



EMPLOYMENT TRIBUNALS

Claimant: Mr Y Stewart

Respondent: Safestyle Security Services Limited

Heard at: Nottingham
On: 20 – 21 November 2019
11 December 2019 (in chambers)

Before: Employment Judge D Faulkner
Members: Mrs J Bonser
Mr C Goldson

Representation

Claimant: In person
Respondent: Mr A Barnes of Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The Respondent did not harass the Claimant. The complaints of harassment are therefore dismissed.
2. The Respondent did not treat the Claimant less favourably than it treated or would treat others because of his race. The complaints of direct discrimination are therefore dismissed.
3. The Respondent did not victimise the Claimant. The complaints of victimisation are therefore also dismissed.

REASONS

Complaints

1. The Claimant complains of harassment, alternatively of direct race discrimination. He also complains of victimisation.

Issues

2. It was agreed that the issues in relation to liability were as follows.

Harassment

3. The Respondent eventually accepted that the Claimant was dismissed by Gavin Hawkings (its Operational Manager and the Claimant's line manager) on 7 October 2018. In addition, the Tribunal had to determine whether on 6 October 2018:

- 3.1. The Respondent's trainer, Jonathan Evans, referred to fire panels as "slaves", sneering and looking directly at the Claimant whilst doing so;
- 3.2. Mr Evans continued to use the word "slave" in the Claimant's presence when examining three other fire panels.
- 3.3. Mr Evans expressed surprise at the speed with which the Claimant completed administrative paperwork;

4. If so, the next issue was whether the conduct referred to above was unwanted.

5. If so, the next issue was whether it was related to race.

6. If it was, the final issue was whether it had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

Direct discrimination

7. The first issue was whether the Claimant was subjected to any of the above detriments on 6 October 2018.

8. If so, and in relation to his dismissal, the second issue was whether the Respondent treated him less favourably than it treated or would treat someone in materially similar circumstances.

9. If so, the final issue was whether the less favourable treatment was because of the Claimant's race.

Victimisation

10. The first issue was whether the Claimant did a protected act in sending emails to Mr Hawkings, on 7 October 2018 complaining about Mr Evans' behaviour and/or by making a complaint to the Respondent on 11 October 2018. In view of how the Claimant's case developed during the Hearing, it was also necessary to decide whether the Respondent's General Manager, Stuart Grocott, believed that the Claimant would do a protected act.

11. If there was a protected act or Mr Grocott believed the Claimant would do a protected act, as noted, it is accepted that the Claimant was dismissed. It is indisputable that in this case at least the dismissal was a detriment. During the course of the Hearing the Claimant said that he also wished to complain about the way in which Mr Grocott dealt with his grievance as a second complaint of victimisation, it having initially been advanced as a further complaint of direct discrimination. Accordingly, it is necessary to determine whether the Claimant was subjected to a detriment by Mr Grocott's handling of the grievance, which the Claimant specifically characterised as follows:

- 11.1. dismissing his grievance without impartially investigating it, by taking Mr Evans' word for what happened;
- 11.2. making the grievance seem less serious than it was by not investigating the use of the words complained about by the Claimant and by using terminology adopted by the Institute of Electrical and Electronics Engineers ("IEEE") as an explanation for the use of the phrase "slave panels"; and
- 11.3. dishonestly informing the Claimant that the Respondent would be changing the terminology used in its business so as to no longer refer to "slave panels".

12. If the Claimant was subjected to any of the above detriments, the final issue was whether this – and/or his dismissal – was because he had done a protected act or because the Respondent believed that he had done, or may do, a protected act.

Facts

13. Judgment in this case was reserved. The Tribunal was not able to start hearing evidence until the afternoon of the first day due to a combination of the time taken to read the witness statements, dealing with the fact that the parties had failed to agree a common bundle and hearing an application by the Claimant related to non-compliance with Tribunal Orders. As a result, submissions were not completed until late in the afternoon of the second day. The Tribunal met in private to deliberate on its decision on 11 December 2019.

14. It is necessary to record that the Claimant applied to strike out the Response, or otherwise have the Respondent barred from participating in the proceedings for non-compliance with the Tribunal's Case Management Orders, and to set out why those applications were refused.

15. The first allegation of non-compliance related to exchange of witness statements which the Tribunal had set for 2 September 2019. The Claimant sent his statement to Mr Barnes on 30 August and chased for a response on 10 September (see page 219). The Respondent's statements were not provided until 11 September – see page 220. Mr Barnes said that the delay was because of discussion about substantial additional documents the Claimant wanted to introduce into the bundle. This may have necessitated further witness evidence from the Respondent and Mr Barnes wanted to deal with all relevant matters in the statements he provided. It appears that in the end the additional documents were not in fact included.

16. The Claimant also complains that Mr Barnes sent him the final bundle index and additional numbered pages just a week or so before this Hearing (there were around ten additional pages in total, all of which the Claimant wanted included), and also says that he did not get the bundle in a file. He did have all or most of the bundle documents well before the Hearing and although he was delayed in putting final page numbers in his statement, he was happy with the final version.

17. We were not prepared to strike out the Response or bar the Respondent from participating in the Hearing for the following reasons:

17.1. Tribunals should not determine issues of non-compliance in a way which undermines the importance of Case Management Orders. We were more concerned with the delay in providing the Respondent's statements; the issues with the bundle seemed to us to be minor in nature.

17.2. We were satisfied with the Respondent's explanation for the delay, which was that it was awaiting clarification of whether additional documents were to be included which its witnesses might be expected to comment on.

17.3. It could have served its statements on the required date and served supplementary statements subsequently if needed. We were satisfied however, that there was no prejudice to the Claimant in terms of his preparation for the Hearing and moreover, it seemed to us having read them, that the Respondent's statements had not been written taking into account what was in the Claimant's statement, i.e. they were prepared independently.

17.4. Accordingly, it would have been disproportionate to strike out the Response or bar the Respondent from further participation in the case.

18. The common bundle as eventually compiled totalled around 250 pages. We made clear to the parties it was their responsibility to draw our attention to any particular documents they wished us to consider. Written statements were prepared by the Claimant, Mr Grocott and Mr Evans, all of whom gave oral evidence. The Claimant had made some fairly minor changes to his statement which had not been shared with the Respondent. Mr Barnes had no objection to them. Based on all of this material we make the following findings of fact. Where there were factual disputes between the parties, we make our findings on the balance of probabilities. Page references in these Reasons refer of course to pages in the bundle.

19. The Respondent is a provider of security services throughout the United Kingdom. It employs around 40 employees. One of the locations at which it provides its services is student accommodation in Nottingham city centre, at a building called Nova. Its head office is in Cardiff.

20. The Respondent employed the Claimant as a security guard from 6 October 2018 until 7 October 2018. He describes himself (paragraph 9 of his statement) as a British born black man. He says that his ancestors were slaves. He was interviewed and appointed by Mr Hawkings a few days before (see page 29).

