

THE INDUSTRIAL TRIBUNALS

CASE REF: 10159/19

CLAIMANT: Veronica Gomes

RESPONDENTS: 1. Industrial Temps Limited
2. Nadezda Snegiriova

JUDGMENT

The decision of the Tribunal is that the claimant was not unlawfully discriminated against by the respondents on the grounds of race.

Constitution of Tribunal:

Employment Judge: Employment Judge Wimpres

Members: Mr R McKnight
Mr I Atcheson

Appearances:

The claimant appeared in person and was assisted by an interpreter – Ms Trigo.

The respondents were represented by Mr Peter Bloch Director, of Engineering Employers Federation Northern Ireland.

SOURCES OF EVIDENCE

1. The Tribunal received witness statements from the claimant, Mr Pedro Cantecali, Ms Nadezda Snegiriova and Ms Roisin Thompson and heard evidence from them by way of cross-examination. The Tribunal also received an agreed bundle of relevant documents which was supplemented during the course of the hearing. This material included a copy of the claimant's application for funding to the Equality Commission and copies of all emails between the claimant and the Equality Commission in compliance with a direction given by the Tribunal during the course of the hearing. As recorded at the Case Management Discussion on 23 September 2019 the claimant has some ability in English but would be provided with an interpreter in Spanish for the hearing.

THE CLAIM AND THE RESPONSE

2. The claimant alleged that she was discriminated against by both respondents on racial grounds. The claim form contained a detailed history of her dealings with the

respondents which focussed on not being given the opportunity to test for Greiner Packaging and the second respondent, the Greiner Packaging Recruitment Coordinator, not having a job for her but having jobs for others. The alleged act of discrimination took place on 11 February 2019 and was not ongoing. The claim form was lodged in the tribunal office on 25 May 2019. The claim form was sent to the respondents on 24 June 2019 and a response was lodged on behalf of both respondents on 9 July 2019.

3. The respondents denied discriminating against the claimant on the grounds of race, as alleged or at all and set out succinctly the sequence of events. In particular the respondents denied that the claimant was informed that she could not or would not be considered for engagement with Greiner Packaging. The response also drew attention to the claimant's failure to reply to an invitation to test for Greiner Packaging which was issued after she had made a complaint about the matter.

THE ISSUES

4. The main issue was identified at a Case Management Discussion held on 23 September 2019 as follows:

“Whether the two respondents unlawfully discriminated against the claimant on the ground of her colour, contrary to the Race Relations Order, in not providing the claimant with employment in Greiner Packaging?”

Although not referred to in the record of the Case Management Discussion it is clear that there is also a time issue as the claim was lodged outside the 3 month time limit for such claims and this needs to be addressed.

THE FACTS

5. The claimant is a black Spanish National originally from Guinea Bissau in North East Africa. The claimant moved to the United Kingdom in September 2017 and lived in Birmingham with her partner. She subsequently moved to Northern Ireland and lived with her cousin Pedro Cantecali and his girlfriend Rosinda Ramos in Dungannon.
6. The first respondent is a recruitment agency which specialises in providing temporary labour for industry. It has four offices in Belfast, Lisburn, Portadown and Ballymena with forty seven staff. The first respondent has one hundred and twenty five clients and major clients such as Greiner Packaging and Linden Foods have dedicated Account Coordinators. It looks after the processing of approximately two thousand temporary workers at any one time and is responsible for their weekly PAYE. Ms Thompson is employed by the first respondent as its Human Resources Manager, a post that she has held from March 2010.
7. Ms Snegiriova is the Account Coordinator for Greiner Packaging and in this capacity she is responsible for recruiting temporary labour for Greiner Packaging. Ms Snegiriova oversees recruitment, registration, testing and induction. Up until November 2019 Ms Snegiriova was on site at Greiner Packaging three days a week - Monday, Tuesday and Thursday and was based at the Industrial Temps office in Lisburn on Wednesday and Friday. Since November 2019 she has only worked at Greiner Packaging on Monday and Tuesday and is based at Lisburn for the

remainder of the week. Ms Snegiriova arranges for workers who have expressed an interest in working for Greiner Packaging to attend at Greiner Packaging for registration where she has the use of an office. Ms Snegiriova is originally from Lithuania and now lives in Northern Ireland. Imra Katke was the Account Coordinator for Linden Food. She no longer resides in Northern Ireland.

