'go back to where I came from'. The Claimant says that he reported the incident to Mr Kotobelli, who told him that Mr Card meant that he should go back to his former department. This allegation was not part of the Claimant's pleaded case, and the Respondent was plainly prejudiced in dealing with it. Mr Kotobelli accepts that the Claimant reported the remark to him, and that he told the Claimant that he was sure that what was meant was that he should go back to his previous place of work in DEP. It is plainly unsatisfactory that he told the Claimant this without speaking to Mr Card himself, to clarify what he meant by the remark. However, we were struck by the fact that, when asked what he thought Mr Card meant by the remark, the Claimant was very hesitant in suggesting that it had a racist connotation.

75. In the event, this incident cannot take the Claimant's race discrimination case any further, because our focus must be on the mind of the alleged discriminator, and no allegation of discrimination was made against Mr Card.

The resignation

76. On 6 September 2019, the Claimant submitted his letter of resignation to Mr Pengelly, which stated:

> 'Please treat this as my letter of resignation from my job here at Lineside Logistics one week from today 6 September 2019. In view of the way in which I have been treated, I consider I have no option but to resign'.

77. On 11 September 2019, the Claimant had an exit meeting with Mr Dhanjal, in the course of which the following exchange took place:

> 'GD: in your appeal you requested the move to DDC and we made that happen very quickly so I was a bit surprised when you tendered your resignation.
>
> OA: I didn't want to stay in DEP because of what has happened.'

The law

Direct discrimination because of race

78. S.13(1) EqA provides:

> **(1) 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.**
>
> **(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.**

79. The burden of proof provisions are contained in s.136(1)-(3) EqA:

> **(1) This section applies to any proceedings relating to a contravention of this Act.**
>
> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision.**

80. The effect of these provisions was conveniently summarised by Underhill LJ in *Base Childrenswear Ltd v Otshudi* [2019] EWCA Civ 1648 at [18]:

> **'It is unnecessary that I reproduce here the entirety of the guidance given by Mummery LJ in *Madarassy*.[1] He explained the two stages of the process required by the statute as follows:**
>
> **(1) At the first stage the Claimant must prove "a *prima facie* case". That does not, as he says at para. 56 of his judgment (p. 878H), mean simply proving "facts from which the Tribunal could conclude that the Respondent 'could have' committed an unlawful act of discrimination". As he continued (pp. 878-9):**
>
> > **"56. … 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.**
> >
> > **57. 'Could conclude' in section 63A(2) [of the Sex Discrimination Act 1975] must mean that 'a reasonable Tribunal could properly conclude' from all the evidence before it. …"**
>
> **(2) If the Claimant proves a *prima facie* case the burden shifts to the Respondent to prove that he has not committed an act of unlawful discrimination – para. 58 (p. 879D). As Mummery LJ continues:**
>
> > **"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."**
>
> **He goes on to explain that it is legitimate to take into account at the first stage all evidence which is potentially relevant to the complaint of discrimination, save only the absence of an adequate explanation.'**

81. In *Hewage v Grampian Health Board* [2012] ICR 1054 at [32], the Supreme Court held that the burden of proof provisions require careful attention where

[1] *Madarassy v Nomura International plc* [2007] ICR 867, CA

there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the Tribunal is in a position to make positive findings on the evidence one way or the other.

82. The question whether the alleged discriminator acted 'because of' a protected characteristic is a question as to their reasons for acting as they did; the test is subjective (*Nagarajan v London Regional Transport* [2000] ICR 501, *per* Lord Nicholls at 511). Lord Nicholls considered the distinction between the 'reason why' question from the ordinary test of causation in *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065 at [29]:

> **'Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach…The phrases "on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'**

83. In *Reynolds v CLFIS (UK) Ltd* [2015] ICR 1010 at [36], the Court of Appeal confirmed that a 'composite approach' to an allegation of discrimination is unacceptable in principle: the employee who did the act complained of must himself have been motivated by the protected characteristic.