21. The Claimant attended the Nova premises to commence his employment at 8.00 pm on 6 October 2018 and was met by Mr Evans who, as well as being a security guard himself, has responsibility to provide induction and training to new starters. He provides training throughout the country, and appears to be recognised by the Respondent as very experienced to do so. The Respondent's intention was that Mr Evans would be present during the Claimant's first two shifts. Both Mr Grocott and Mr Evans say that this is normal practice for the Respondent and in the security industry more broadly. We accept that uncontroversial evidence, given the importance of the role and the absence of any local office.

22. The Claimant says he did not feel welcome from the outset as Mr Evans and an individual called Josh, who was employed by the owners of the building, seemed close and from the moment he arrived on site, Mr Evans placed himself in the middle of conversations between Josh and the Claimant. We recognise that such contextual matters can be very relevant in cases of discrimination, but find it unsurprising that Mr Evans would have involved himself in conversations with Josh and the Claimant on the latter's first day, given that Mr Evans was the client's point of contact.

23. On commencing his shift, Mr. Evans asked the Claimant to complete a fairly substantial amount of paperwork (pages 40 to 63). Rather unusually, this included an application form – it may have been that the interview had taken place by telephone. The Respondent says that the Claimant failed to complete significant parts of the information it required for background security screening. This seems to be borne out by the documentary evidence.

24. The Claimant says (paragraph 17 of his statement) that he skim-read most of the paperwork, preferring not to "sign contracts immediately and when under pressure". We note that he did complete forms relating to a Working Time Regulations opt out, confidentiality and data processing (pages 42 to 44). As appears at page 53, one of the forms required him to specify phone numbers. Mr Evans says (paragraph 6 of his statement) that on checking the form, he noticed that the address and phone information was not completed and so gave the paperwork back to the Claimant, whereupon the Claimant filled in the address but said he did not have a phone. Mr Evans says he found that very odd as the Claimant had two mobile phones on the table. The Claimant agrees but says neither had a SIM card and so did not have a number. He said later in his oral evidence that he uses one phone for taking pictures and another for writing poetry. He agrees that he used one of the phones, during his shift, to email Mr Hawkings (page 73), suggesting that he did so using Wi-Fi without a SIM card or credit.

25. One of the crucial documents the Respondent requires sets out details of previous employers, to be recorded on an employment history vetting form (page 56). The Claimant did not complete it. His case is that he did not understand why a form was necessary given that he had completed an application form and CV to secure the role, though he did in fact partially complete the form. The Respondent says that it requires a five-year employment history, as an industry standard, and that it is unable to employ security guards without that information. We accept that unchallenged evidence and find it unsurprising. The Claimant says that the required

information was evident from his CV (page 25), but in answer to the question, “May we approach your [former] employers?”, he answered “No”.

26. Mr Evans says (paragraph 7 of his statement) that he pointed this out to the Claimant who replied that he was unwilling for the Respondent to contact previous employers and so did not need to fill in this part of the form. We accept that evidence, given the way the form was completed. In his oral evidence, the Claimant said that he did not have previous employer information with him, and that he could not remember at this Hearing the name of his previous employer. He later agreed that he could have looked at his CV on his phone, as it was stored on Indeed.com. He says he told Mr Evans he would fill in the details later, but could not explain to us why he said that the Respondent could not contact former employers. The Claimant says that if it had been explained to him why it was necessary, he would have provided the information.

27. Chronologically, the Claimant’s first complaint of harassment or discrimination is that Mr Evans expressed surprise that he could complete administrative paperwork so quickly, saying that it takes other people more than 20 minutes. The complaint is not so much that the comment was made but that Mr Evans made it “to the room”, for the benefit of Josh. The Claimant says that he could not say it was a comment related to race, but that looking back after what happened when he and Mr Evans went on a tour of the building (see below), he believed it to have been so related. Mr Evans says that only he and the Claimant were present when the comment was made and says at paragraph 7 of his statement that ultimately it was for Head Office to sort out. We will come to this conflict of evidence in our analysis.

28. On a tour of the building, Mr Evans was required to demonstrate to the Claimant a number of key tasks, including the operation of a fire alarm system. In doing so, Mr Evans described how the system consisted of a main panel and three secondary panels. What the Claimant says is that Mr Evans said that there was a “master panel” and that the building also had three “slaves” (plural – see the Claimant’s statement at paragraph 21), and that as they went further on their tour of the building, on seeing an individual panel Mr Evans said, “This is a slave”. The Claimant says that in making these comments Mr Evans sneered – which the Claimant describes as “a satisfied smile having completed something evil” – and looked at him in a deliberate way, glaring (“opening his eyes wide provocatively”), pausing for effect to await the Claimant’s reaction, and noticing the Claimant’s discomfort. He added in oral evidence that Mr Evans emphasised the word “slave”. At paragraph 20 of his statement the Claimant says that he eventually “acknowledged” Mr Evans, which in oral evidence he said meant that he nodded.

29. Mr Evans gives a different account. At paragraph 9 of his statement he said, “I did explain how the fire alarm system had a master panel and three slaves (subsidiary panels). I have always known the secondary panels on a fire alarm system to be called slaves or slave panels. At the time it certainly did not occur to me that this could cause offence, it is a standard term and the same term that I would use and have used for every new starter who has had a tour like this”. In his oral evidence he confirmed that he had used the term historically when inducting and

training other new starters from Black and Minority Ethnic backgrounds. We heard no evidence to dispute that assertion.

30. In his oral evidence, when we asked him to describe what happened in detail, Mr Evans said that there were several panels situated next to each other – a sprinkler panel, a refuge call point panel and a master fire alarm panel. He says that he referred to each in turn, from left to right, using the word “panel” in relation to each, the master fire alarm panel being the most complex and taking longest to explain. He says he then said that there were also “three slave panels” elsewhere in the building. He says he was not looking at the Claimant as he said all of this but at the panels themselves with the Claimant standing to his side, as this was necessary for him to show the Claimant carefully what buttons were used for which functions. As to the Claimant’s reaction, Mr Evans says there was no response at all, and so he turned to look at him simply to ascertain whether he had understood what had been said. We will deal with this crucial evidential conflict in our analysis.

31. As Mr Evans explained, the master panel has overall control of sounders and other elements of the fire alarm system. Each secondary panel feeds information to the master panel which it then disseminates through the system. The master panel communicates with everything in the system; each secondary panel communicates only with the master panel. The Claimant says that Mr Evans used the word “slave” on three further occasions as they completed the tour of the building, emphasising it as if triumphant; Mr Evans says that on each subsequent occasion after the initial instruction, he said, “This is one of the slaves I was referring to”. Again, we will resolve this crucial conflict of evidence in our analysis. Mr Evans expressed awareness during his evidence of the potential for the term “slave” to be offensive, but said that everything depends on context. He recognises that it would be offensive if referring to unpaid forced labour, but did not see a necessary connection to persons of the Claimant’s race given the recent cases of white Eastern Europeans who have been notoriously subjected to what is normally referred to as modern slavery.

32. The Claimant says he has never come across the use of the term “slave” or even “slave panel” before in his many years working in the security industry. The Respondent’s case is that it is standard terminology used by the IEEE and also used to describe car cylinders and music amplifiers. Mr Evans did not get the term from the IEEE. In his statement at paragraph 31, he says that he has “used these terms with everyone that I have trained, as far as I was concerned, they were the industry standard for describing the panels”. In his oral evidence he said he had used the terminology when working in the motor industry and when working for an electrical wholesaler, describing compressors and controllers. In relation to fire alarm systems, he says he has also heard the same equipment called “control panels”, “sounders”, “fire alarms” and “relays”. At paragraph 32 of his statement he adds, “However I have been instructed to avoid the use of these words [“slaves” and “master”] in the future, and I am happy to do that”.