8. Mr Canticali was aware that the claimant was looking for work and drew her attention to the first respondent's Facebook page where it was stated that Greiner Packaging had vacancies for process operatives. Mr Canticali told the claimant to apply. The claimant was interested in the position and went on to the Facebook page and registered her interest online.
9. On 29 January 2019 the claimant phoned Ms Snegiriova and told her that she was interested in the job. Ms Snegiriova asked the claimant if she was registered with Industrial Temps and the claimant told her that she had already completed the online registration. According to the claimant Ms Snegiriova explained that she had to go the Industrial Temps office in Portadown to register and that she should attend there at 10.00 am on 4 February 2019. The claimant was also asked to bring the necessary documents along with her together with bank details and her National Insurance number.
10. The claimant duly attended the office on Monday 4 February 2019 but was told by a female employee that Ms Snegiriova was not there and was at the Greiner Packaging premises. The female employee contacted Ms Snegiriova by phone and according to the claimant conversed in a language that was not English. After hanging up she advised the claimant that Ms Snegiriova had told the claimant to go and see her in Greiner Packaging and not in the Industrial Temps offices. She also told the claimant that the position that she was applying for was not vacant anyway and that the only position they had was for a process operative in Linden Food. The claimant replied that she was not interested in this position and left.
11. Mr Canticali advised the claimant to report the matter to the Central Office of Industrial Temps in Belfast. The claimant did so and was told that there must have been a confusion and that they would tell Ms Snegiriova to call her. Twenty minutes later Ms Snegiriova called the claimant and said that she had told the claimant to go to Greiner Packaging to meet her. The claimant replied that it will have been a misunderstanding and that she had not heard that. The claimant asked Ms Snegiriova if she could meet the next day on 5 February 2019 and Ms Snegiriova replied that she only did the registration process on Mondays. The claimant agreed to attend the following Monday 11 February at 10.00 am. The claimant also asked whether there were vacancies in that position as Ms Snegiriova's colleague had said that they were no longer hiring and that she would not like to go there and waste her time. Ms Snegiriova replied that she was in charge of recruiting people for Greiner Packaging and that her colleague didn't know anything. The claimant agreed to attend.
12. On 8 February 2019 Ms Katke emailed Ms Snegiriova with regard to the claimant. The email read as follows:

"This woman just called me looking for work in Linden, said she had a reg (sic) appointment with you on Monday.

If she will be no good for you, can you give her Linden test please.”

Ms Snegiriova replied – “ok”

The claimant's interest in working at Linden Foods was also recorded on the first respondent's computer system.

13. The claimant attended Greiner Packaging on 11 February as arranged and was directed to Ms Snegiriova's office. The claimant went to the office, greeted Ms Snegiriova and told her who she was and that she had come to do the registration. Ms Snegiriova gave the claimant the registration papers to fill out and told her to return to the office when she had completed them. Ms Snegiriova directed the claimant to the seating in the reception area outside her office where she was to complete the forms. The claimant thought that it was strange be asked to complete the form outside Ms Snegiriova's office as there was a table and chairs inside the office but accepted this and filled in the registration form.
14. The registration form completed by the claimant was produced by the first respondent during the hearing and contained some entries which latterly assumed a degree of prominence in the respondents' case. On the first page in answer to the question – “Do you have your own transport?” the claimant answered “yes” and in answer to a question about radius of travel she answered “car”. Ms Katke therefore recorded on the first respondent's computer system that the claimant had a car and could travel. When questioned about this during the hearing the claimant stated that Greiner Packaging was a 20 minute walk from where she lived and that Linden Foods was a 20 minute drive and that as she did not have a car it was not the same to her.
15. When the claimant had completed the papers she returned to Ms Snegiriova's office and she was asked for her passport, bank details and National insurance number which the claimant provided. After the registration was completed and the claimant's document were copied Ms Snegiriova told the claimant that she did not have a job for her as there were 10 people starting the next day. Ms Snegiriova offered the claimant another job with Linden Foods and the claimant accepted this as she had been looking for work for a while and had a 6 month old baby. Ms Snegiriova then gave her the Linden test to complete.
16. While the claimant was still in the office three people whom she described as “white skinned”, two men and a woman, entered the office and Ms Snegiriova gave them the tests for Greiner Packaging. The claimant thought that they were part of the 10 people that Ms Snegiriova had said were starting the next day but as Ms Snegiriova started asking them about their availability and documents this suggested to the claimant that they were not registered and they were attending to undertake the registration process like the claimant. In addition, while the claimant was doing the Linden test Ms Snegiriova received a call from a person asking for the same job that Ms Snegiriova had told the claimant was no longer available. Ms Snegiriova invited the caller to a meeting in her office the same day at 12.00 and told the caller to bring his/her passport, bank details and National Insurance number and said that she would have work for the caller tomorrow. The claimant completed the test and gave it to Ms Snegiriova who told her that she would pass it to Imra Katke who was in charge of recruitment for Linden and that she would call the claimant. Ms

Snegiriova also told the claimant to call her if she didn't hear from Ms Katke by 13 February. The claimant thanked Ms Snegiriova and left the office.