84. The conventional approach to considering whether there has been direct discrimination is a two-stage approach: considering first whether there has been less favourable treatment by reference to a real or hypothetical comparator; and secondly going on to consider whether that treatment is because of the protected characteristic, here race.

85. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 at [11-12], Lord Nicholls questioned the need for a two-stage approach, particularly in cases where no actual comparator was identified:

> **'[…] employment Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the Claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the Claimant on the proscribed ground, was less favourable than was or would have been afforded to others.**
>
> **The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less favourable treatment issue first. But, for the reason set out above, when formulating their decisions employment Tribunals may find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded to the Claimant […]'**

<u>Unfair (constructive) dismissal</u>

86. S.94 of the Employment Right Act 1996 ('ERA') provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by his employer.

87. S.95(1) ERA provides that he is dismissed if he 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 ('a constructive dismissal').

88. The employee must show that there has been a repudiatory breach of contract by the employer: a breach so serious that he was entitled to regard himself as discharged from his obligations under the contract.

89. Examples of breaches of contract upon which a complaint of constructive dismissal might be founded include a reduction in pay (*Industrial Rubber Products v Gillon* [1977] IRLR 389); and a complete change in the nature of the job (*Land Securities Trillium Ltd v Thornley* [2005] IRLR 765).

90. An employee may also rely on a breach of the implied term of trust and confidence. The applicable principles were reviewed by the Court of Appeal in *London Borough of Waltham Forest v Omilaju* [2005] IRLR 35 (at [14] onwards):

> **14. 'The following basic propositions of law can be derived from the authorities:**
>
> **1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment: *Western Excavating (ECC) Ltd v Sharp* [1978] 1 QB 761.**
>
> **2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee: see, for example, *Malik v Bank of Credit and Commerce International SA* [1998] AC 20, 34H-35D (Lord Nicholls) and 45C-46E (Lord Steyn). I shall refer to this as "the implied term of trust and confidence".**
>
> **3. Any breach of the implied term of trust and confidence will amount to a repudiation of the contract see, for example, per Browne-Wilkinson J in *Woods v WM Car Services (Peterborough) Ltd* [1981] ICR 666, 672A. The very essence of the breach of the implied term is that it is calculated or likely to *destroy or seriously damage* the relationship (emphasis added).**
>
> **4. The test of whether there has been a breach of the implied term of trust and confidence is objective. As Lord Nicholls said in *Malik* at page 35C, the conduct relied on as constituting the breach must "impinge on the relationship in the sense that, looked at *objectively*, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer" (emphasis added).**
>
> **5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para [480] in Harvey on Industrial Relations and Employment Law:**
>
> > **"[480] Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee**

> **leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the 'last straw' which causes the employee to terminate a deteriorating relationship."**
>
> **15. The last straw principle has been explained in a number of cases, perhaps most clearly in *Lewis v Motorworld Garages Ltd* [1986] ICR 157. Neill LJ said (p 167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p 169F:**
>
> > **"(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term? (See *Woods v W. M. Car Services (Peterborough) Ltd.* [1981] ICR 666.) This is the "last straw" situation."**
>
> **16. Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "*de minimis non curat lex*") is of general application.**'

91. The Court of Appeal gave further guidance in *Kaur v Leeds Teaching Hospitals NHS Trust* [2018] IRLR 833 (at [55]):

> **'(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation?**
>
> **(2) Has he or she affirmed the contract since that act?**
>
> **(3) If not, was that act (or omission) by itself a repudiatory breach of contract?**
>
> **(4) If not, was it nevertheless a part (applying the approach explained in *Omilaju*) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the *Malik* term? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)**
>
> **(5) Did the employee resign in response (or partly in response) to that breach?'**

92. In determining whether there has been a breach of the implied term, the question is not whether the employee has subjectively lost confidence in the employer but whether, viewed objectively, the employer's conduct was likely to destroy, or seriously damage, the trust and confidence which an employee is entitled to have in his employer: *Nottinghamshire County Council v Meikle* [2005] 1 ICR 1 (at [29]).

93. It is important to apply both limbs of the test. Conduct which is likely to destroy/seriously damage trust and confidence is not in breach of contract if

there is 'reasonable and proper cause' for it: *Hilton v Shiner Ltd Builders Merchants* [2001] IRLR 727 (at [22- 23]).

94. Where there are mixed motives for the resignation, the Tribunal must determine whether the employer's repudiatory breach was an effective cause of the resignation; it need not be the only, or even the predominant, cause: *Meikle* (at [29]).

95. The employee must not delay his resignation too long, or do anything else which indicates affirmation of the contract: *W.E. Cox Toner (International) Ltd. v Crook* [1981] ICR 823 (at 828-829). What matters is whether, in all the circumstances, the employee's conduct shows an intention to continue in employment, generally by continuing to work: *Chindove v William Morrison Supermarket plc*, UKEAT/0201/13 at [25-26].

96. If there is a constructive dismissal, s.98(1) ERA provides that it is for the employer to show that it was for one of the permissible reasons in s.98(2) ERA, or some other substantial reason. If it was, s.98(4) ERA requires the Tribunal to determine whether the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee.

97. The correct approach was clarified by the Court of Appeal in *Buckland v Bournemouth University Higher Education Corporation* [2010] IRLR 445, from which the following principles emerge:

    97.1. in constructive dismissal cases, the question of whether the employer has committed a fundamental breach of the contract of employment is not to be judged by a range of reasonable responses test. The test is objective: a breach occurs when the proscribed conduct takes place.

    97.2. in determining whether or not the employer is in fundamental breach of the implied term of trust and confidence, the unvarnished *Malik* test applied;

    97.3. if acceptance of the breach entitled the employee to leave, he has been constructively dismissed;

    97.4. it is open to the employer to show that such dismissal was for a potentially fair reason; and

    97.5. if he does so, it will then be for the employment Tribunal to decide whether the dismissal for that reason, both substantively and procedurally, fell within the range of reasonable responses and was fair.

98. The Court held at [29] that the reasonableness of the Respondent's conduct comes in at the final stage. The Court considered what the conduct was, which falls to be assessed, at [47]:

> **'But how does one decide, pursuant to s.98(4), whether the university acted reasonably in treating this as a sufficient reason for dismissal? Since the university did not consciously either dismiss Professor Buckland or therefore treat anything as a sufficient reason for doing so, the question makes little sense. One has to make sense of it by translating it into the question whether the university behaved reasonably in undermining his status. So posed, the question**

answers itself, for the university could not intelligibly seek to justify something it said it had not done.'

Conclusions: direct race discrimination

Issue 4(a): Being demoted after a line stopped that was not in his area or his responsibility

99. The Tribunal considers that it is in a position to make a positive finding as to the 'reason why' the Claimant was demoted: we have no doubt that it was because of his failure on 10 May 2019 to escalate to his managers the fact that Struandale was full, which had led to a stoppage on Panther Line A.

100. We considered whether the answer might be different, applying the burden of proof provisions. We concluded that the Claimant has not proved facts from which a Tribunal could reasonably conclude that the decision was tainted by considerations of race. As we have indicated above, the Claimant has not shown that he was treated less favourably than Mr Young. The matters that the Claimant specifically relied on in the list of issues as potentially shifting the burden of proof did nothing to advance his case: they merely restated allegations of adverse treatment, some of which we have rejected on their facts, without identifying evidence which pointed to his race being a factor.

101. The only matter which might have been relevant was the evidence he gave about the remark made by Mr Card. However, even if there were evidence that the remark was discriminatory, that cannot shift the burden of proof in relation to decisions taken by Mr Turner and Mr Pengelly. Even if the burden shifted to the Respondent, we come back to the question of whether the Respondent has provided a satisfactory, non-discriminatory explanation for the demotion, and we conclude that it has.

102. For these reasons, the Claimant's claim of direct race discrimination fails.

Conclusions: constructive dismissal

Did the Respondent breach the Claimant's contract by demoting him and reducing his pay? If so, was it a fundamental breach of contract?

103. The Respondent accepts that demotion and reduction in salary were not sanctions available to it under its disciplinary policy, nor did the Claimant's contract of employment entitle it to demote him or reduce his pay. In doing so, the Respondent acted in breach of contract.

104. We are satisfied that that both actions were so serious as to amount to fundamental breaches of contract; a unilateral reduction in pay, and the removal of status and responsibility, go to the root of the contract.

105. For the avoidance of doubt, the relevant reduction in salary is only that which was consequent on the demotion; the further reduction, when the Claimant elected to change teams, was agreed.

Which, if any, of the acts, which C alleges amounted to a breach of the implied term, occurred as alleged?

Acts which we have found did not occur

106. The Tribunal has already found that the following acts did not occur, and they play no further part in our judgment:

106.1. Issue 2(c): 'On 18 July 2019, did the Claimant submit a grievance on this date and, if so, did the Respondent fail to deal with the Claimant's grievance against Mr Dhanjal in a timely and appropriate manner?'

106.2. Issue 2(d): 'On 9 July 2019, being permanently replaced as Team Leader despite the investigation still being ongoing';

106.3. Issue 2(e): 'The Claimant being blamed for matters that were outside of his responsibilities (i.e. the events of 10 May 2019)';

106.4. Issue 2(g): 'Between 13 and 21 May 2019, being subjected to excessive monitoring by Mr Danny Lewis';

106.5. Issue 2(h): 'Prior to 21 May 2019, being segregated from other Team Leaders by Danny Lewis';

106.6. Issue 2(j): 'the Respondent's failure to acknowledge that the Claimant had not been adequately trained on the kit line area and was not sufficiently confident in identifying which areas were his responsibility';

106.7. Issue 2(k): 'During the appeal meeting, Rob Pengelly contradicting how long the line was down for. Initially, the Respondent alleged it had been down for 150 mins from 11am but Rob informed the Claimant it went down at 12.45pm (Claimant left at 1pm) and that Management were aware of the line going down'.

Acts which we have found did occur

107. We have found that the following acts did occur:

107.1. Issue 2(a): 'On 10 May 2019, being shouted at on the telephone by Gurminder Dhanjal in front of his family';

107.2. Issue 2(b): 'On 10 May 2019, having his job threatened by Mr Dhanjal in the same telephone conversation';

107.3. Issues 2(f)(i) and (ii): 'Being demoted and unilaterally having his wages reduced';

107.4. 2(i): 'On 21 August 2019 being told that despite it only being the second day of training the Claimant was going too slowly'.

<u>Having regard to the acts which occurred, was there reasonable and proper cause for them?</u>

108. Dealing first with Issues 2(f)(i) and (ii), we are satisfied that there was reasonable and proper cause for demoting the Claimant: the Respondent reasonably formed the view that he had committed serious misconduct: he failed to escalate the problem with Struandale, when he became aware of it; moreover, he positively misled managers by telling them, before leaving at the end of his shift, that there were no problems. We consider that the Respondent acted reasonably in reaching its conclusion (especially against the background of the previous warnings given to the Claimant) that they could no longer rely on him to perform the team leader role. Once the decision to

demote had been taken, the reduction in salary followed as a matter of course; there was reasonable and proper cause for that action. These matters cannot, therefore, form part of any breach of the implied term.

109. Turning to Issues 2(a) and (b), we have concluded that, although Mr Dhanjal had good reason for being dissatisfied with the Claimant's actions (or rather failure to act), he did not have reasonable and proper cause for acting in the intemperate and unprofessional manner in which he did; we reject his evidence that the phone call was a genuine information-gathering exercise.

110. As for Issue 2(i), we reiterate the fact that the Claimant cannot rely on the alleged remark made by Mr Card to him about going back to where he came from, whatever may have been meant by that: that formed no part of the Claimant's pleaded case. Our focus was solely on Mr Card's telling him that he was working too slowly. It is not in dispute that this occurred. Moreover, there was evidence from which we can infer that Mr Card was right: the importance of getting up to speed quickly had been emphasised to him in the email from Mr Pengelly of 21 August 2019; this was the Respondent's fastest line, and we accept that managers required a demanding pace of work from operatives working on it; the Claimant significantly exceeded the usual period to complete the familiarisation training. We accept Mr Jupp's submission that it cannot be objectionable for a supervisor to tell an experienced worker that he is working too slowly. In all the circumstances, we are satisfied that the Respondent had reasonable and proper cause for its actions. Consequently, this matter cannot form part of any breach of the implied term, nor could it amount to a 'last straw' for the purposes of such a claim.

111. If we are wrong about that, we are not satisfied that Mr Card's reprimand played any part in the Claimant's decision to resign; it was a minor incident, and there was no reference to it in the Claimant's letter of resignation. Although that is not determinative of the issue, in our judgment it is significant.

<u>If not, did the Respondent behave in a way that, viewed objectively, was likely to destroy, or seriously damage, the relationship of trust and confidence between the Claimant and the Respondent?</u>

112. The Tribunal could see why, in other circumstances, Mr Dhanjal's conduct might have amounted to conduct likely seriously to damage the relationship of trust and confidence. However, that conduct must be seen in its context: the Claimant knew, or ought to have known, that he had seriously failed in his obligations by not reporting the problem to his managers. On balance, and given that this was a single occurrence rather than a course of conduct, we have concluded that Mr Dhanjal's actions, although wrong, were not serious enough, in themselves, to amount to a breach of the implied term.

113. For the avoidance of doubt, if we are wrong in our conclusion that Mr Dhanjal's conduct did not amount to a breach of the implied term, we find that the Claimant waived the breach, for the reasons given below. He waited nearly four months to resign.

114. Consequently, the only relevant breaches for the purposes of the Claimant's constructive dismissal claim were the freestanding breaches in relation to the demotion and salary cut.

Did the Claimant resign in response to the breach of contract?

115. We accept the Claimant's evidence that he resigned, in part at least, in response to the Respondents to decision to demote him, and to reduce his salary. We conclude that those decisions continued to play on his mind, even after he had moved to a different area of work.

If so, did the Claimant affirm the contract before resigning?

116. The decision to demote the Claimant, and to reduce his salary, was communicated to him on 25 June 2019; the appeal was rejected on 18 July 2019; the Claimant did not resign until 6 September 2019, some seven weeks later. After the breaches of contract had occurred, the Claimant remained in the Respondent's employment over the summer break, and then asked to go back to DCC on a different shift, and on a lower salary, without reserving his right to resign and claim constructive dismissal. He did more than merely continuing to work: he specifically asked to transfer and take a lower salary. In our judgment, that was a clear affirmation of the contract.

117. Because the Claimant affirmed the contract, the claim of constructive dismissal fails.

If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract? The Respondent says conduct.

118. If we are wrong that the Claimant affirmed the contract, and there was a constructive dismissal, we are satisfied that the dismissal was for a potentially fair reason, namely conduct. There is no doubt that the Respondent had a genuine belief, on reasonable grounds, that the Claimant had failed to escalate the problem on 10 May 2019, when he became aware of it: he admitted at the time that he had decided not to do so because he was in a hurry; he accepted that this was wrong. Further, he misled his managers by telling them there was no problem, when he knew that there was. The Respondent was reasonably entitled to conclude that this was serious misconduct on his part, and that it could not have confidence in his ability to continue as team leader. In our judgment, the Respondent acted reasonably in treating that conduct as sufficient reason to demote the Claimant, and to reduce his salary; the sanctions fell within the band of reasonable responses. Consequently, if there was a constructive dismissal, it was a fair dismissal.

Employment Judge Massarella
Date: 26 February 2021

APPENDIX 1: AGREED LIST OF ISSUES

Unfair (constructive) dismissal

1. Did the Respondent breach the Claimant's contract by demoting him and reducing his pay? If so, was it a fundamental breach of contract? The Respondent accepts that there was no provision in the contract entitling it to do so.

2. Did the following acts occur?

   a. On 10 May 2019, being shouted at on the telephone by Gurminder Dhanjal in front of his family.

   b. On 10 May 2019, having his job threatened by Mr Dhanjal in the same telephone conversation.

   c. On 18 July 2019, did the Claimant submit a grievance on this date and, if so, did the Respondent fail to deal with the Claimant's grievance against Mr Dhanjal in a timely and appropriate manner.

   d. On 9 July 2019, being permanently replaced as Team Leader despite the investigation still being ongoing.

   e. The Claimant being blamed for matters that were outside of his responsibilities (i.e. the events of 10 May 2019).

   f. (i) Unilaterally having his wages reduced from £33,000.00 to £24,000.00.

      (ii) Being demoted/having his Line Manager responsibilities removed.

   g. Between 13 and 21 May 2019, being subjected to excessive monitoring by Mr Danny Lewis

   h. Prior to 21 May 2019, being segregated from other Team Leaders by Danny Lewis.

   i. On 21 August 2019 being told that, despite it only being the second day of training, the Claimant was going too slowly.

   j. Respondent's failure to acknowledge that the Claimant had not been adequately trained on the kit line area and was not sufficiently confident in identifying which areas were his responsibility: this relates to the incident on 10 May 2019.

   k. During the appeal meeting, Rob Pengelly contradicting how long the line was down for. Initially, the Respondent alleged it had been down for 150 mins from 11am but Rob informed the Claimant it went down at 12.45pm (Claimant left at 1pm) and that Management were aware of the line going down.

3. Did those acts, individually or cumulatively, breach the implied term of trust and confidence? The Tribunal will need to decide:

    a. whether the Respondent behaved in a way that, viewed objectively, was likely to destroy, or seriously damage, the relationship of trust and confidence between the Claimant and the Respondent; and

    b. whether it had reasonable and proper cause for doing so.

4. Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was part of the reason for the Claimant's resignation.

5. Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that he chose to keep the contract alive even after the breach. The Respondent contends that the Claimant affirmed the contract by requesting a move to DDC, and accepting a new role on a different salary and undertaking work in this role, prior to his resignation.

6. If the Claimant was dismissed, what was the reason or principal reason for dismissal - i.e. what was the reason for the breach of contract? The Respondent says conduct.

7. Was it a potentially fair reason?

8. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

Direct Discrimination

9. Did the Respondent treat the Claimant less favourably because of his race (the Claimant is black), contrary to s.13 Equality Act 2010?

10. The less favourable treatment alleged is as follows:

    a. The Respondent demoted the Claimant after a line stopped that was not in his area or his responsibility.

11. The Claimant relies on Mr Peter Young as a comparator and/or a hypothetical comparator who was in the same position as the Claimant, and had a line stop, but was white.

12. The Claimant relies on the following matters, from which he contends that the Tribunal can draw an inference that the alleged treatment was because of his race (points (a), (c) and (d) are disputed by the Respondent):

    a. the Claimant was blamed for a line stopping when he did not have the relevant training to deal with it;

    b. the Claimant submitted that the line stop was not in his area;

c. the Claimant was demoted as a result of this line stop (the Respondent contends the Claimant was not demoted but accepts his team leader responsibilities were removed as a result of the line stop);

d. Mr Peter Young as Team Leader had a line stop and was not demoted despite it being his responsibility.

Remedy

13. If there is a compensatory award, how much should it be? The Tribunal will decide:

a. What financial losses has the dismissal caused the Claimant?

b. Has the Claimant taken reasonable steps to replace his lost earnings, for example by looking for another job?

c. If not, for what period of loss should the Claimant be compensated?

d. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

e. Did the Respondent or the Claimant unreasonably fail to comply with it?

f. If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

g. If the Claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?

h. If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

14. What basic award is payable to the Claimant, if any? Would it be just and equitable to reduce the basic award because of any conduct of the Claimant before the dismissal? If so, to what extent?

15. If the Claimant succeeds in his discrimination claim, at what level should an award for injury to feelings be made?