33. The Claimant says that he may have taken offence if Mr Evans had just used the word “slave”, but could have suggested other terminology and the level of offence would have been different. It was Mr Evans’ conduct, as described above, which

leads the Claimant to believe he used the word to insult him and which thus created the weight of the offence. Similarly, the Claimant says if Mr Evans had used the term “slave unit”, that would have significantly changed the meaning and context.

34. We were taken by both parties to substantial documentary evidence detailing how the phrases “slave” and “slave panel” are used in various different industry contexts. At page 162 there is information from a company called Eaton regarding a burglar alarm, which uses “master” and “slave” terminology, but the Claimant says that this is used for the technicalities of circuitry, i.e. for an installer or other expert, and not to generically describe panels. Similarly, at page 139 there is information from the IEEE using the same terminology in relation to cables, but again the Claimant says this is academic/specialist language. The information at page 230 taken from Alibaba.com refers to master and slave fire panels; again, the Claimant says this is technical information. The Respondent’s Google search of “slave units” at pages 140 to 149 produced results referring to various pieces of equipment where again “slave” and “master” terminology is used. The Claimant says that Mr Evans used the term “slave”, not “slave units” and so the search is irrelevant.

35. His own search of the term “slaves” (pages 150 - 159) produced multiple images of Black African slaves from the 17th to 19th centuries. The Claimant also refers to British Standard terminology – pages 177D to F – which is “control and indicating equipment”, not “slave” and “master”. That, he says, is UK and industry-wide practice. Similarly, at pages 91 to 92 there is information produced by a company dealing with fire alarms which uses the term “control panels”.

36. Mr Evans says that several times during his shift the Claimant enquired when Mr Evans would be leaving so that the Claimant could undertake a tour of the building by himself. Mr Evans says that he explained that, as with all new employees, he would be required to stay with the Claimant for the first few shifts. He says that the Claimant made clear he was not happy about this. We accept his evidence, not least because it tallies with the Claimant’s emails we will come to below. The Claimant says (paragraph 25 of his statement) that what had happened on the initial tour of the building shattered his confidence and his view of the role.

37. Although not a separate complaint, the Claimant says that Mr Evans talked down to him during the rest of the shift, in front of Josh, as a means of trying to force him out of employment, because Mr Evans knew what he had said on the initial tour of the building was wrong and likely to lead to complaint. This seems to refer to completion of an online form; the Claimant says Mr Evans patronised him by the way in which he directed him, for example, where to enter his name. Mr Evans says the form is often filled in wrongly and as the Claimant had not completed the earlier paperwork correctly, he felt it right to provide guidance.

38. At 23.25 on 6 October 2018, during his shift, the Claimant emailed Mr Hawkings (page 71) as follows: “Hello mate. Just a quick update. Training’s going well, nothing new, more of a familiarisation. One thing though, your trainer is quite specific and I think two days of him will turn me to stone ... Do you think you could ease him off and allow me time to settle and catch the flavour? No worries if not mate, I’m just afraid he’s going to transform me into a spreadsheet!!! Any ways,

thanks for the opportunity. All seems good and I don't think there'll be any issues. Nice one, Yez". The Claimant says that because he wanted to stay in his job, he was trying to negate what Mr Evans might report about what had happened. He agrees that this e-mail was not a protected act.

39. At paragraph 24 of his statement, Mr Evans says that at around 00.30 on 7 October, with Josh also present, the Claimant stated, "You know what man, this job ain't for me, you can stick it". Mr Evans says that he told the Claimant that if he did not want to stay, Mr Evans could not force him to do so. Mr Evans adds that a short while later, after removing his security jacket and putting on his own, the Claimant told him that the job was not what Mr Hawkings had told him it was, namely that he would be working on his own site and not with two other people. At paragraphs 26 and 37, Mr Evans says that a short while later, the Claimant said he "did not want me there or to show him what to do, simply tell him what needs to be done and leave and he will figure out the rest himself". It is agreed that the Claimant left the site shortly thereafter. He says that this was to protect himself and avoid further incidents. Mr Evans agrees that the Claimant said he would be back the next day. On that basis the Claimant denies saying the Respondent could stick the job and that it wasn't for him. On balance however, in view of the Claimant's email referred to above and his further email below, we accept Mr Evans' account.

40. On 7 October 2018, at 01.00 and thus still during his shift but just as he was leaving, the Claimant emailed Mr Hawkings again (page 70). He stated, "Gavin, really sorry but this is unbearable. I can't seem to engage with sticky [this is apparently Mr Evans' nickname], he's just patronising me with spiel. When I ask for specifics, I find it difficult to comm with him, it's becoming tedious and a bit embarrassing. I am leaving site now to home, there's three of us here and my brain is rotting. I really love this place and desperately need work, so if it's possible to work independently of sticky in the future, I would bite your hand off for the opportunity. I'll call it a night for now, I'll turn up tomorrow as scheduled, unless I hear otherwise from you".

41. The Claimant accepts that the email was warm and friendly, and positive about the Respondent generally, and says this was because he did not want to put pressure on Mr Hawkings or get anyone into trouble, his priority being to keep his job. He added that it is difficult to raise a complaint of discrimination and at that point he had not understood the extent of the offence he felt. He agreed in evidence that this email also was not a protected act. He agreed that both emails were informal, did not ask for help, and did not ask Mr Hawkings to contact him.

42. The Respondent says in its Response that it took the Claimant's decision to leave the site as his resignation. Later on 7 October, Mr. Hawkings replied (page 70) to the Claimant's 01.00 email saying, "unfortunately due to you leaving site at approximately 00.30 on your first shift I have to withdraw the job offer. I wish you luck in finding future employment". Mr Barnes stated that the Respondent accepts that the Claimant had not resigned and was dismissed by that email; the Claimant eventually too accepted that this was the case. Mr Grocott confirmed that the decision to dismiss was his. The Claimant's reply to Mr Hawkings' email was, "no worries. I wish you luck furthering your business ambitions in the city". The

Claimant agreed in evidence that there is nothing in Mr Hawkings' email or his reply which suggested that his dismissal was because he had made complaints, though says that was on the assumption that Mr Evans had not told Mr Grocott that the Claimant would complain.

43. The Claimant emailed Mr Grocott and Mr Hawkings on 8 October (page 74A): "Just a quick one chaps... Is it company policy to refer to fire panel repeaters as 'slaves', or was that just an old-fashioned reference from your trainer? That's the sort of atmosphere I endured on my shift. Apologies for causing any inconvenience. Yez". The Claimant says he assumed the Respondent would know from this that he found the use of the word "slave" offensive without him having to say so expressly. He agrees that he did not refer to discrimination in this email though he says he was making the Respondent aware that the language used was discriminatory.