17. The claimant returned home and was very depressed and crying. She told Mr Cantecali what had happened. The claimant told Mr Cantecali to call Ms Snegiriova, tell her that he was interested in the process operative job at Greiner Packaging and ask if the job was still available. Mr Cantecali called Ms Snegiriova and asked if the job was still available. Ms Snegiriova asked him if he was registered at Industrial Temps and he replied that he wasn't. Ms Snegiriova told Mr Cantecali that she might have a job for him but he would have to register first. Mr Cantecali thanked her and hung up.
18. Mr Cantecali was very angry and called the first respondent's central office in Belfast to complain. He asked to speak to the manager but after waiting 15 minutes he was told that the manager was too busy right now to speak to him and suggested that he write everything down and email it to the manager at an email address that was provided to him. Mr Cantecali gave the claimant the email address and she emailed the manager, Ms Thompson, on the same day.
19. In her email of 11 February 2019 the claimant set out in detail what had occurred and stated that she felt discriminated and very angry "because I wanted to work for Greiner and I went there to do the test for Greiner and ended up doing the test for Linden Food and [Ms Snegiriova] does not have any job for me but she does have positions for others." The claimant concluded her email by stating that she was making the complaint because she wanted someone to do something about the situation otherwise she would have no choice but to take legal action through the courts.
20. On 12 February 2019 the claimant and Mr Cantecali went to the Citizens Advice Bureau ("CAB") to seek advice about what had happened. Having done so they were advised to contact the Equality Commission as they were the specialists in cases of discrimination.
21. After leaving the CAB they went to PA Duffy & Co solicitors and spoke with Sean McGrath, a solicitor. Mr McGrath asked if they had spoken with the Industrial Temps manager and the claimant replied that she had sent her an email. Mr McGrath also advised them to contact the Equality Commission as they were specialists in discrimination but that he would send a letter to Industrial Temps and after receiving the answer he would advise on next steps.
22. On 13 February the claimant re-sent her email of 11 February 2019 to Ms Thompson as her previous email did not reach her because she did not use the correct email address. According to the claimant's witness statement she was very depressed at this time, didn't know where to call, who to turn to, had no confidence in finding a job and couldn't sleep at night crying and thinking about how she was going to feed her 7 month old baby but she was still desperately looking for a job.
23. On receiving the claimant's email Ms Thompson commenced an investigation. She asked both Ms Snegiriova and Ms Katke to provide accounts of what had happened and both did so. Ms Thompson also wanted to speak with the claimant and invited her to meet with her on 20 February 2019.

24. On 14 February 2019 Mr McGrath wrote to the Manager at Greiner Packaging in Dungannon. This letter was subsequently re-addressed to the first respondent rather than Greiner Packaging at Ms Thompson's request. Mr McGrath set out the details of the claimant's complaint. He first addressed the claimant's attendance at the first respondent's Portadown office on 4 February 2019, the fact that Ms Snegiriova was not at this office on this date and being told that Greiner Packaging were not recruiting and that the only vacancies were at Linden Foods. The letter went on to refer to the claimant's complaint to the first respondent's Belfast office and Ms Snegiriova's call saying that there had been a misunderstanding and inviting the claimant meet her on 11 February 2019 and do the registration and test for Greiner Packaging. Mr McGrath stated that the claimant had indicated that she didn't want to waste anybody's time and if there was no job available, as suggested, she would not attend. The claimant was reassured that jobs were available subject to the applicant carrying out registration and passing the test. Accordingly, the claimant attended on 11 February 2019, filled out the registration form but was then told that there were no positions available as 10 people were due to start work the next day. The claimant was then invited to apply for Linden Foods and did so reluctantly. The letter continued "While the claimant was on the premises, it became very clear and obvious that a number of people were arriving and were permitted to do both the Greiner registration and test." Mr McGrath went on to refer to Mr Cantecali phoning and being invited "to attend, register and apply for a job and he was assured that there were jobs available". The letter then stated that the claimant felt very strongly that she was being discriminated against and the only basis she could think for doing so was either her gender or ethnic background. Mr McGrath sought an explanation within 14 days and reserved the right to take the matter further. The letter concluded by asking whether anyone had been recruited or started work with Greiner in the period between 4 February 2019 and 14 February 2019.
25. On 15 February 2019 the claimant received a response from Ms Thompson inviting her to a meeting on 20 February 2019. This was subsequently changed to 19 February. The claimant informed Mr McGrath of this development and he advised her not to meet Ms Thompson until he had received a reply to his letter. The claimant accepted this advice and informed Ms Thompson that she could not attend until they had a reply. Ms Thompson said that she could not reply to the letter before 19 February 2019.
26. On 19 February 2019 Ms Snegiriova texted the claimant and invited her to attend a test for Greiner Packaging at 11.00 am on 21 February 2019. The claimant informed Mr McGrath of the invitation. He asked her what she wanted to do. The claimant replied that she was not going to take the test because she no longer trusted Ms Snegiriova. The claimant did not reply to Ms Snegiriova's invitation to take the test.
27. Ms Snegiriova told the claimant that Ms Katke would call her about a test for Linden Food but she did not call and the claimant secured employment with Linden through Grafton Recruitment and started work there on 4 March 2019.
28. Ms Thompson replied to Mr McGrath on 5 March 2019. Ms Thompson firstly set out the claimant's initial contact with Ms Snegiriova and the misunderstanding that had occurred in relation the venue for registration on 4 February 2019 with the appointment being rescheduled for 11 February 2019 which the claimant attended.

Ms Thompson then set out her findings resulting from the investigation of the claimant's complaint. The findings were set out in fourteen numbered points. It is not necessary to set out all of these findings. The key findings were that the three applicants that the claimant had referred to as having received more favourable treatment had been registered the previous week and were attending on 11 February 2019 in order to sit the entry tests for Greiner Packaging. The claimant who enquired about immediate start dates was advised that testing would need to be scheduled and that starts would normally be the week following the successful completion of the tests depending on the client's availability to schedule new start training or their operational requirements. As the claimant required immediate engagement she was advised that another company [Linden Foods] had a requirement for immediate starts. Further, at no time was the claimant advised that she could or would not be considered for engagement with Greiner Packaging. Ms Thompson then set out the steps that she took on receiving the claimant's complaint and her contact with the claimant. Ms Thompson also provided the information sought by Mr McGrath in relation to start dates since 4 February 2019. This showed that there were 5 starts on 5 February, 8 on 12 February, 4 on 26 February and 6 on 5 March 2019. Ms Thompson further advised that 45% of the first respondent's workers currently engaged at Greiners were females and 80% were non-nationals. Ms Thompson advised that the claimant was now fully registered and that she had been invited to attend for testing but had not returned voicemail or text communications. Ms Thompson concluded by expressing regret that the claimant's experience with the first respondent had been negative but refuted the claim of discrimination on the grounds of race, gender, ethnicity or otherwise. Ms Thompson also indicated that they would be contacting the claimant directly to request a follow up meeting and that Mr McGrath should contact Ms Thompson if he required additional information.

29. The claimant and Mr Cantecali attended with Mr McGrath on 11 March 2019. The claimant told Mr McGrath that she disagreed with the statement that Ms Snegiriova offered her the opportunity to test for Greiner Packaging the week after registration. Mr McGrath told her that it would be complicated to sue as it would be her word against Ms Snegiriova's and she didn't have data or the names of the three people who entered the office. He again advised the claimant to contact the Equality Commission which would guide her better through the process.
30. After leaving Mr McGrath's office the claimant emailed the Equality Commission and was provided with forms to complete including an application for funding.
31. On 12 March 2019 Ms Thompson emailed the claimant and invited her to a meeting with her on 15 March 2019. The claimant was advised by the Equality Commission to attend the meeting to see if they could clear up any misunderstanding and reach an agreement.
32. The claimant and Mr Cantecali attended the meeting with Ms Thompson at the first respondent's office in Portadown on 15 March 2019. Ms Thompson made a note of the meeting. The claimant did not challenge the accuracy of the note and while more detailed the note is largely consistent with the claimant's account of a cordial and friendly meeting. Ms Thompson advised that Ms Snegiriova was not in attendance as she was not based in Portadown but that she would be keen to have Ms Snegiriova involved in any follow up meeting. Ms Thompson also explained the misunderstanding in relation to the claimant's initial attendance at Greiner

Packaging. According to Ms Thompson, Ms Snegiriova had been conducting registrations for Greiner Packaging and therefore could not have told the claimant to go to Portadown on 4 February 2019. The claimant went on to give her account of what had occurred. Ms Thompson explained the hiring process for Greiner Packaging. In particular she stated that the first respondent had been continuously recruiting for Greiner Packaging recently but could only start successful candidates over a period of time in order to allow the training department to cope with the numbers and had recently fast tracked forklift drivers as they were very scarce. Mr Cantecali commented that he knew several people who had registered with the first respondent but were never offered work and Ms Thompson explained that the onus is on the job seeker to keep in contact. Mr Cantecali acknowledged that the first respondent could not investigate any of these matters in the absence of a complaint. The claimant also raised the matter of Ms Snegiriova and Ms Katke communicating in a language that she could not understand and Ms Thompson accepted that this was frustrating and should not have happened as they try to maintain an English speaking environment. Ms Thompson also commented that Ms Snegiriova had tried to contact the claimant on two separate occasions to invite her for testing but that she did not respond. The claimant did not respond to this comment. Ms Thompson then asked the claimant to say why she felt that she was unfairly treated and the claimant replied that Ms Snegiriova did not like her and when Ms Thompson queried this assumption the claimant replied that it was because she was black. Ms Thompson responded that they currently had 12-13 people engaged at Greiner Packaging who would determine their ethnicity as black and Mr Cantecali said that he didn't know that. Ms Thompson went on to ask the claimant what her desired outcome was and the claimant said that she didn't know. Ms Thompson asked if she was still interested in doing the test for Greiner. The claimant hesitated before saying 'yes' and asking whether there were evening shifts available. Ms Thompson replied that she did not know but that there were varied shift patterns. Ms Thompson asked again whether the claimant would like to be considered for Greiner and confirmed that she was fully registered. The claimant replied that she did not trust Ms Snegiriova to mark the test correctly or not to destroy it. Ms Thompson assured the claimant that this had not and would never happen. The claimant said that they would think about it but may submit a claim through the Equality Commission. Ms Thompson said that she was sorry that they felt this way and reassured them that they did not discriminate against any work seeker and they and other employers and agencies urgently needed workers and that at it was a candidates market at the minute. Ms Thompson asked the claimant to have a think about what they had discussed and let her know how she wanted to proceed. The claimant agreed to email Ms Thompson her response. Ms Thompson concluded by asking them if they had any questions. Both replied 'no' and thanked Ms Thompson for the meeting and said that it was lovely to meet her.

33. On 16 March 2019 the claimant made an application to the Equality Commission for funding. The final page of the application which the claimant signed included a note (in bold) which reads as follows:

“Note: This application for assistance to the Equality Commission Northern Ireland does not constitute a complaint to a Tribunal or claim to the County Court which are separate and independent judicial bodies.”