44. The Claimant emailed the Respondent again on 11 October 2018, marked "FAO MD and HR Manager" (pages 75 to 77). He made clear that he was complaining about Mr Evans, specifically what he felt was discrimination towards him because of his race. He made reference to the difficulty in making conversation with Josh which led to him feeling unwelcome. He said that during the initial patrol, Mr Evans "referred to the fire panels as 'slaves'" and that this was said with a sneer, looking him directly in the eye, with a pause for effect to await his reaction. He went on to say that on three further occasions Mr Evans felt it necessary to emphasise the word slave as though promoting a brand name. The Claimant said that he held his tongue in order to keep his job. He then referenced the comment about completion of paperwork and Mr Evans delivering basic instruction as to where he should complete an online form. He said that he tried to explain to Mr Evans that he did not need such help but the reply was, "It's what we do". The Claimant went on to say he believed Mr Evans was trying to create a hostile environment to force him out so that he would not get into trouble should the Claimant complain. He said that having emailed Mr Hawkings without reply on the night, exasperated by the conditions he was working in, he went home. He asked the Respondent to carry out an investigation. On 12 October 2018 (page 78), Mr Grocott replied, saying that he was sorry to hear the Claimant felt discriminated against and stating, "we take the matter of racial discrimination very seriously and will investigate this matter thoroughly".

45. The promised investigation was carried out by Mr Grocott, who says that he felt able to do so impartially, notwithstanding that it was he who had decided to dismiss the Claimant. He had already spoken with Mr Hawkings on 7 October and was told the evening had not gone well (paragraph 5 of Mr Grocott's statement). Mr Hawkings relayed that there had been problems with completing forms, including for security clearance, and that the Claimant had talked to himself, and shown a bad attitude towards Josh and towards some students. Naturally, Mr Hawkings had obtained this information from Mr Evans.

46. Mr Grocott says at paragraph 9 of his statement that "obviously" a complaint of racism would be taken seriously, "but I was really surprised to hear that Jonathan [Mr Evans] had been noted as being racist... He is my 'go to' guy on training for the student residences, he has a huge amount of experience and he has trained a very large amount of our team over the years. Team members of all races". He asked

both Mr Evans and Josh for statements, which they produced – see pages 79 and 81 to 83 – although Mr Grocott did not tell Josh there had been a complaint, and he did not forward the actual complaint to Mr Evans, simply asking for his account of the evening. Mr Evans says that it was on hearing about the Claimant’s complaint about the use of the word “slave” that he thought for the first time about this terminology possibly causing offence. His statement was almost identical to that produced for this Hearing; Josh’s statement is at page 79. In addition to the Claimant’s comments about leaving site, between them they recounted that the Claimant:

- 46.1. Told Josh to get out of his seat, Josh says soon after the Claimant’s arrival, Mr Evans says after the tour of the building; the Claimant denies saying this, going on to say he would only have asked Josh to move “for functional reasons”.
- 46.2. Spoke inappropriately to a female student when she challenged him for (Josh says) winking at her; the Claimant says he does not remember this and disputes Josh could have seen him winking; Mr Evans says (paragraph 14 of his statement) that the Claimant was staring at the student, and when she asked why, said “I’m security. It’s my job to watch you and keep an eye on what you are doing”.
- 46.3. Had an outburst of some description, shouting and swearing to himself; again, the Claimant denies that this took place.
- 46.4. Did not know which buttons to press when the fire alarm went off – the Claimant does not deny that was the case.
- 46.5. Said to Josh that he does not speak to people (like Josh) in their 20s; again, this is denied.
- 46.6. Had to be told by Mr Evans several times not to let people in without permits.

47. Having gathered this evidence, Mr Grocott concluded (paragraphs 10 and 11 of his statement): “I could not see anything untoward in Jonathan’s behaviour, we all call the secondary panels in fire alarm systems ‘slaves’, and run off the master panel. I have never really heard them called anything else. The term is also used to describe many electrical systems (master/slave system), many electrical parts from shops in the UK, the master cylinder and slave cylinder in vehicle braking systems, it is used in photography and probably other areas as well. I have never heard it described in the industry as a derogatory term. Having said that I wanted to be as proactive as possible bearing in mind the complaint so I wrote back to the claimant to suggest that in future we would use alternative names for the main and secondary panels”. At paragraph 13 of his statement he said that the term was simply describing a system “and I do not believe they [the comments] were in any way directed as an insult on the claimant to force him from his position as he claims”.

48. Having checked his conclusions with outside HR consultants, Mr Grocott wrote to the Claimant on 15 November 2018 setting out his conclusions (page 86). The letter

confirmed the requirement for the Claimant to work two full shifts of training to cover the needs of the job, which the Claimant had prevented by leaving early. It said that having spoken to Mr Evans, he (Mr Evans) was shocked at the complaint and that the Claimant took the terminology as he did. He stated, "This terminology is not created by us or Jonathan but is from the [IEEE] when referring to the main control panel and respective other panels that work off this." It said that Mr Evans had no response from the Claimant when explaining the panels, so had asked whether he understood the explanation. It said that Mr Evans was adamant that he had not treated the Claimant in any way differently from any other employee he has trained over many years, denied that Mr Evans did anything to make the training awkward, and that this was backed up by the account given by Josh.

49. The letter went on to say that the Respondent has employees from a range of different nationalities, none of whom are treated less favourably and so the Claimant's complaint was not upheld. Nevertheless, Mr Grocott thanked the Claimant for his comments and said that, as a result, the terminology used during training would be changed to primary and secondary units when describing the working of a fire alarm system. It concluded by saying that the Respondent's equal opportunities policy had never previously been brought into question.

50. The Claimant's criticisms of Mr Grocott's decision are as follows:

50.1. "Master panel/slave panel" was not the terminology he wanted investigated, and so Mr Grocott had sought to make the complaint seem less serious than it was. Mr Grocott agrees that he investigated the use of the term "slave panels" and says that this was because the complaint clearly indicated that it was the panels the Claimant was referring to.

50.2. The use of the offending terminology by the IEEE was not why the terminology was used by Mr Evans. The Claimant says that the Respondent uses British Standards for everything else, for example security screening. He says that the reference to the IEEE was retrospective cover for Mr Evans' actions, so again not taking his case seriously and indeed being dishonest. Mr Grocott agrees that he checked the IEEE's position after he got the complaint and not before.

50.3. Mr Grocott assumed Mr Evans' evidence to be authoritative and so he did not carry out an impartial and independent investigation.

50.4. Mr Grocott's statement that the Respondent would now use different terminology both showed that he knew the terminology used by Mr Evans was wrong and was dishonest because, he believes, the Respondent had always used the "new" terminology, except in relation to him.

51. The Claimant says Mr Grocott's email justified the Respondent's racism. Very shortly afterwards, the Claimant wrote to Mr Grocott (page 30A): "Thanks for your response Stuart. I have not questioned any of the company's policies or training minutes, but the actions of one of your employees. I must say, that the word panel was never used when your trainer used the word slave, so I was unable to draw

reference”. He went on to say that he had instructed his solicitor to pursue legal action and how determined he was to obtain justice. The Respondent did not reply to this email.