34. On 18 March 2019 the claimant emailed Ms Thompson. The claimant thanked her for meeting them and clearing up the misunderstanding but said that she was not

interested in taking the Greiner test as Ms Snegiriova who had discriminated against her was not at the meeting. Ms Thompson replied on the same date and stated it was unfortunate that they were not able to resolve things and that she would arrange a further meeting with Ms Snegiriova in attendance but that she had wanted to meet the claimant initially and then arrange a follow up with Ms Snegiriova. The claimant replied on 22 March 2019 and said that she did not want to meet Ms Snegiriova as her apology would not be genuine. Ms Thompson replied that Ms Snegiriova was genuinely upset about the allegations and would have welcomed the opportunity to speak to the claimant directly. The claimant replied on 24 March 2019 and stated that she did not want to meet.

35. The claimant was subsequently informed by the Equality Commission that Ms Aoife Colgan, a Legal Officer, had been assigned to her case. This prompted the claimant to send an email to Ms Colgan on 9 March 2019 in which she raised queries about forms and suggested that Ms Colgan contact Mr McGrath.
36. On 15 April 2019 Ms Colgan emailed the claimant and introduced herself as the Legal Officer allocated to the application for funding. Ms Colgan asked the claimant to phone her as she had been trying to make contact with her. Over the next few days they exchanged emails in an attempt to establish contact without success and on 22 April 2019 the claimant emailed Ms Colgan and said that she had sent her all of the conversations that she had had with the first respondent.
37. On 24 May 2019 the claimant emailed Ms Colgan and stated that she had not yet received the ET3. Ms Colgan replied an hour or so later and asked the claimant to provide a copy of the ET1 that she had lodged with the Tribunal and a copy of the ET3 when received. The claimant replied saying that she had attached the form and that as soon as she got the ET3 she would send it to Ms Colgan. The claimant sent a further email to Ms Colgan just over half an hour later saying that she didn't know about the form and would fill it out and send it to Ms Colgan tomorrow because she was at work now. The claimant then stated that the issue happened in February and asked Ms Colgan whether she thought they still had time. In response Ms Colgan sent a link to the Employment Tribunal to the claimant and stated "you need to lodge your claim with them as a matter of urgency. There is a **3 month time limit** from the alleged act of discrimination to lodge a claim with the Tribunal." The claimant replied that evening and stated that she would lodge it the next day. The claimant lodged her ET1 on 25 May 2019 and sent a copy to Ms Colgan on the same day.
38. The claimant remained in email contact with Ms Colgan and on 28 May 2019 Ms Colgan informed the claimant that she could not provide specific legal advice until a decision was made on funding. In the same email Ms Colgan stated that she could only make a report for the Legal Funding Committee when she received a copy of the response and that a decision on funding would usually take 12 to 16 weeks from then. Ms Colgan also strongly advised the claimant to investigate alternative forms of funding- the University of Ulster Law Clinic, house/car insurance and the Law Centre. They spoke by phone on the same day and Ms Colgan sent the claimant a follow up email in which she explained the basis on which a Tribunal could extend time for a claim that was brought outside the 3 month time limit.
39. The Equality Commission wrote to the claimant in June 2019 and informed her that her application for funding had been unsuccessful.

40. On 27 June 2019 Ms Colgan emailed the claimant and again advised her of alternative sources of funding and stated that she was not the claimant's representative as the application for funding had been unsuccessful but that the claimant could phone her if she had any further queries about the Tribunal process.
41. On 28 June 2019 Ms Colgan wrote to the claimant by email and enclosed a letter from Mr Bloch to Ms Colgan seeking an extension of time for the respondents' response and asking if there was any objection to this. Ms Colgan advised the claimant in both her letter and covering email that the Equality Commission did not represent her. Ms Colgan also informed the tribunal office and Mr Bloch that the Equality Commission did not represent the claimant.
42. In the event the respondents' response was lodged on 9 July 2019 and no extension was required.
43. By letter of 4 November 2019 the claimant asked the respondents' representative to provide a breakdown of the workforce at Greiner Packaging by ethnicity, race, colour, national origin hired before, from and after 4 February 2019. In response to this request a list of temporary employees was provided on 14 November 2019 which specified the date of engagement, position, nationality and race of each. Of the 44 employees 14 were Portuguese, 12 were Lithuanian, 7 were Polish, 4 were British, 3 were Hungarian, 2 were Italian, 1 was Slovakian and 1 was Latvian. In terms of colour 30 were white, 11 were black and three were of mixed race. On questioning by the Tribunal it transpired that the list only included employees who were still with Greiner when the list was compiled. The Tribunal directed that a revised list be provided which would include employees who were no longer engaged by Greiner Packaging. The revised list was larger and was comprised of 130 temporary employees of whom 29 were British, 29 were Portuguese, 30 were Lithuanian, 21 were Polish, 12 were Hungarian, 3 were Latvian, 2 were Italian, 1 was Slovakian, 1 was Czech and 1 was Bulgarian. 106 were white, 16 were black and 8 were of mixed race. The second list also showed that no-one was hired on 11 February 2019 and 8 people were hired on 12 February 2019. The claimant did not seek to suggest that either list was not accurate.

THE LAW

44. The Race Relations (Northern Ireland) Order 1997 (as amended) ("RRO") provides, so far as is relevant to these proceedings that:-

"Article 3(1) - A person discriminates against another in any circumstances for the purposes of any provision of this Order if -

- (a) *on racial grounds he treats that other less favourably than he treats or would treat other persons".*

Article 5(1) is as follows:-

"Subject to paragraphs (2) and (3), in this Order:-

'Racial grounds' means any of the following grounds, namely colour, race, nationality or ethnic or national origins".

Article 6(2):

"It is unlawful for a person, in the case of a person employed by him at an establishment in Northern Ireland, to discriminate against that employee

- (a) in the terms of employment which he affords him; or*
- (b) in the way he affords him access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitted to afford him access to them; or*
- (c) by dismissing, or subjecting him to any other detriment."*

45. There are two elements in direct discrimination, firstly, the less favourable treatment and secondly, the reason for that treatment ***Glasgow City Council v Zafar 1998 IRLR 36***. In the case of ***Shamoon v Chief Constable of the RUC 2003 UKHL 11*** at paras 7 & 8 - Lord Nicholls said that *"sometimes the less favourable treatment issue cannot be resolved without, at the same time deciding the reason why issue"*. Further, in his judgment in the case of ***Nagarajan v London Regional Transport 1999 IRLR 572*** he observed that 'the reason why' is the crucial question.

Burden of Proof

46. The reverse burden of proof applies to the RRO. The relevant provisions are contained in Article 52A of the RRO is set out below:

"52A. — (1) This Article applies where a complaint is presented under Article 52 and the complaint is that the respondent—

(a) has committed an act of discrimination, on grounds of race or ethnic or national origins, which is unlawful by virtue of any provision referred to in Article 3(1B) (a), (e) or (f), or Part IV in its application to those provisions, or

(b) has committed an act of harassment.

(2) Where, on the hearing of the complaint, the complainant proves facts from which the Tribunal could, apart from this Article, conclude in the absence of an adequate explanation that the respondent—

(a) has committed such an act of discrimination or harassment against the complainant,

(b) is by virtue of Article 32 or 33 to be treated as having committed such an act of discrimination or harassment against the complainant,

the Tribunal shall uphold the complaint unless the respondent proves that he did not commit or, as the case may be, is not to be treated as having committed, that act."

47. The Tribunal considered the guidance provided by the Court of Appeal in ***Igen -v- Wong [2005] IRLR 258*** on the application and the application of the Burden of Proof Regulations which apply to cases brought under the Race Relations (Northern Ireland) Order 1997 by virtue of Article 52A, above.
- (i) Pursuant to Section 63A of the 1975 Act it is for the claimant who complains of sex discrimination to prove on the balance of probabilities *facts* from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of discrimination against the claimant which is unlawful by virtue of Part 2, or which, by virtue of Section 41 or Section 42 of the 1975 Act, is to be treated as having been committed against the claimant. These *facts* are referred to below as “such facts”.
 - (ii) If the claimant does not prove such facts he or she will fail.
 - (iii) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of (sex) discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that “he or she would not have fitted in”.
 - (iv) In deciding whether the claimant proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from facts found by the Tribunal.
 - (v) It is important to note the word “could” in Section 63A(20). At this stage the Tribunal does not have to reach a definitive determination that such facts would lead to the conclusion that there was an act of unlawful discrimination. At this stage the Tribunal is looking at the primary facts before it to see where inferences of secondary fact could be drawn from them.
 - (vi) In considering what inferences or conclusions can be drawn from the primary facts. The Tribunal must assume that there is no adequate explanation for those facts.
 - (vii) These inferences can include, in appropriate case, any inferences that it is just and equitable to draw in accordance with Section 74(2)(b) of the 1975 Act from an evasive or equivocal reply to a questionnaire or any other questions that fall within Section 74(2) of the 1975 Act.
 - (viii) Likewise, the Tribunal must decide whether any provision of any relevant Code of Practice is relevant and, if so, take it into account in determining such facts pursuant to Section 56A(1) of the 1975 Act. This means that inferences may also be drawn from any failure to comply with any relevant Code of Practice.
 - (ix) Where the claimant has proved facts from which conclusions could be drawn that the employer has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the employer.

- (x) It is then for the employer to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.
- (xi) To discharge that burden it is necessary for the employer to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the ground of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.
- (xii) That requires a Tribunal to assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.
- (xiii) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or Code of Practice.

48. The proper approach to the **Igen Guidelines** has been the subject of some helpful comments by the Employment Appeal Tribunal in **Laing v Manchester City Council [2006] IRLR 748** and by the Court of Appeal in **Madarassy v Nomura International PLC Neutral Citation Number [2007] EWCA Civ 33**. In **Laing**, Elias J stated at the first stage the burden rests on the claimant to satisfy the Tribunal, after a consideration of all the facts, that a prima facie case exists sufficient to require an explanation. The facts include evidence adduced by the respondent though this should not be confused with any explanation offered by the respondent for the claimant's treatment. This approach was approved by the Court of Appeal in **Madarassy**, in the following part of the judgment of the Court of Appeal, per Mummery LJ reads (at paragraphs 56, 57, 71 and 72) as follows:-

"56. The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

57. "Could conclude" in section 63A(2) must mean that "a reasonable Tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory "absence of an adequate explanation" at this stage the Tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the

comparisons being made by the complainant were of like with like as required ... and available evidence of the reasons for the differential treatment.