Law

Harassment

52. Harassment is proscribed by section 40 of the Equality Act 2010 (“the Act”). Section 26 of the Act states as far as relevant:

(1) A person (A) harasses another (B) if –

(a) A engages in unwanted conduct related to a relevant protected characteristic [which includes race]; and

(b) The conduct has the purpose or effect of –

(i) violating B’s dignity; or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

Section 212(1) of the Act states that “*‘detriment’ does not ... include conduct which amounts to harassment*”.

53. The Tribunal is thus required to reach conclusions on whether the conduct complained of was unwanted, if so whether it had the requisite purpose or effect and, if it did, whether it was related to race. As to whether the conduct had the requisite effect, there are clearly subjective considerations – the Claimant’s perception – but also objective considerations including whether it was reasonable for it to have the effect. That much is clear from section 26 and was confirmed by the Employment Appeal Tribunal in **Richmond Pharmacology Ltd v Dhaliwal [2009] ICR 724**

54. It is for the Claimant to establish the necessary facts which go to satisfying the first stage of the burden of proof – see further below. If he does, then it is plain that the Respondent can have harassed him even if it was not its purpose to do so, though if something was done innocently that may be relevant to the question of reasonableness under section 26(4)(c). It is also clear that the requirement for the

conduct to be “related to” race entails a broader enquiry than whether conduct is because of or on the ground of race as in direct discrimination.

Direct discrimination

55. Section 39 of the Act provides, so far as relevant, “(2) *An employer (A) must not discriminate against an employee of A's (B)— ... (c) by dismissing B; (d) by subjecting B to any other detriment*”. In determining whether the Claimant has been subjected to a detriment, “one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to ‘detriment’” (**Shamoon v Chief Constable of the RUC [2003] UKHL 11**).

56. Section 13 of the Act provides, again so far as relevant, “(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*”. The protected characteristic relied on in this case is race, which according to section 9 of the Act includes nationality and ethnic or national origins. Section 23 deals with comparators and provides, as far as relevant, “(1) *On a comparison of cases for the purposes of section 13 ... there must be no material difference between the circumstances relating to each case*”.

57. Whichever part of section 39(2) is relied on, and in relation to section 39(2)(d) assuming where relevant that an employee can establish that he has been subjected to a detriment, it must first be considered whether the employee has been less favourably treated than his comparator, having regard to section 23. If he has, the Tribunal must then consider whether that less favourable treatment was because of his race – “this is the crucial question” (**Nagarajan v London Regional Transport [1999] IRLR 572**). As was also observed in **Nagarajan**, whilst in some cases, the ground, or the reason, for the treatment complained of is inherent in the act itself, in other cases the act complained of is not in itself discriminatory but may be rendered discriminatory by the mental processes which led the alleged discriminator to act as they did.

58. Establishing the decision-maker’s mental processes is not always easy. What tribunals must do is draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances, where necessary with the assistance of the burden of proof provisions (see below). In determining the reason why the alleged discriminator acted as they did, the Tribunal does not have to be satisfied that the protected characteristic was the only or main reason for the treatment. It is enough for it to be significant in the sense of being a more than trivial factor in the treatment (again, **Nagarajan**).

Victimisation

59. Victimisation is proscribed by section 39(4) of the Act, in identical terms to section 39(2). Section 27 of the Act provides:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because:

(a) B does a protected act, or

(b) A believes that the B has done, or may do, a protected act.

(2) Each of the following is a protected act -

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

60. There are therefore two essential matters for the Tribunal to determine, namely whether the Claimant did a protected act or the Respondent believed that he had done or might do a protected act, and secondly the question of causation, namely whether any detriment the Claimant is able to establish was because of a protected act or because of the Respondent's belief in relation thereto. It is clear from the Court of Appeal's decision in **Rowstock Ltd v Jessemey [2014] ICR 550** that both the alleged detriment and indeed the protected act can take place after a claimant's employment with a respondent has terminated, notwithstanding the provisions of section 108 of the Act.

Burden of proof

61. Section 136 of the Act provides as follows:

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

(2) If there are facts from which the court [which includes employment tribunals] 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".

62. Direct evidence, certainly of discrimination or victimisation, is rare and tribunals frequently have to consider whether it is possible to infer unlawful conduct from all the material facts. This has led to the adoption of a two-stage test, the workings of which were described in the annex to the Court of Appeal's judgment in **Wong v Igen Ltd [2005] ICR 931**, updating and modifying the guidance that had been given by the Employment Appeal Tribunal in **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205**. The Claimant bears the initial burden of proof. The Court of Appeal held in **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** that "there is nothing unfair about requiring that a Claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one

only of showing that there is a prima facie case that the reason for the Respondent's act was a discriminatory one) then the claim will succeed unless the Respondent can discharge the burden placed on it at the second stage".

63. At the first stage, the tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them. As was held in **Madarassy v Nomura International plc [2007] IRLR 246** "could conclude" refers to what a reasonable tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all and, in a direct discrimination case, evidence related to comparators. In considering what inferences or conclusions can thus be drawn, the tribunal must assume that there is no adequate explanation for those facts. It is important however for the Tribunal to bear in mind that it was also said in **Madarassy** that "the bare facts of a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which an employment tribunal 'could conclude' that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination". The something "more" which **Madarassy** says is needed may not be especially significant, and may emerge for example from the context considered by the Tribunal in making its findings of fact.

64. If the burden of proof moves to the Respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act. To discharge that burden it is necessary for the Respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of race or the protected act as the case may be. That would require us to assess not merely whether the Respondent has proved an explanation for the facts from which the relevant inferences can be drawn, but also that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a tribunal would normally expect cogent evidence.

65. All of the above having been said, the courts have warned tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination or victimisation, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination.

Analysis

Witness evidence

66. This is a case in which there is little material of direct assistance to the Tribunal in resolving crucial conflicts of evidence, in particular those which arise in relation to events to which only the Claimant and Mr Evans were witness. It is necessary therefore to provide some analysis about the evidence generally. Whilst it is

unhelpful to make sweeping generalisations, there were a number of difficulties with the Claimant's evidence. In particular:

- 66.1. without explanation as to why, he said he was unable to tell the Tribunal the name of his previous employer;
- 66.2. he stated that he could not complete important parts of the Respondent's paperwork because he did not have previous employer information to hand, but then agreed he could have looked it up on his mobile phone;
- 66.3. he said that he would have filled in the information relating to his previous employers if Mr Evans had explained to him why it was needed (i.e. for vetting purposes), but was unable to explain how that was consistent with his having stated on the form that the Respondent could not contact those employers;
- 66.4. he stated that he did not like completing paperwork under pressure, but he did complete forms relating to data protection, confidentiality and the Working Time Regulations;
- 66.5. there were clear inconsistencies between the emails he sent to the Respondent on 6 and 7 October 2018 and what he says he experienced at the time – we will come back to that below.

67. Mr Evans' evidence on the other hand was in our view clear, consistent and matter of fact. We noted for example his readiness to volunteer that he did not derive the use of the word "slave" from the IEEF, but from his previous working experience. That is a small detail, but it demonstrates that he was a witness who did not seek to provide explanations for his conduct which were not in his mind at the time, but rather sought to give an account of his actual thought processes and related context. There was, as the Claimant pointed out, some inconsistency between the accounts provided by Mr Evans and Josh of the events of 6 and 7 October, specifically at what point during the shift the Claimant told Josh to get out of his seat. In our view however, that indicates the independence with which Mr Evans and Josh gave their evidence to Mr Grocott and in any event, such inconsistencies as there were did not concern issues of central importance to this case.

68. Mr Barnes also challenged the veracity of the Claimant's evidence regarding his mobile phones, suggesting it was inherently unlikely he would have two phones neither of which had a SIM card, particularly when it is agreed he used one of them to send emails and could have used them to view his CV online. We are prepared to give the Claimant the benefit of the doubt in this regard, as it may well be possible to use a mobile phone for various purposes without a number or SIM card. That said, and whilst we recognise that being sometimes consistent or inconsistent does not mean that a witness is always reliable or always unreliable, where there is a conflict of evidence between the Claimant and Mr Evans and where there is no other directly relevant material of assistance, we are inclined to prefer the evidence of Mr Evans.

Mr Evans' initial reference to "slaves" or "slave panels"

69. As noted above, this is the main conflict of evidence between the parties. We prefer Mr Evans' account of what happened, namely that he used the terms "master panel" and "slave panels" and looked at the Claimant simply to check understanding when, as is agreed, the Claimant gave no response. We reach this conclusion for the following reasons:

- 69.1. The evidence presented to us shows that the terminology, "master panel" and "slave panels" is widely used across various industries. This may sometimes be in technical guidance and specifications, but it is commonly used nevertheless, though admittedly not universally.
- 69.2. Mr Evans gave uncontested evidence that he had used this terminology himself over a long period when inducting other security guards – see paragraph 9 of his statement where he says, in what seems to us to be an overall summary of what he said to the Claimant on the tour of the building, "I did explain how the fire alarm system had a master panel and three slaves (subsidiary panels) ...".
- 69.3. Mr Evans was open about the fact that he used the term "three slaves" when touring the rest of building (see below), an admission which lends credibility to his evidence in relation to this earlier incident.
- 69.4. It seems to us inherently likely that on this first occasion, when they were standing by the "master panel", Mr Evans used the words "panel" and "panels", rather than just "master" and/or "slaves", because he used the word "panel" repeatedly in describing everything that was in front of him, moving from left to right.
- 69.5. It also seems to us inherently likely that Mr Evans was looking at the panels whilst he spoke, rather than at the Claimant – as he said, this would have been important in showing the Claimant how the panels worked.
- 69.6. Mr Evans' thoughtful reflection on the possible offence the word "slave" might cause and his considered understanding of slavery, also tends to suggest that, contrary to the Claimant's case, he did not look at the Claimant in order to elicit a reaction.
- 69.7. The fact that the Claimant could not turn off the fire alarm later in the evening supports Mr Evans' contention that the fire alarm panel was the most complex and that he needed to look at the buttons to show the Claimant how it worked.
- 69.8. It is wholly unsurprising that Mr Evans looked at the Claimant to check understanding in the absence of any response.

70. The combination of all of that evidence resolves the factual dispute, though of course it does not determine whether the Claimant was harassed, or alternatively

directly discriminated against, by the use of the terms “master panel” and “slave panels”. That is what we now go on to consider.

71. In respect of harassment, the first question is whether the use of these terms was “unwanted conduct”. We must of course look at this from the Claimant’s perspective, but even when doing so we have serious doubts that it was. We will come back to the terminology in more detail below, but whilst we appreciate that it is not easy for an employee to raise concerns about a perception of discrimination, perhaps especially on their first day of employment, it is difficult to escape the content of the Claimant’s emails to Mr Hawkings. They were in all respects warm, friendly and complimentary about the working environment generally, whilst at the same time being very forthright about the Claimant’s issues with Mr Evans’ assiduous manner whilst training him. In a very direct email to a new manager, levelling criticisms at a new colleague, it is telling that the Claimant did not raise the issue of the terminology used by Mr Evans, or how he is said to have used it, or even allude to it. For these reasons we conclude that the conduct of Mr Evans on this occasion, as we have found it to be, was not unwanted.

72. That is enough to dispose of this harassment complaint, but we consider the remaining issues for completeness. Was Mr Evans’ conduct related to race? The way he looked at the Claimant clearly was not; he was simply and routinely checking the Claimant’s understanding. A somewhat more difficult question is whether the terminology “master panel” and, particularly, “slave panels” was related to race. We conclude that it was not. The term has longstanding use in particular industries, and is still widely used, including in the security industry as the Respondent generally, and Mr Evans in particular, asserted. The comment therefore related to equipment and technology, not to race. It is possible to see how the terminology could be misused, such as to become related to race, but it was not in this instance. We also think the terminology is regrettable and would be better avoided. Nevertheless, we conclude that it was not related to race in the sense required by the Act.

73. Even if it was, it clearly was not Mr Evans’ purpose to violate the Claimant’s dignity or create the proscribed environment for him in using it – he used the terms for all new staff, to describe how the relevant equipment worked, and it is clear from our findings of fact that we accept his evidence that he did not realise at the time that the Claimant, or indeed anyone, would find it offensive. We are also satisfied that the conduct did not have the required effect for the following reasons:

- 73.1. The Claimant’s emails to Mr Hawkings strongly suggest that Mr Evans’ comments and actions did not have the required effect on the Claimant when judged subjectively, i.e. from his point of view. The emails show that what the Claimant actually objected to was being supervised and told what to do: he was particularly vexed by there being “three of us here” on the site.
- 73.2. Assessed objectively, we conclude that it would not be reasonable for Mr Evans’ comments and conduct to have the required effect. The Claimant himself said that the way he alleged Mr Evans looked at him added offence – we have concluded that the way in which Mr Evans looked at the Claimant was entirely innocuous and therefore on any objective measure any offence

or hostility was negligible or non-existent. The Claimant also said that the phrase “slave units” was less offensive than “slaves”. We have found that the term used on this occasion was “slave units”. Again, therefore, on any objective measure any effect on the environment for the Claimant was diminished and, we conclude, insufficient to meet the statutory test.

74. For all of these reasons, we are not satisfied that the Claimant has proved facts from which the Tribunal could conclude in the absence of an adequate explanation that he was harassed. The Claimant’s complaint of harassment in this regard does not succeed and is dismissed.

75. The alternative way of putting this complaint was that it was direct discrimination because of race. We find that there was no detriment in the way Mr Evans looked at the Claimant, for the reasons we have already made clear. As to the terminology he used, it is clear that Mr Evans did not treat the Claimant less favourably than he treated or would have treated other staff who were also being inducted, as he had clearly used the same terminology with everybody he was asked to train.

76. If it were said that the terminology was inherently racial, and thus inherently more offensive to a person of black race or ethnicity, so that treating everyone the same was no answer to a claim under the Act, then that is addressed by our having considered this matter as a complaint of harassment first. In any event, as set out above in relation to harassment, we have concluded that the terminology was not inherently racial. As for what was in Mr Evans’ mind, it is clear that he was seeking to explain the workings of the fire alarm system as he had done over several years. Mr Evans’ conduct, including the words he used, was therefore not because of race.

77. In summary, the Claimant has not proved facts from which the Tribunal could conclude in the absence of an adequate explanation that the Respondent discriminated against him. This complaint of direct discrimination therefore does not succeed and is dismissed.

Mr Evans’ further use of the term “slaves”

78. There is no conflict of evidence to resolve in relation to this complaint, as it is agreed that on continuing the tour of the building, on more than one occasion Mr Evans referred to a panel as one of the “slaves” he had referred to earlier. The question therefore is whether this amounted to harassment, or alternatively direct discrimination. In this instance, it is the use of the term only, and not any associated conduct, that we are required to consider.

79. Again we find that the conduct was not unwanted even when considered wholly from the Claimant’s perspective, for the reasons given above. The Claimant says he was “stunned” by what Mr Evans said, but we find that to be inconsistent with the content and tone of the emails he sent to Mr Hawkings, as already noted. As also already noted, we accept the difficulty of raising concerns about discrimination, especially at the start of an employment relationship, but the emails go far beyond what one might expect from someone who was simply trying to retain his employment. As we have said, what they reveal is that the Claimant was really concerned about the perceived lack of autonomy, and not about the terminology

used by Mr Evans in relation to the fire alarm system. That complaint came later, but by then the Claimant's employment had ended; what he set out in hindsight seems to us a less reliable guide to whether the conduct of Mr Evans was unwanted from the Claimant's point of view. We find that it was not.

80. In any event, we also find that the conduct was not related to race. This is not an entirely straightforward point, particularly given that the term used on these additional occasions was "slaves". The context for those comments makes clear however that this was shorthand for "slave panels". For the reasons already given in relation to that terminology, we conclude that the conduct related to the system and equipment Mr Evans was referring to and not to race.

81. We are further satisfied that on this occasion also, Mr Evans did not have the purpose of violating the Claimant's dignity or creating the requisite environment. In his mind, he was simply doing his job as he had done with familiar terminology for some time. As to whether the conduct had the required effect, we conclude that the Claimant did not perceive that it did, again for the reasons already given (see paragraph 73.1 above). Objectively assessed, the word "slaves" is a regrettable term, though we have found that it is not uncommon and is used widely in a variety of industries. Given that we have found that there was nothing in Mr Evans' manner or demeanour that suggested the use of this word was in any way targeted at the Claimant or anything other than a reference to the way the system worked, and given what Mr Evans had said doubtless just a few moments before, about a "master panel" and "slave panels" and the workings of system, it was plain on any objective assessment that this was what he was referring to. It would not be reasonable therefore for the use of the word to have had the effect the Claimant contends for.

82. As will already be clear, we find also that there was no less favourable treatment of the Claimant in comparison to other inductees in the use of this word, given that Mr Evans had used it frequently and consistently. It follows too that Mr Evans' conduct was not because of race.

83. The Claimant has again failed to meet the burden of proof that is on him, both in relation to his complaint of harassment and in relation to his complaint of direct discrimination. Both complaints are therefore dismissed.

Completion of paperwork

84. We note that the Claimant's complaint in this respect concerned not so much Mr Evans' comment as the manner in which it was made, specifically that it was said with Josh present and that the Claimant took Mr Evans to be questioning his capabilities. We have to say that we find it unsurprising that the comment was made, given that the failure to complete some of the paperwork makes it likely that it was returned quicker than Mr Evans expected and given also that it was Mr Evans' job to make sure the paperwork was completed correctly as part of the Respondent's normal induction process. We also conclude, as the Claimant all but accepted by the way he put this allegation, that there was nothing objectionable in the comment itself, which could be construed as positive towards the Claimant.

85. There is a conflict of evidence on whether Josh heard or could have heard Mr Evans' comment. We are unable to resolve that conflict on the material presented to us but assuming in the Claimant's favour that Josh was able to hear what was said:

- 85.1. Was the comment unwanted conduct? In a broad sense it could be, but the Claimant did not raise the matter until his 11 October email and the emails to Mr Hawkings of 6 and 7 October which we have already referred to at length suggest that it was not.
- 85.2. Even if it was, we cannot see how the comment was related to race even if one were to stretch that phrase to its limits. It does not have any racial content, overtone or hint within it.
- 85.3. Furthermore, even if it had been related to race, we conclude that it did not have the required purpose or effect. It was a one-off, quick, passing comment of the sort that would occur in everyday conversation, with no obvious intent or consequence of questioning the Claimant's abilities. It was unreasonable of the Claimant to see it as such and the contextual evidence, of his emails in particular, suggest that he did not perceive it as such.

86. Again the Claimant has failed to prove facts from which a reasonable tribunal could conclude in the absence of an adequate explanation that the Respondent harassed him. This complaint of harassment also fails and is dismissed.

87. As for the alternative way of putting the complaint, namely direct discrimination, the Claimant has led no evidence that he was less favourably treated in this regard compared to how Mr Evans would have responded to someone of a different race who completed the paperwork more quickly than he was used to. Even if it was less favourable treatment, it was certainly not because of race, but because the Claimant had completed the paperwork so quickly. Even if we assume it was said loud enough so that Josh could hear it, we would need "something more" than a possible difference in treatment and race to conclude that the burden of proof had shifted to the Respondent. Given our findings in respect of the other allegations concerning Mr Evans, and our findings in respect of contextual matters such as Mr Evans' involvement in conversations between the Claimant and Josh, there is no "something more" to assist the Claimant. The complaint of direct discrimination also fails and is dismissed.

Dismissal

88. The Claimant says that his dismissal was an act of harassment and/or of direct discrimination and/or an act of victimisation. The factual context is that Mr Evans had relayed his version of events to Mr Hawkings, who in turn relayed what he had been told to Mr Grocott. Mr Grocott then instructed Mr Hawkings to write to the Claimant in terms which it is now agreed amounted to his dismissal. As we have highlighted, there is some conflict of evidence around what the Claimant said before leaving the site, but it is not necessary for us to resolve it. The question we have to consider, in respect of all of the ways the Claimant complains about his dismissal, is what were the Respondent's reasons for it.

89. It is clear in our judgment that even if the Claimant did not say that the Respondent could “stick” the job, there was much in what was reported to him for Mr Grocott to be legitimately concerned about:

- 89.1. There was an unexplained failure to complete essential paperwork.
- 89.2. The Claimant was plainly not receptive to the induction process and to the training which Mr Evans was deployed to provide, which is the opposite of what an employer would be entitled to expect from a new starter.
- 89.3. Most concerning of all, the Claimant had walked off site, a serious matter for any employee but even more so for a security guard. The Claimant said in submissions that he left for his own safety but he did not communicate that to the Respondent, even if it were true.
- 89.4. Mr Grocott may well have heard, at least in summary form, about the other matters eventually detailed in the statements produced by Mr Evans and Josh, but it is unnecessary for us to say anything further about those as they were not matters, or at least not the principal matters, that led to the Claimant’s dismissal.

90. There was nothing in the Claimant’s emails of 6 and 7 October to Mr Hawkings which gave the Respondent any cause for concern about Mr Evans’ behaviour or which might give it any reason to suspect there was a different reason for the Claimant’s decision to walk out. In fact, quite the opposite. Nothing reasonably suggested to the Respondent that it should investigate the circumstances in which the Claimant left the site. It is unsurprising that his doing so just a few hours after starting his employment led the Respondent to dismiss him, given what it showed about his attitude to the job. That, we find, was what operated on the mind of Mr Grocott, and thus Mr Hawkings, in sending the dismissal email.

91. Was that in any sense unlawful conduct under the Act? The Claimant admitted that there was no protected act prior to his dismissal and, further, led no evidence, other than his own speculation, that Mr Grocott (and thus Mr Hawkings) believed he may do a protected act. The dismissal took place before the Claimant sent his 8 October email in which he first hinted at concerns about Mr Evans’ conduct. The Claimant suggests Mr Evans may have told Mr Grocott the Claimant would complain, but he has no evidence of that and Mr Evans says he did not know there was any problem from the Claimant’s point of view until Mr Grocott told him following the Claimant’s formal complaint. We accept Mr Evans’ evidence for the general reasons we have already given. The Claimant has thus failed to prove facts from which the Tribunal could even remotely conclude that a belief in a protected act played any part in the dismissal decision. The complaint of victimisation is therefore dismissed.

92. As to the complaint of harassment, of course the dismissal was unwanted conduct. It was not however related to race, but to all the reasons set out above. There was nothing in the evidence before the Tribunal that even remotely suggested that Mr Grocott took his decision on the basis of those matters, which were unrelated

to race. There is no need for us to go further; the Claimant has again failed to meet the initial burden of proof.

93. As to direct discrimination, the Claimant led no evidence to suggest that someone who did materially the same things would not have been dismissed. Walking off site in the middle of a shift is one thing (though it is generally agreed that except in the most extreme circumstances it is liable to lead at least to disciplinary action). Walking off site as a security guard, on your very first day, without any apparent justification except that he did not like the fact that Mr Evans was insistent on training him and following normal induction procedures, is quite another. We are satisfied that anyone in materially similar circumstances would have been treated in the same way. Looking at it another way, if we apply our minds to the reason why the Claimant was dismissed, it is plain that the reasons were as set out above. The Claimant has not proved facts from which a reasonable tribunal could conclude that the Respondent discriminated against him in this respect. The complaint of direct discrimination also fails and is dismissed.

Grievance

94. The Claimant's email of 11 October 2018 was clearly a protected act. In the **Jessemey** case, the employee brought a tribunal complaint after the termination of his employment and was subsequently given an unfavourable reference. The Court of Appeal's decision simply assumes that both the protected act and the detriment can take place post-termination. The effect of that case cannot be limited to the bringing of tribunal proceedings, but by implication covers all of the potential protected acts set out in section 27. We have therefore considered this complaint as the Claimant explained it during the course of the Hearing.

95. Without being unduly critical of Mr Grocott, there are aspects of the way he dealt with the grievance that were not ideal. First, it was he who had decided the Claimant should be dismissed just a few days before (although the Claimant did not know that) and so ideally, he would have passed the grievance to someone who was not involved in that decision. Secondly, he did not discuss the grievance with the Claimant, although in fairness he did have a very full email of complaint and the Claimant was no longer an employee. Thirdly, some of the reasons for his conclusions were less than analytical, specifically that no-one had ever challenged the Respondent's equal opportunities policy before. It is however to Mr Grocott's credit that he specifically avoided telling Josh that there had been a complaint so that Josh could give his own untainted account, and that he did not forward the complaint to Mr Evans as he also wanted Mr Evans' independent account. It is with that context in mind that we consider the Claimant's case.

96. The first complaint is that Mr Grocott took Mr Evans' word for what had happened and therefore failed to be impartial. The Claimant is right at least to some extent, in that Mr Grocott did have inherent difficulty in believing Mr Evans would have done what was alleged. We would be prepared to conclude that this was a detriment to the Claimant, taking the broad view required by **Shamoon**. We do not believe however that Mr Grocott approached matters in this way because the Claimant had complained of discrimination and/or, as the Claimant says, because he

believed the Claimant would take things further. We reach this conclusion for the following reasons.

97. First, Mr Grocott decided to obtain a view from Josh, someone not employed by the Respondent and on the face of it therefore able to comment independently of Mr Evans. The statement that resulted, produced without Josh knowing that there was a complaint, largely backed up Mr Evans' account – and as we have said, the minor inconsistencies between the two accounts suggests there was no collusion between them. Secondly, the fact that Mr Grocott did not show Mr Evans the complaint meant that Mr Evans was not given the opportunity to respond point by point, which very much suggests Mr Grocott was not pushing towards a particular outcome in investigating the issues. Thirdly, Mr Grocott openly concluded that the term “slave panels” had been used. This was not the term the Claimant had raised, but it nevertheless shows Mr Grocott was independent-minded enough to reach a conclusion that was close to what had been complained about. Fourthly, he agreed to a change in terminology and told the Claimant about that, which shows a willingness to entertain the idea that the Respondent's practice could be improved; moreover, this conclusion effectively gave the Claimant material to complain further.

98. The second complaint is that Mr Grocott investigated the wrong term – “slave panel(s)” instead of “slave(s)”. Whilst we can understand the Claimant's concern in this regard, we do not believe that this was because of a protected act either. We do not know the detail of the briefing Mr Grocott gave to Mr Evans, but as already stated, he left Mr Evans to give an independent account and “slave panels” is what Mr Evans told Mr Grocott he had said. Further, it was clear the complaint was about a reference to slave panels, and therefore we do not find it surprising that Mr Grocott used that term in his letter.

99. The third complaint concerns the reference to IEEE terminology. Again, we are satisfied that Mr Grocott did not include this reference in his decision because of a protected act or because he believed the Claimant might take things further. He did not hesitate to confirm to the Tribunal that he checked the IEEE's position after he received the complaint – and there was certainly nothing untoward about doing so. All he was saying in his decision was that “slave panels” is widely used terminology, which we accept.

100. The fourth complaint is that Mr Grocott was dishonest in saying that the Respondent had implemented a change in terminology. The Claimant's case in this regard amounted to no more than speculation; we heard no evidence from which we could conclude that his speculation was well-founded. Further, as noted above, by making this point Mr Grocott was essentially giving the Claimant material to complain if he was minded to do so, by effectively admitting that the term “slave panels” was best avoided.

101. The Claimant has not proved facts there from which we could conclude in the absence of an adequate explanation that the protected act, or the possibility of a further protected act, played any part in the investigation of the grievance or the grievance decision. Even if he had, such as to place the burden of proof on the Respondent, for the reasons we have given we are satisfied that the Respondent's

explanations of the matters complained about were not influenced by a protected act or the prospect of a protected act. The Claimant's complaints of victimisation fail and are dismissed.

102. Finally, stepping back from the process of considering each individual complaint in turn, such as to look at the whole picture and the totality of the evidence before us, nothing in the contextual evidence referred to in our findings of fact adds anything of importance to our conclusions and certainly does not give us cause to change those conclusions. None of the Claimant's complaints succeeds, whether of harassment, indirect discrimination or victimisation. They are all dismissed.

Employment Judge D Faulkner

Date: 14 January 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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