...

71. *Section 63A(2) does not expressly or impliedly prevent the Tribunal at the first stage from hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the complainant's evidence of discrimination. The respondent may adduce evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or the situations with which comparisons are made are not truly like the complainant or the situation of the complainant; or that, even if there has been less favourable treatment of the complainant, it was not on the ground of her sex or pregnancy.*
72. *Such evidence from the respondent could, if accepted by the Tribunal, be relevant as showing that, contrary to the complainant's allegations of discrimination, there is nothing in the evidence from which the Tribunal could properly infer a prima facie case of discrimination on the proscribed ground. As Elias J observed in **Laing** (at paragraph 64), it would be absurd if the burden of proof moved to the respondent to provide an adequate explanation for treatment which, on the Tribunal's assessment of the evidence, had not taken place at all"*

Time-Limits

49. The relevant time limit is set out in Article 65 of the RRO:

"65. - (1) An industrial Tribunal shall not consider a complaint under Article 52 unless it is presented to the Tribunal before the end of —

(a) the period of 3 months beginning when the act complained of was done; or

...

(7) A court or Tribunal may nevertheless consider any such complaint, claim or application which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.

(8) For the purposes of this Article —

(a) when the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract; and

(b) *any act extending over a period shall be treated as done at the end of that period; and*

a deliberate omission shall be treated as done when the person in question decided upon it."

50. In ***British Coal Corporation v Keeble [1997] IRLR 336 EAT*** the Employment Appeal Tribunal suggested that Tribunals may find the checklist of factors in section 33 of the Limitation Act 1980 helpful -

"8 ... It requires the Court to consider the prejudice which each party would suffer as the result of the circumstances of the case and, in particular, inter alia, to:-

(a) *the length and reasons for the delay;*

(b) *the extent to which the cogency of the evidence is likely to be affected by the delay;*

(c) *the extent to which the party sued had co-operated with any requirements for information;*

(d) *the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*

(e) *the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action."*

51. While the checklist is helpful it is not a requirement that a Tribunal go through the check list and failure to consider a significant factor will amount to an error of law: ***London Borough of Southwark v Afolabi [2003] IRLR 220 CA*** paragraph 33 per Peter Gibson LJ.

52. In ***Lindsay v London School of Economics and Political Science [2014] IRLR 218*** the Court of Appeal held that:-

"An extension of time will not automatically be granted simply because it results in no prejudice to the respondent in terms of a fair trial. If a claim is brought out of time it is for the claimant to show that it is just and equitable for the extension to be granted. This is a multifactorial assessment where no single factor is determinative."

Submissions

53. Both Mr Bloch and the claimant made oral submissions. Mr Bloch relied on ***Igen v Wong*** and submitted that there was no evidence that the claimant had been less favourably treated because she was black and therefore the burden had not passed to the respondents to prove that any treatment was not on the grounds of race. Mr Bloch also made extensive submissions in relation to the facts and how the Tribunal should approach the evidence. It is not necessary to set out all of these submissions here.

54. Mr Bloch submitted that the claimant's refusal to take the test for Greiner Packaging when this was offered by Ms Thompson on the basis that Ms Snegiriova would not mark it properly or would destroy it was an unreasonable reaction in that it was not founded on harsh words on the part of Ms Snegiriova but merely on the basis that three people may somehow have been treated differently.
55. On credibility Mr Bloch submitted that the claimant had given dishonest evidence about having a car and that this called into question the entirety of her evidence.
56. In relation to quantum Mr Bloch submitted that there was no financial loss and any award for injury to feelings should be at lower end of the Vento scale.
57. As regards the time point Mr Bloch reminded the Tribunal that it had a very wide discretion as to whether to extend time and drew attention to a number of factors – (1) The claimant is well educated and articulate, (2) The very next day after the events on 11 February 2019 she knew her rights and went to see the CAB and solicitors, (3) she stated in her email first sent on the same day as the events complained of allegedly happened, 11 February 2019, that she had no choice but to take legal action through the courts, (4) In addition to seeking advice from the CAB and a solicitor she sought assistance from the Equality Commission and was in regular contact with it by telephone and emails. Therefore the claimant had knowledge at an early stage and could have seen the position regarding time limits by a cursory look at the internet. Mr Bloch further submitted that it was bizarre to suggest that the Equality Commission would not have been looking at time limits from the start.
58. The claimant in her submissions largely repeated what she had already said in her witness statement and in evidence to the Tribunal. The claimant submitted that the discrimination consisted of not being offered the opportunity to do the test for Greiner Packaging and not being allowed to complete registration on the same day. The claimant also suggested that it was bizarre to be asked to complete the registration form outside the office in which there were tables and chairs. The claimant also emphasised that she was not told that she could come back at a later stage and test for Greiner Packaging and as she needed a job she agreed to do the test for Linden where work was available.
59. The claimant submitted that there was no evidence as to when the three white people who entered the office were registered and was convinced that Ms Snegiriova had provided them with forms to complete the tests and asked them for documents and information that were normally required at registration namely passports and their national insurance numbers. On this basis the claimant submitted that their registration had not been completed but they were treated differently by being allowed to sit the test anyway. The claimant also placed reliance on the telephone conversation that she overheard on 11 February 2019 which made her think that the caller was being offered a job in Greiner Packaging, an opportunity that was not given to her.
60. In relation to the time issue the claimant stated that she was not aware of the need to submit a claim form herself and that she was advised by Mr McGrath to write to the company first and not to do anything until she had received a reply. When a reply was received from the first respondent Mr McGrath advised the claimant to

contact the Equality Commission. The claimant followed Mr McGrath's advice and applied to the Equality Commission. In her submissions the claimant stated that Ms Colgan first advised her about time limits on 24 May 2019 and that she had no face to face contact with the Equality Commission or any contact by phone.

61. The claimant did not take issue with Mr Bloch's submissions in relation to financial loss and Mr Bloch quite properly objected to the claimant's attempt to give evidence about the alleged impact of the events on mental condition in her closing submissions.
62. The claimant denied being dishonest about having a car and said that she had access to her cousin's car and that was why she had answered 'yes' to the question in the registration form - "Do you have your own transport?" and "car" in answer to the question about radius of travel. The claimant also pointed out that she had a full driving licence but it was in her interests to work in Greiner Packaging as it was closer to where she was living. In response to what was effectively new evidence Mr Bloch submitted that the claimant was being disingenuous and questioned why she had not sought to clarify the position when Ms Snegiriova gave evidence about the form by saying that she could walk to Greiner Packaging or that she had access to a car but still wanted to work for Greiner Packaging or that she had access to a car but that it was not hers.

CONCLUSIONS

Time Limit

63. As Mr Bloch quite properly acknowledged the Tribunal has a wide discretion in terms of extending time limits. The points that Mr Bloch makes against extending time are all perfectly valid. It is quite reasonable to expect the claimant to have received accurate and early advice from the CAB, her solicitor and the Equality Commission as to the need to lodge her claim form within 3 months of act of discrimination. However, there is no evidence before the Tribunal that undermines the claimant's evidence that she was first advised of time limits on 24 May 2019. It is also clear that once she received this advice she acted promptly and lodged her ET1 the next day on 25 May 2019. Further, given that the claimant had sought advice from three separate and ostensibly reliable sources we would be slow to criticise her for not conducting her own research about time limits on-line or otherwise.

Registration

64. The claimant's complaint about being required to complete her registration form in the reception area is not capable of founding her claim of discrimination on racial grounds. There is no evidence that other persons were permitted to complete their registration forms in the office occupied by Ms Snegiriova and accordingly there is no evidence of discrimination.

Failure to provide employment in Greiner Packaging

65. This main element of the claimant's case is based on the allegation that three people, all of whom were white, both registered and sat entry tests for Greiner Packaging on 11 February 2019 whereas the claimant was required to return on a

later date to undertake the entry test. The respondents' case was that the three applicants had registered the previous week and when attending to sit the entry test they were allowed to supply any documentation or information that was missing when they were filling in the registration forms. Furthermore, nobody started at Greiner Packaging on 11 February 2019. This is supported by the second list of employees produced by the respondent. The claimant did not seek to challenge the authenticity of the list or accuracy of the list of start dates. Mr Cantecali's evidence does not assist the claimant. It appears that he was angry because he thought that the claimant had wasted her time and that it was unfair that three other people were given the test for Greiner Packaging and that she was not. Mr Cantecali did not give evidence that he was treated better than the claimant when he phoned the first respondent. Rather, he was told that there might be a job but that he would have to register first. Ms Thompson also offered the claimant the opportunity to sit the Greiner Packaging test but the claimant declined this offer because she did not trust Ms Snegiriova to mark the test or not to destroy it. There is absolutely no evidence to support the claimant's suspicions in this regard.

Offer of Employment at Linden Foods

66. The claimant also sought to tie in her complaint about her treatment in relation to employment at Greiner Packaging with being offered the opportunity to be tested for Linden Foods. It is clear however that the claimant wanted work that was immediately available and she registered for work with Linden Foods on this basis. It was only later when the claimant sought to complain about her treatment in relation to Greiner Packaging that she denied any interest in being tested for Linden Foods but this flies in the face of telling Ms Katke on 8 February 2019 that she was interested in employment at Linden Foods. This information was passed on by Ms Katke to Ms Snegiriova in an email and was also logged on the first respondent's computer system. There is no reason to believe that Ms Katke would send a false email message or make a false entry in the first respondent's computer system about this matter.
67. In view of our conclusions as set out above we are satisfied that there is no evidence that the claimant was treated differently from anyone else and accordingly she cannot establish a prima facie case of discrimination on racial grounds. In the absence of prima facie evidence of discrimination the burden has not shifted to the respondents to prove that they did not commit acts of discrimination. The claimant's claim must therefore be dismissed.

Employment Judge:

Date and place of hearing: 11-13 February 2020, Belfast.

Date judgment recorded in register and issued to parties: