

# EMPLOYMENT TRIBUNAL

Case N° 17 of 2018

BART VAN THIENEN

CLAIMANT

-and-

GVC SERVICES LIMITED

RESPONDENT

Mr Bart Van Thienen representing himself  
Mr Darren Martinez representing the Respondent.

## JUDGEMENT

### Background To The Case

The Claimant was employed by the Respondent on the 15<sup>th</sup> May 2017, as a customer service retention agent in the Dutch team, and was dismissed on the 7<sup>th</sup> May 2018, for gross misconduct pursuant to clause 10.1 of his employment contract in that the Claimant had had three or more days of unauthorised absence from work; this being confirmed in a letter dated the 8<sup>th</sup> May 2018 from the Respondent. By a Claim Form received by the secretary of the Employment Tribunal dated the 29<sup>th</sup> May 2018 the Claimant claimed for (a) unfair dismissal (b) 11 months of bullying and (c) victimisation missed promotion. In said form the Claimant stated as follows:-

*“On 15<sup>th</sup> May 2017 I started working for GVC. From the first day bullying was continuous till the last day on 7<sup>th</sup> May 2018. The company has no proper Bullying at Work Policy although I point out the Employment (Bullying at Work) Act 2014. No serious action or investigation were ever undertaken to stop the bullying. The Gibraltar Data Protection Act was not respected when I asked for copies of papers and files re my person. I was victimised re a possible promotion and annual leave. Then a situation was created in which I was forced by the company to absence without leave, the company tries to force me back to the bullies without any solution. They then used this to fire me only days before I would work 52 weeks with them. I had also to call in sick for a month for “stress related anxiety” caused by the bullying. The company refused to work on my appeal against the bullying “investigation” out come based on make shift procedures. I have a file of written proof like eg e-mails, minutes of meetings to prove every point I claim. I wrote eg a time line with bullet points that is 18 pages long”.*

The Respondent filed a Response Form which in essence (a) contended that the Tribunal did not have jurisdiction to hear the claim for unfair dismissal as the Claimant did not have 52 weeks service and in the alternative denied that the Claimant had been unfairly dismissed (b) denied that the Claimant had been bullied and (c) denied that the Claimant had been victimised with respect to promotion or otherwise.

The Claimant has from the very commencement of the proceedings represented himself. The Respondent whilst represented throughout by the firm of Hassans has nevertheless had different counsel appearing before the Tribunal at one time or another with Mr Darren Martinez having been the final one in the chain. It is to be said that the Claimant has continuously and repeatedly used harsh words and made damaging assertions against the firm of Hassans and particularly on those members of the firm (save for one) who have represented the Respondent before this Tribunal. I mention this because throughout the hearings there has been an

underlying tension of a nature and extent which would not have been there had the Claimant been represented by counsel (indeed counsel would not have been given half the leeway the Claimant has been granted), and which has resulted in much being written and said which had little to do with the matters before this Tribunal as set out in the Claim Form and/or further and better particulars thereof; matters which I disregard since they have no bearing on the real issues on which I have to arrive at a determination.

The Claimant has expressed the view on more than one occasion that the proceedings in this case have taken an unduly long time to come to a hearing and that either Hassans and/or this Tribunal have intentionally delayed proceedings. That over three years have elapsed since the claim was first filed is without doubt to say the least unfortunate and worthy of criticism and not something to be proud of but having said this I have not seen from the date of my appointment as Chairman the “intentionality” which the Claimant alleges. As I foresee that this issue will be raised in any appeal filed, and I have no doubt that there will be an appeal irrespective of how I determine matters before me, I set out below a very brief synopsis of events:-

- (a) 29<sup>th</sup> May 2018, Claim Form received.
- (b) 20<sup>th</sup> June 2018, Response Form received.
- (c) 22<sup>nd</sup> August 2018, Chairman appointed.
- (d) 18<sup>th</sup> September 2018, the Tribunal ordered that Further and Better Particulars be filed by the Claimant and thereafter a Response by the Respondent, and made directions as to disclosure, exchange of witness statements etc.
- (e) 12<sup>th</sup> October 2018, the Claimant served his Further and Better Particulars.
- (f) 9<sup>th</sup> November 2018, the Respondent filed his Response together with an application for the striking out of the claim for unfair dismissal. In the event the application to strike out was not proceed with.
- (g) 10<sup>th</sup> January 2019, the Tribunal made further directions with reference disclosure, witness statements etc and set the hearing of the case for 5 days as from the 24<sup>th</sup> June 2019.
- (h) 19<sup>th</sup> March 2019, the Tribunal made further directions with regard to the attendance of witnesses, applications for witness attendance orders etc, and vacated the June hearing date.
- (i) 3<sup>rd</sup> June 2019, the Tribunal issued witness summonses, made further directions with regard to witness statements etc and set the hearing for November/December 2019 depending on witness availability.
- (j) 23<sup>rd</sup> September 2019, the Tribunal made further directions as to exchange of witness statements etc, withdrew the witness attendance orders issued and set the hearing for the 2<sup>nd</sup> December 2019.
- (k) 11<sup>th</sup> October 2019, in consequence of the application filed by the Respondent further orders were made as to exchange of witness statements, filing of skeleton arguments etc.
- (l) 27<sup>th</sup> November 2019, the Chairman resigned.
- (m) 14<sup>th</sup> January 2020, I was appointed Chairman.
- (n) 12<sup>th</sup> February 2020, order made for the hearing of the preliminary point of whether the tribunal had jurisdiction to hear the claim for unfair dismissal.

- (o) 26<sup>th</sup> February 2020, the preliminary point was heard and judgement reserved. Substantive Hearing listed for six days commencing the 9<sup>th</sup> June 2020.
- (p) 20<sup>th</sup> April 2020, Employment Tribunal issues its decision dated the 17<sup>th</sup> April 2020.
- (q) 4<sup>th</sup> May 2020, Claimant files in the Supreme Court a Notice of Appeal with regard to the preliminary point and as a result the June hearing date is vacated.
- (r) 20<sup>th</sup> May 2020, Claimant files in the Supreme Court his Memorandum of Appeal.
- (s) 4<sup>th</sup> November 2020, the Supreme Court ordered that the Claimant's claim for unfair dismissal proceed to a hearing in the Employment Tribunal to determine whether the Claimant was unfairly dismissed for the reason specified in section 65B(1)(d) of the Employment Act.
- (t) Covid restrictions to not permit the setting down of the hearing on liability.
- (u) 26<sup>th</sup> March 2021, a directions hearing held and orders made with regard to disclosure.
- (v) 13<sup>th</sup> April 2021, a directions hearing held.
- (w) 17<sup>th</sup> May 2021, the liability hearing commenced.
- (x) 28<sup>th</sup> May 2021, the liability hearing terminated and the parties given until the 9<sup>th</sup> June 2021 to submit their closing submissions; the Claimant filing further submissions after the 9<sup>th</sup> June 2021 to those filed before the 9<sup>th</sup> June 2021.

The fact that the liability hearing took place some three years or more after the alleged incidents took place has to be taken into account when considering witness recollections of events, chronology and times and inconsistencies that may arise within and with the voluminous amount of documents produced for the purpose of this case.

As stated above, the liability hearing commenced on the 17<sup>th</sup> May 2021 and continued on the 18<sup>th</sup> to 21<sup>st</sup> May 2021, and from the 24<sup>th</sup> to 28<sup>th</sup> May 2021. During the course of those ten days the following persons gave oral evidence; namely the Claimant, Dennis Dorland, Steff Van Veen, Susana Martin, Jose Luis Asnar, Yousri Amrani, Samira Mouhayar (via zoom), Danielle Wood, Stefan Kalcher and Roni Maman. There was no doubt that (a) the majority, if not all, the witness wanted to see closure of this case on giving evidence and (b) the personality clash/antagonism that existed in 2017/2018 between the Claimant and three of the witnesses is still alive although perhaps deeper under the surface. Moreover, what did come across very clearly from all the witnesses that appeared for the Respondent is that they all considered the Claimant a difficult person to work/deal with, a person who preferred doing things his way, not a team player as they would have put it.

I point out at this stage that I have read the documents contained in the various bundles before me, as well as all the witness statements and the exhibits attached to those. I have also taken into account the oral evidence given before me spanning over ten days, and have read the skeleton arguments presented, and all the authorities drawn to my attention by both parties. There is a tremendous amount of documentation that has been filed in this case and for obvious reasons only a small proportion of what has been presented will in one way or another be referred to in this judgment but this does not mean that I have not taken it into account for the purposes of the determination I have to make. I thank both parties for all the assistance they have given me throughout the proceedings.

In this judgement I may quote from the verbal evidence given before me as set out in my notes but this does not signify that I have not taken on board the contents of the witness statements and exhibits tendered and/or the statements made in the course of the hearing when deciding as to the facts of the case.

### Setting the Scene

The Claimant commenced his employment on the 15<sup>th</sup> May 2017, as a Customer Service Retention Agent in the Dutch team. On the same day as the Claimant, Mr Dennis Dorland and Mr Steff Van Veen also commenced employment with the Respondent and also began in the Dutch team. At the time these three persons commenced employment, the Dutch team was comprised of Mr Martijn Van De Vechte, Mr Yousri Amrani, Mr Jose Luis Asnar, Mr Sabir Nouri and Mr Hamid Ringelberg. In the course of the proceedings the phrase "Camp 2" has consistently been used or referred to by the Claimant; it is not a phrase I particularly like since it is misleading in the sense that at certain times it is used it cannot possibly refer to all the individuals concerned. When using such a phrase the Claimant is referring to Mr Yousri Amrani, Mr Jose Luis Asnar, Mr Sabir Nouri and Mr Hamid Ringelberg; the four persons he alleges bullied him "from day one" and until he left. The Camp 2 members who gave evidence deny this categorically.

The team leader of the Dutch and Scandinavian teams was Ms Susana Martin at the time that the Claimant commenced employment and throughout the time that he was employed with the Respondent. The Claimant alleges that he was bullied by Ms Martin as from the 31<sup>st</sup> January 2018 onwards. Ms Martin denies this categorically. The Claimant alleges that Ms Martin was bullied by Camp 2 members throughout the period he was employed; an allegation denied by both Ms Martin and the Camp 2 individuals who gave evidence although all admitted to there being friction between them as a result of gossiping and perceptions. It is interesting to note that what the Claimant perceives as the bullying of Ms Martin by Camp 2 members, is seen by all the characters involved as a clash of characters or misunderstandings or the circulation of false rumours amongst employees. Likewise, when it comes to the Claimant what he perceives to be bullying by either Camp 2 members and/or Ms Martin is seen by all the other characters (except for Mr Dorland) as being a clash of characters, squabbles between individuals and pettiness. The word "perceptions" is one that has been used often in this case.

The line manager of Ms Martin was Ms Samira Mouhayar, the Head of Customer Services for Western Europe. Ms Mouhayar held this post throughout the time that the Claimant was employed with the Respondent.

It was clear to me after having seen the witnesses and hearing their evidence that:-

- (a) there was clear antagonism on both sides between the Claimant and Messrs Amrani and Asnar. That it so clearly showed through after so many years indicates to me that it is deep rooted antagonism on both sides and that therefore what each side has to say about the other has to be taken with caution and carefully examined;
- (b) the evidence of Ms Martin as to events has also to be considered with caution since it is accepted by her and others that whilst events unfolded in 2018 she did lie and was caught out lying in one or two respects. Having said this, she generally came across as being a person with a position who at the time was completely out of her depth as events unfolded and unable to deal with some of the strong personalities within the Dutch team, and that after all this time all she wanted to do was put events behind her. I did not feel any great degree of antagonism against the Claimant. On the Claimant's side I clearly felt that he considered her to be the reason for his eventual dismissal and a person who had

traitorously turned against him for no rhyme or reason; there is antagonism there;

- (c) the evidence of Mr Dorland has to be considered in the context of the fact that he has himself filed a claim for unfair dismissal against the Respondent and therefore that certain parts of his evidence could be tainted either by his personal views of the Respondent and how it had treated him or by other considerations. I do not say this is the case; just that I have to bear this in mind when considering his evidence;
- (d) Mr Van Veen came across as being a witness with no axe to grind and very much an independent witness merely recounting the events he saw and/or perceived;
- (e) Ms Mouhayar gave evidence via zoom and therefore it was much more of a challenge to me to get a meaningful impression of her. Having said this my overall impression was that she either ensured at the time she was periphery to the events that were transpiring in the Dutch team or adopted a very hands-off approach until she had no other choice but to be involved, and then only for the purposes of passing matters onto HR;
- (f) Mr Kalcher and Mr Maman came across as truthful witnesses recounting events as they recalled them and providing the rationale for their respective decisions;
- (g) Ms Wood came across as a witness who felt that the Claimant was a difficult character to deal with but who showed no antagonism or ill feeling towards him; and
- (h) the Claimant came across as a person of a strong character who does not back down in an exchange and who has the natural characteristic (possibly without realising) of using exaggerated language and making generalised sweeping statements about persons/events and of giving words or actions by third parties the worst possible interpretation to the detriment of those persons irrespective of whether or not it has anything to do with him. This has made it problematical when it comes to considering his evidence, especially since in his witness statement and in his addresses to the Tribunal he makes comments/statements as to his belief as to the intentions/reasons why this or that person must have said this or done that or not done this or that or how they could have acted differently or why this action was or was not carried out or how things in his opinion could have been done properly or better. All of this has made it much more difficult to come to a conclusion as to the facts as they were at the time and as to whether the Claimant held those beliefs at the time or whether they have arisen subsequently out of repeated self-analysis carried out or, indeed to bolster his case.

Turning them to a very brief description of the premises in which events unfolded as I understood them from the evidence heard.

All the customer services teams (approx 70 persons) were on the same floor but each team had their own space with no partitions between them. It is open plan although between the VIP section and the customer service section, all on the same floor, there was a division. The division partition had two doors. The two doors were apparently almost always open. The toilets and the leisure areas were shared by the customer services and VIP sections. There were a few metres distance between the VIP section and the customer services section. The desks of the Dutch team were in very close proximity the one from the other. Not so many metres away from the desks of the Dutch team was the office of Ms Martin, and not too far away again, the office of Ms Mouhayar.

Before proceeding any further, I set out below those parts of the Claimant's contract of employment with the Respondent which are relevant to one extent or another to the various issues raised in this case.

The Claimant's employment contract with the Respondent included the following clauses or parts thereof; namely:-

Clause 4 – *“The first four months of your employment with the Company will be a probationary period”.*

As the Claimant commenced employment on the 15<sup>th</sup> May 2017, this meant that he was on probation until the 14<sup>th</sup> September 2017.

Clause 9.1 – *“Holiday must be taken at times convenient to the Company and must be approved in writing in advance”.*

This provision clearly states that any leave requested must be approved in writing before the leave is requested and that any leave requested is subject to the business requirements of the company.

Clause 10.1 – *If you are absent from work for any reason and your absence has not previously been authorised by the Company you must inform the Company directly by telephone before you are due to start work on your first day of absence and shall comply with such notification and certification procedures as the Company may require from time to time as set out in the Company's Sickness and Absence Policy. If you are absent from work for any reason and such reason remains unauthorised or unreported for a period of 3 days or more, this is likely to be treated as gross misconduct which may result in your dismissal without notice or pay in lieu of notice”.*

This was the clause that the Respondent relied on when it terminated the Claimant's employment for gross misconduct.

Clause 10.4 – *“The Company reserves the right at any time to require you to be examined by a medical practitioner nominated by the Company. The Company will bear the cost of such an examination .....*”.

Clause 10.5 – *“The Company may require a medical certificate from your doctor and/or any doctor(s) nominated by it, confirming that you are fit to return to work after any period of absence. The Company has the right to postpone your return to work ..... Until the Company's nominated doctor(s) has confirmed you are fit to return”.*

Both these clauses are pertinent with regard to the allegation made by the Claimant with reference as to how Messrs Van Veen and/or Dorland were treated by the Respondent in the context of their respective illnesses.

Clause 12.1 – *“The Company's grievance, dismissal and disciplinary procedures are available on the Company's intranet. Save as set out in the procedures or this agreement or as required by law, the procedures do not form part of your contract of employment and afford you no contractual rights”.*

Clause 12.2. – *“If you wish to raise a grievance in relation to your employment, you should notify your Department Manager (or the HR Business Partner if the grievance relates to your Departmental Manager) in accordance with the grievance procedure”.*

These clauses are relevant with reference to the issue of whether or not the Claimant had access to the disciplinary procedures of the Respondent and as to when exactly was the first time the Respondent officially complained about any matter relating to his employment. The Claimant's Departmental Manager was Ms Moyhayar and her Deputy was Ms Daniella Schiena.

As I understand it, the Claimant has never stated or implied that he was unaware of the terms and conditions of his employment contract and/or that he did not have a copy of it. This being the case I have proceeded on the basis that the Claimant was fully aware of the terms of his employment and that he had access to or held a copy of his employment contract.

### Chronology of Events

Whilst there are differences between the parties as to how things transpired and/or what was said in the course of meetings and/or the intention behind events the parties are generally in agreement as to when events transpired. The following is the chronology of material events as I have found them to be. I stress the word "material" simply because it is not a full and exhaustive list setting out each and every minor date/event referred to in the statements and/or exhibits.

- 15<sup>th</sup> May 2017 – The claimant commenced his employment with the Respondent.
- 22<sup>nd</sup> May 2017 – The Claimant met the members of the Dutch team for the first time.
- 11<sup>th</sup> July 2017 – Accordingly to the Claimant he had a meeting with Ms Martin in which "*I mentioned the bullying and that I was having a hard time*". Ms Martin does not deny this meeting occurred or that during it the Claimant may have used the word "*bullying*" but she points out that the Claimant "*often took the slightest miscommunication, disagreement or his misinterpretation of others attempting to support him as bullying*".
- 24<sup>th</sup> July 2017 – At 14.39 hrs Mr Asnar sends Ms Martin (copied to the Claimant) an e-mail in which he complains that (a) every time he gives the Claimant advice or an explanation the Claimant goes to someone else to ask the same thing and (b) that when he asks the Claimant what has occurred with a case the Claimant acts defensively and does not speak to him and that as a result of both these things he does not wish to waste time assisting the Claimant going forwards.
- 24<sup>th</sup> July 2017 – At 16. 25 hrs the Claimant replies to Mr Asnar's e-mail; said reply being sent to Mr Asnar and Ms Martin.

It is to my mind significant that what in essence is four short sentences on the part of Mr Asnar receives a one page reply from the Claimant and at no time in said reply does the Claimant allege bullying.

- 24<sup>th</sup> July 2017 – At 16.39 hrs Mr Asnar requests from Ms Martin a meeting with everyone and copies all the members of the Dutch team into the e-mail.
- 24<sup>th</sup> July 2017 – At 18.02 hrs Ms Martin informs Ms Mouhayar about the e-mails, and she in turn informs Ms Wood. In her e-mail Ms Mouhayar states "*My problem is that Jose*

– *Luis included all the team in the thread and I’m not sure how Bart will react to that because it looks a bit like a call to other members to gain against Bart .....*”

- 24<sup>a</sup> July 2017 – At 19.11 hrs Ms Martin asks Mr Asnar and the Claimant to a meeting the next day *“to clear some doubts about the collaboration”*.
- 24<sup>a</sup> July 2017 – At 20.10 hrs Ms Wood sends Ms Martin an e-mail asking her to touch base with Ms Mouhayar and suggesting that the first stage would be to understand why the two can’t communicate effectively and what each intends to do about it.
- 25<sup>a</sup> July 2017 – Ms Martin met with the Claimant and Mr Asnar. The Claimant is surprisingly brief as to what transpired at this meeting merely restricting himself to saying that Mr Asnar’s only contribution *“was that he denied that there was any bullying”*. However, neither Ms Martin or Mr Asnar make any reference to the word bullying.
- 25<sup>a</sup> July 2017 – Ms Martin e-mails Ms Wood at 16.56 hrs stating that at the meeting with the Claimant and Mr Asnar *“we discussed things to have a better communication, understanding of the issue”*. But at the end of this e-mail she also refers to *“two of the Dutch team members came to work, said hello to everybody except Bart”*.
- 26<sup>a</sup> July 2017 – At 18.33 hrs the Claimant sends Ms Martin a one page e-mail in which he thanks her *“for the constructive meeting we had yesterday”* and then proceeds to complain about the actions of Messrs Asnar, Yousri and Nouri who he claims *“have started a campaign to discredit me in the team”* and ends by requesting Ms Martin to *“give me some advice and guidance on how to handle this situation”*.

I pause to point out that (a) in this e-mail the Claimant does not refer to the word or actions of bullying (b) due to the fact that this e-mail was sent a day after the meeting of the 25<sup>a</sup> July, it suggests to me that either the Claimant is re-stating things that had been mentioned by him at the meeting, which makes one wonder why there is a need to do so, or that the Claimant had, for a reason that is not immediately obvious, failed to refer to these matters at the meeting, which makes one wonder what that reason could be and (c) it indicates that the Claimant had spent some time on checking shifts and leave for Camp 2 members for the following week.

- 26<sup>a</sup> July 2017 – At 18.49 hrs Ms Martin e-mails the Claimant stating she is sad about how he is feeling and that she is going to speak to Ms Mouhayar about it.
- 27<sup>a</sup> July 2017 – Ms Martin met separately with Mr Asnar, Mr Amrani and Mr Nouri and discussed with them the need for good collaboration between team members.
- 27<sup>a</sup> July 2017 – At 22.19 hrs Ms Martin sends Ms Wood (copied to Ms Mouhayar) an e-mail in which she reported that she had asked Messrs Asnar, Amrani and Nouri to ensure good collaboration amongst team members and ended up by saying *“I really think that they have nothing against Bart, at least that is my opinion and*



*after had the individual chats, therefore I hope this will not go further”.*

- 29<sup>th</sup> July 2017 – At 21.55 hrs the Claimant sends a long e-mail to Ms Martin and Ms Mouhayar complaining specifically about Mr Amrani and his alleged behaviour towards the Claimant in the course of that day. I cannot but help feel on reading this e-mail, that in this e-mail, as indeed in others, the Claimant engages in self-serving statements, whilst at the same time attacking the person he is complaining about. The Claimant ends the e-mail stating *“what the real problem is, that’s for the management to decide. What I can say for myself is that I’m happy to work with everyone in the team and forgive and forget. But it is also clear that this situation should not be allowed to get worse by the day as this has become insupportable for me and other team members are suffering too. I have to add that my fear is growing that my days in the company are counted”*. This reference to his days with the company being numbered is a perception that the Claimant voices at various times from now until May 2018.
- 2<sup>nd</sup> August 2017 – At 22.41 hrs the Claimant e-mails both Ms Mouhayar and Ms Martin referring to issues that had occurred from Monday to Wednesday of the week. With regard to Monday he complains about Mr Amrani’s behaviour towards him whilst with reference Tuesday he complains about Messrs Amrani’s and Asnar’s behaviour towards Ms Martin. With reference Wednesday he complains about Mr Amrani’s behaviour towards him and alleges that Mr Amrani is collecting *“a file about me or things I do without proper authorisation or permission from all parties involved”*. The Claimant ends the e-mail by stating *“I repeat that I am willing to do what is right for the company so, again, I ask for advice and guidance to find a way out of the present mess that seems to become worse by the hour”*.
- 2<sup>nd</sup> to 9<sup>th</sup> August 2017 – Ms Martin speaks on more than one occasion to Messrs Asnar and Amrani and the Claimant about their collaborating the one with the other.
- 9<sup>th</sup> August 2017 – At 21.45 hrs the Claimant sends Ms Martin an e-mail in which he states *“Thanks to your interventions the atmosphere at work was back to normal again today and there were no incidents to report with any of my colleagues”*.
- 16<sup>th</sup> August 2017 – At 11.19 hrs Mr Martin sends an e-mail to Ms Wood copied to Ms Mouhayar in which she states; *“After having a chat with all, it seems that everything is back to normal. Bart has come to me to say that things have changed and he is very positive again about the collaboration within the team”*.
- 5<sup>th</sup> September 2017 – At 15.28 hrs Mr Amrani sends an e-mail to Ms Martin copied to all the Dutch team and including the Claimant asking for a meeting *“regarding the working atmosphere”*.

- 5<sup>th</sup> September 2017 – At 22.04 hrs the Claimant e-mails Ms Martin (copied to Ms Mouhayar and Ms Diger) complaining that Mr Amrani and “*Jose Luis started again with their campaign to bully me*”. It is not immediately clear why the Claimant sent this e-mail bearing in mind that (a) he did not at that stage know what Mr Amrani was going to say at the meeting requested and (b) he ended his e-mail by stating that “*I have discussed this in a short meeting with Daniella and Susana and hope this gets sorted out*”.
- It is pertinent to note that the Claimant sees fit to put in writing what he had spoken to Daniella and Susana already about and that this is the document in which he uses the word “*bully*” for the first time as far as I can see.
- It is not known whether or not the meeting requested by Mr Amrani occurred and, if so, who was present but suffice to say that there were no repercussions arising from it.
- 15<sup>th</sup> September 2017 – The Claimant completed his probationary period and Mr Nouri left the Dutch team.
- November 2017 – During the course of this month Mr Armani and Mr Van De Vechte left the Dutch team and moved to VIP.
- November 2017 – The Claimant alleges that he informed Ms Martin that he had overheard a conversation in which two Camp 2 members discussed planning to call in sick at the same time in order to cause Ms Martin complications at work and that Ms Martin told him not to say such things.
- 2<sup>nd</sup> November 2017 – The Claimant alleges that he booked his flight tickets to Belgium for the leave period of the 8<sup>th</sup> to 15<sup>th</sup> May 2018.
- 27<sup>th</sup> November to 1<sup>st</sup> December 2017 – The Claimant was on leave.
- 25<sup>th</sup> to 28<sup>th</sup> December 2017 – The Claimant was on leave. There is some evidence to the effect that the Claimant booked the flights for this leave without prior authorisation but I have not concluded that this was the case.
- 11<sup>th</sup> January 2018 – Mr Vandenhoeck applies for leave for the period 17<sup>th</sup> March 2018 to 1<sup>st</sup> April 2018. This period includes week 12.
- 23<sup>rd</sup> to 26<sup>th</sup> January 2018 – The Claimant commenced a poker training course scheduled to last for four days. During this time Ms Martin was on leave.
- 25<sup>th</sup> January 2018 – On this day, due to two members of the Dutch team calling in sick, thereby leaving the team with only one junior member to deal with the work, Ms Mouhayar requested the Claimant to leave the poker training and go to his post; which request the Claimant complied with. However, the Claimant was able to return to the training since Mr Asnar, who was not on shift, voluntarily came in to man the desk.

- 26<sup>th</sup> January 2018 – Once again due to two members of the Dutch team calling in sick thereby leaving the team with only a junior member to deal with the work, Ms Mouhayar requested the Claimant to leave the training and man his desk; a request with which the Claimant complied with. On the way to returning to his desk the Claimant first of all stopped at Ms Mouhayar’s office. According to Ms Mouhayar the Claimant on this, and indeed subsequent occasions, complained about being taken out of poker training. The Claimant denies complaining then or later about being taken out of poker training instead saying that he merely expressed his worry that *“by missing the final and most important poker training day I would be unable to answer poker queries from customers”*.
- 28<sup>th</sup> January 2018 – The Claimant alleges that Mr Amrani contacted him via facebook to speak ill about Ms Martin and that *“he was very shocked”* by this to the extent that *“I had some kind of a nervous meltdown after all I had to go through with him at work”*.
- 29<sup>th</sup> January 2018 – The Claimant alleges that he informed Ms Martin about being contacted on facebook by Mr Amrani wishing to speak ill of her. Ms Martin stated she had no recollection of such an event.
- 29<sup>th</sup> January 2018 – There was an incident whilst the Claimant was not at work involving Ms Martin, Mr Amrani and Mr Van Der Vechte. The Claimant notwithstanding that he was not present at the time gives a detailed description of events, which events Ms Martin denied were correct.
- 30<sup>th</sup> January 2018 – Ms Mouhayar called a meeting of the Dutch team in order to discuss increased tensions within the team. The meeting, which the Claimant refers to as *“the chaos meeting”*, was supposed to be chaired by Ms Martin but she quickly lost control of it with persons shouting at each other so that Ms Mouhayar had to step in. According to Ms Mouhayar the Claimant through his comments rubbed everyone up until suddenly Mr Ringelberg in an upset manner shouted at the Claimant something to the effect that he hated the Claimant. The Claimant accepts that Mr Ringelberg shouted at him in the stated manner but denies being the cause of Mr Ringelberg’s outburst or that he rubbed people the wrong way. The meeting ended abruptly. The events of this meeting led to an investigation, which in turn led to Ms Martin being placed on a personal improvement plan.

I pause to make the following observation. The Claimant, as indeed the others accept that Mr Ringelberg is a quiet man who hardly speaks and generally goes unnoticed. If this is the case, then the question that begs to be answered is what could possibly have made Mr Ringleberg not only shout out but shout out that he hated the Claimant? This is even more so if the Claimant is to be believed that he did nothing to cause the outburst. Mr Van Veen was of the view that the cause of the outburst was the Claimant making a face (smiling) at Mr Ringleberg; something which is referred to in documentation and other evidence.

- 30<sup>th</sup> January 2018 – As a consequence of events that had transpired at the meeting of earlier on that day, Ms Mouhayar met with Ms Wood and it was decided that a full investigation would be conducted into what had transpired and that all members of the customer services team would be interviewed. The interviews took place between the 31<sup>st</sup> January and the 2<sup>nd</sup> February 2018 inclusive.
- 31<sup>st</sup> January 2018 – The Claimant sends Ms Martin an e-mail requesting leave during the weeks 12 (ie 19<sup>th</sup> March) and 14.
- 31<sup>st</sup> January 2018 – A meeting took place between the Claimant and Danielle Wood as a result of the events that had transpired at the meeting of the previous day. At the meeting minutes were taken and the following is recorded as having been said by the Claimant:-

*“Asked colleague to help check work – not a good reply so had to ask someone else. Sabir was the Colleague. Since have had similar reaction from Yousri Amrani (YA) and Hamid Ringelberg (HRi) and Jose Luis Asnar (JA). Made clear not welcome. Made complaint to team leader and Samira Mouhayar (SMo). Thinks YA got job in another team as part of the solution. Started with Stef Van Veen (SV) and Dennis Dorland (DD). Sabir left, YA, JA and HRi separated on different shifts so not all there together. DD and SV are low profile, so went relaxed and I let it go. Then had so whole serious of events where screen shorts taken of all mistakes and YA building file of evidence to use. Closed myself off to work for 8 hours. I emailed formal complaint. Has been some meetings. Over last 2 weeks surfacing again. The 4 of them are saying problem is company and management and team leader worst in world. All new colleagues worst in the world. Everything in company bad. JA said conspiracy by the company to steal our customers. Susana Martin (SM) too soft sometimes. Really bad advertised, people depressed. I have thick skin, I will do my 8 hours. I did discuss solutions with SM, I became bad guy because I had no issues. 4 people made her cry on the job, they made her life impossible. YA constantly over with team building up rubbish again, he is the ring leader and still has an audience with HRi and JA. Trying to influence DD against SM. Company is nice, can talk to SM. They are spreading unhappiness and bad feeling”.*

*“Doesn’t know why they don’t like SM. Ongoing problem everyday. Since discussed a few months ago, they have cold war. So sometimes don’t speak sometimes nice. Happy to do my 8 hours, do overtime. Made a point to everyone, when I looked at job in GVC. Screaming and shouting at me in the meeting yesterday. Have heard JA and HRi looking at rota saying if we take those days off sick then we will fuck up SM”.*

*Disaster, there is no team – JA is there – on man period, growling everyone avoiding him and then*

*relieved when he goes home. 2 or 3 people call in sick regularly. HRi and JA a lot of time off sick.*

*Something in team that is focussed on SM, I have zero problems with her, maybe too soft but prefer soft to hard, no problem with SMO either. I won't say they are bad just because they want me to. They push me and I will not reply to them when they are doing this. They put me in a corner because I am supporting my team leader. She is suffering because of it.*

*One thing I forgot and that was brought up again during the team meeting by Hamid and Jose Luis is their claim that during my probation time I was not following their advice and that I did do that to make them look bad, Something that definitely did not happen as such, I asked Yousri later in a quiet moment and he replied that indeed in 3 months I had asked for a second opinion 3 or 4 times. I did ask for a second opinion because I was convinced that the information given was incorrect and that was also confirmed by the person who gave the second opinion (mostly shift supervisor or team leader). I did this to do my job as professionally as possible and definitely not to make my colleagues feel bad. Yousri and his little club have gone around though for months that I did that constantly and on purpose and it caused me remarks from Susana and Samira. It's just another example of how they were trying to terrorise me on the job".*

I pause here to make the following observations:-

- (a) whilst the Claimant complains of the actions of Camp 2 members months previously, and what was done/said at that time, he does not actually directly complain of presently being bullied by Camp 2 members although he does mention that they sometimes "*sometimes don't speak, sometimes nice*" and that "*over last two weeks surfacing again*" but that he is happy to do my 8 hours, do overtime" as he has a "*thick skin*";
- (b) the Claimant states that he has "*zero problems*" with Ms Martin;
- (c) the Claimant refers to Ms Martin being made to cry and her life made impossible by Camp 2 members;
- (d) the Claimant affirms that it is because he does not take sides against Ms Martin that the Camp 2 members were putting him "*in a corner*" and "*she is suffering because of it*"

31<sup>st</sup> January 2018      –      A meeting took place between Mr Ringelberg and Ms Wood with reference the incidents at the meeting of the previous day. At the meeting Mr Ringelberg is according to the minutes taken recorded as having said the following about Ms Martin and/or the Claimant:-

*"She is not performing how she should be – not my job to assess, but give me a list of TL responsibilities and I can show you which ones being done and which ones being neglected.  
Key issues – TL not acting upon concerns of team members, not up to date with promotions and articles. Personally, I don't trust her. I don't like*

*drama, but I can vouch for team members subject of back talking, making fun of them.*

*For example – Jose Luis – been there 1.5 years, shows more leadership skills, sometimes a bit passionate, he always tries to put in extra, heard Susana Martin (SM) criticising him, literal translation ‘knobhead’. Many heated discussions between them about things that have not been addressed. She referred to Dennis Dorland (DD) as a worthless dead weight.*

*They both know about this.*

*Yousri Amrani (YA) offered position with VIP and she spoke to Luis Pinto and said he has a difficult character, he could not even do simple emails. Blocking his progression.*

*Terrible, JL and myself and YA and Sabir (left), ever since new starters hired been addressing issues, try to handle ourselves professionally at work. When needed assistance, our concerns not taken seriously. Spoke to Samira Mouhayar (SMo), not to SM. DD and Bart Thienen (BT), DD good guy but not a star with CS work. BT did good job and then it turned out he had a difficult character, we would explain things and then he would not trust us and ask other supervisors and shift leaders and they were then challenged on why they were not helping BT. BT went to SM and went on BT’s side as she was not getting on with us. So we went to SMo. No concrete complaints. We thought if we addressed with our team leader it was not dealt with.*

*I can’t stand sight of BT, but act professionally. Last 2 weeks been pretty sick but coming in to work, sinusitis. I show up and find out BT has been complaining about me. And SM and SMo, so personally attacked. Yesterday had team meeting so good opportunity to confront.*

*I don’t know, I can continue working with BT but can’t work with him knowing how he feels about me. One instance where BT was checking my emails or snuck in and sent before me. He then made faces at me. I addressed to SM and I expected it to be acted upon. However, BT went to SM and SM took his side. JL and YA saw some of these cases. I don’t complain unless I have to. I currently don’t feel like coming to work. General attitude of management”.*

I pause here to make the following observations;

- (a) Mr Ringleberg clearly does not like or think much of Ms Martin who he accuses of speaking badly of employees behind their backs – a recurring theme in the evidence and one which I accept was the case;
- (b) Mr Ringleberg is of the view that the problem with the Claimant started with the Claimant seeking advice and explanations from team leaders/supervisors and that when they complained about this both Ms Martin and Ms Mouhayar took the Claimant’s side something which continued without being addressed;

- (c) Mr Ringleberg does not like the Claimant and doubts whether he can continue to work with the Claimant although he does say he acts in a professional manner with the Claimant; and
- (d) Mr Ringleberg indicates that the reason that he shouted at the Claimant was because he found out that whilst he had been sick the Claimant had been questioning with Ms Martin as to whether he really was sick.

31<sup>st</sup> January 2018 – Ms Wood has a meeting with Jonas Doper in order to discuss the events of the meeting of the 30<sup>th</sup> January 2018. In the course of interview Mr Doper makes the following statement:-

*“Going good, team helpful, you can have a blast with other guys. Some days something happens with the Dutch and then day can be really bad. No problem in Danish team and we work well with Sara in Swedish team. Issues, tension in Dutch team. Yousri, Hamid and Jose have problem with Dennis and Bart. Not able to understand Dutch. 50/50 instigators. Sometimes only 20 minutes in office and the whole day ruined. Tension between all of them. However, effects everybody. They don’t seem to be escalating to SM, they don’t have respect to her. She can’t put her foot down and say enough is enough, not strict”.*

I pause to make the following observations:-

- Mr Doper clearly states that there are problems between Messrs Amrani, Asnar and Ringleberg on the one side and the Claimant and Mr Dorland on the other and that on some days this leads to tension all round; and
- That Ms Martin is not respected and is not resolving matters.

1<sup>st</sup> February 2018 – A meeting was held between Ms Wood and Kieran Vandenhock with regard to the events of the meeting of the 30<sup>th</sup> January 2018. In the meeting Mr Vandenhock is recorded in the minutes as having said:-

*“Tense but better than in the beginning, has been an improvement. Not everyone agrees on that. Few people seem to be looking for mistakes of everyone, in beginning afraid to make mistakes. Mainly Jose Luis. Does not do so much now. In beginning not feeling like being accepted in the ground. Jose, Hamid, Yousri, then Martin, Bart, Dennis. Still tense even though Yousri and Martin moved team still tense. SM not addressed this maybe not until this week, maybe should have tried to do earlier. Been going on for months even before was here. I don’t have a problem with anyone”.*

The following observations can be made with regard to this statement:-

- (i) There was tension in the team before he started employment since it was there when he started work;
- (ii) The tension in the team although still present had improved since he had started work;
- (iii) The tension had not disappeared even though Mr Amrani and Van Der Vechte had left the team;

- (iv) Ms Martin as the team leader had failed to address the issues causing the tension;
- (v) There is no reference to anyone being bullied or to any incident that could be seen as bullying conduct.

1<sup>st</sup> February 2018 – Ms Martin replies to the Claimants request for annual leave stating that he needed to check with the members of the Dutch team to see if they could cover for the Claimant during week 12. According to the Claimant *“I think I had my first mental breakdown that 1<sup>st</sup> February 2018”*. The Claimant obtained a sick note *“for flu- like symptoms”* that day.

1<sup>st</sup> February 2018 – Ms Wood has a meeting with Mr Asnar for the purposes of discussing the concerns raised at the meeting of the 30<sup>th</sup> January 2018. In the course of the meeting Mr Asnar makes the following statements:-

*“Difficult because 2 or 3 having personal issues – me and Bart (BT) from start. He also feels attacked by everyone. Susana Martin (SM) most issues with everyone. In the past a lot people left because of her. The other guys apart from BT everyone comes along with each other. BT does not rely on what I say based on my knowledge and experience, been here the longest. He used to go to everyone to ask how to do it and then when to another team to ask. We had a backlog and it is very frustrating. He went to shift supervisor to check what I say. He always points out mistakes of other team members. I have a conversation with him in front of SM to discuss. I told her I cannot work with this guy. We already had an issue on the floor, I sent meetings to all CS Dutch. The others have slightly easier workload so shifts easier and calmer. I help them a lot as well. If you can’t work together just get on and do the work, you don’t have to like everyone. He does not trust us or rely on what we say”*.

*“At the beginning I was her favourite felt so (SM) – we had same type of background. Then I heard she was calling me gay on the floor, at start of 2017 – April/May. Marjolaine (ML) told me and JP (Jean Phillipe) confirmed it. Did not challenge SM directly did not want to lose a job wanted to continue working with her. I don’t think she should be a team leader. Annual leave approvals can take 2-3 weeks, don’t know why. Lack of knowledge. She does not know most of the things, she asks Martijn (MV) or me or Sabir when he was here. She tries to keep us updated but she does not know a lot of it herself”*.

*“Mostly because of me and Bart, screaming at each other. I cannot stand him to work with him. He said I called him dumb, I did call him a false person, I think he is intelligent I could work with him but his way of thinking is different. He says I am a source of negativity, I help everyone on the floor I have lots of knowledge. He says I am trying to find a conspiracy that the company is stealing people’s money. I do help users, I find a final compensation of a bonus and then close the case. I am trying to prove a conspiracy. I am*



*just more direct in my words. I am sorry for the situation for you guys I don't think this situation should happen".*

The following observations can be made with reference these comments:-

- a. Mr Asnar recognises that there are personal issues between the Claimant and himself and between Ms Martin and everyone else in the team including himself;
- b. Mr Asnar is clearly indignant that the Claimant does not trust his advise and therefore accept his knowledge and experience, and that the Claimant points out the mistakes of others; and
- c. Mr Asnar cannot stand working with the Claimant.

Both Mr Ringleberg and Mr Asnar recognise and are quite open about the fact that they have personal issues with the Claimant and find it difficult to work with him and yet, on the other hand, the Claimant does not seem to show either the same insight (or indeed any at all) or accept that he may have been the cause of or contribute towards the problems that very obviously existed between the players concerned.

1<sup>st</sup> February 2018 – A meeting is held between Ms Wood and Stef Van Veen with the purpose of going over the concerns raised at the meeting of the 30<sup>th</sup> January 2018. According to the minutes of that meeting Mr Van Veen stated that:-

*"Have talked about this with Susana Martin (SM), I think she should put more energy into this and keeping people in their seats, retention wise. Get via email, review yourself and review with Team Leader (TL). About a week between email and review. Get feedback on cases, is quite subjective on things. You do have templates but she used terminology she does not like. You are also encouraged to create standard templates. Which then does not give consistency and makes it really subjective, i.e. everything is up for discussion".*

*"In the team they don't feel appreciated don't feel valued. A lot of it is communication via outlook, even when sit across from each other. Tension from day 1, 2 camps. I am strong enough character to find my way in it. 100% sure that I am on the only that has open communication with everyone. I noticed MV and SM versus the rest. Sabir calm guy – he had a lot of knowledge and it damaged team when he left. YA was fiery character, lot of tensions between YA and SM from day one, they could not drop things and dragged whole team in to it. Tight knit group. YA, Sabir, Jose Luis Asnar (JA), Hamid Ringelberg (HRi). Now it is mainly, tension from HRi, getting angry that conflicts are not sorted out. He has outbursts. From day 1 I talked to them about it, went out for meals, known MV my whole life. They stick together JA and Bart raised voices and Hamid chipped in. I said to them we are not in the school yard. Tension between BT and then JA and HRi, BT is struck in his own way, he double checks with other people and then JA and HRi get offended by the by the fact they do not take their advice. Have been insulted by this. I don't live that way, if I have an argument try to*

*resolve. They are stubborn, problems with breaks. In team meeting I said we all have our little things, why people at this age can't just good and bad. I like all of them, there are certain things I don't like about them but you get past it with mutual respect".*

*"Raised issues with SM about the tension, and ideas about how they should be guided. Also knowing I am also green as grass. I really like SM as a person, lovely lady, kind heart and intelligent. I think she should do more for the team and be more in control of the team. Some things she does is not very professional. She can slate team members in front of each – with DD – you might say something about him and then she comments in same tone, she will agree and chip in. She should challenge and nip in bud and she does not do that. Even in team meeting SMO asked SM to comment and she seemed not able to respond".*

*"I don't think it will ever work between JA and SM, so much anger between them. Holding on to this anger. If JA had another role SM would then have a chance".*

The following observations can be made with regard these statements:-

- a. Interestingly Mr Van Veen does state that there are two Camps within the Dutch team, namely Ms Martin and Mr Van Der Vechte on the one side and everyone else on the other side, and that as a result there is tension within the team from the day he joined;
- b. Mr Van Veen does state that there is tension between the Claimant on the one hand and Messrs Asnar and Ringleberg on the other hand and that this is due to the Claimant double checking with others everything which is then viewed by Messrs Asnar and Ringleberg as an insult;
- c. Mr Van Veen although expressing appreciation for Ms Martin states nevertheless that she speaks badly of others behind their backs and fails to deal with the tensions;
- d. Mr Van Veen does not think that Mr Asnar and Ms Martin can ever work together; and
- e. Mr Van Veen does not refer to anyone being bullied.

2<sup>nd</sup> February 2018 – Ms Wood has a meeting with Mr Dorland in order to discuss the concerns raised at the meeting of the 30<sup>th</sup> January 2018 even though Mr Dorland was not present. In the course of the meeting Mr Dorland states the following:-

*" I have a feeling she is bullying to leave. She said it is good that he is sick (November) he is useless anyway. Said this to HRi, Jose Luis Asnar (JA) and Stef Van Veen (SV) they all confirmed. He is going to raise this with her, probably today. To see if she said it, to see if she is bullying me to get out of the company. It is not first time she has made comments about people, heard comment Christopher Thomsen (CT) – big baby, that he is a liar. He had some conflicts with SM, she asked me about CT as she knew I had beers with him I told her to speak to him. About JA – big complainer will never get a job within BWIN as he is a big complainer, have not told him that, but will now,*

*but if we are going to get a straight line in team everyone needs to know what is happening”.*

*“The solution would be a new team lead. She had a problem with the previous Danish girl, as she told me. 2 others left from Danish team because of her. If she does not know – she asks an old team member to give information Martijn Van der Vechte (MV). She asks him to solve things for us. To me you are incapable to be a team lead. Talking about your colleagues. I am really surprised the people are still here. If I was the boss I would not give her a chance at all, maybe another position that does not affect us as a team”.*

The following observations can be made with regard to these comments:-

- a. Mr Dorland expresses the belief that Ms Martin is trying to bully him out of the company;
- b. Mr Dorland states that Ms Martin speaks badly of employees, including himself, behind their backs; and
- c. Mr Dorland makes no reference to the Claimant being bullied by anyone.

2<sup>nd</sup> February 2018 – Ms Wood has a meeting with Susana Ekma for the purposes of discussing the concerns raised at the meeting of the 30<sup>th</sup> January 2018. In the course of the meeting Ms Ekman is recorded as stating:-

*“Team is special as only team with 2 teams within, feeling happy doing job, somedays you can see tension, but they are talking in Dutch so you cannot tell what they are talking about. Team has not discussed the incident or the meeting with me so can’t really comment”.*

2<sup>nd</sup> February 2018 – Ms Wood has a meeting with Mikked Kristensen with reference the concerns raised at the meeting of the 30<sup>th</sup> January 2018. In this meeting Mr Kristensen is recorded as having stated as follows:-

*“I don’t have any issues with Dutch team but there are extreme tensions, don’t speak Dutch but can tell from body language and tone of voice. I think 2 groups – Jose and Hamid and then Bart, Dennis. More individually have problems with those 2. Steff and Kieran don’t seem to be part of this”.*

*“I honestly think it goes well back, I was told. Strong division, goes back to where I started. Martijn and Yousri had groups, not sure what it is based on. Slow escalation and each takes turn at crossing the line”.*

It is to be observed from these statements that according to this employee there were at the time of the interview extreme tensions between two groups, on the one hand Messrs Asnar and Ringleberg, and on the other hand, the Claimant and Mr Dorland, who each take turns in crossing the line. Whilst he refers to tension he does not refer to bullying conduct.

2<sup>nd</sup> February 2018 – Ms Wood e-mails the Claimant the draft minutes of his interview. The Claimant replies on the 4<sup>th</sup> February 2018.

- 2<sup>nd</sup> February 2018 – Mr Van Veen e-mails the Claimant stating amongst other things that *“I can’t understand that we are still talking about Bart going to Daniella”* and that *“All of them together created the atmosphere before we started”*.
- 5<sup>th</sup> February 2018 – The Claimant sends Ms Wood an e-mail asking whether there were any job opportunities within the company at that time.
- 6<sup>th</sup> February 2018 – The Claimant informs Ms Martin by e-mail that he is seeking another job in the company *“as soon as possible”*.

I pause to note that according to the e-mail sent by the Claimant to Ms Wood on the 6<sup>th</sup> April 2018, this was the point at which Ms Martin turned against the Claimant.

- 6<sup>th</sup> February 2018 – Ms Martin forwards the Claimant’s e-mail to Ms Mouhayar.
- 6<sup>th</sup> February 2018 – Ms Martin sends the Claimant an e-mail stating that as he could not attend the RG refresher training due to being sick she was forwarding to him the RG refresher Power Point.
- 7<sup>th</sup> February 2018 – The Claimant hands in a sick note for “flu”. He is off for four days. Whilst handing in the sick he meets Ms Martin and has a conversation with her. Afterwards the Claimant claims having had *“a good, honest and open (as they always were) meeting”* with Ms Martin.
- 7<sup>th</sup> to 14<sup>th</sup> February 2018 – The Claimant is off work from the 7<sup>th</sup> to the 14<sup>th</sup> February inclusive between sick leave and annual leave.
- 7<sup>th</sup> February 2019 – Ms Martin e-mails the Claimant his evaluation report for the month of January 2018.
- 8<sup>th</sup> February 2018 – The Claimant asks Ms Martin for leave for the 12<sup>th</sup> and 14<sup>th</sup> February 2018. Ms Martin replies back that it is not a problem.

I pause to note that Ms Martin grants this leave request without raising any issues even though according to the Claimant this was after the time that she had turned against him. If so, the question arises, would she have not created an issue here?. If not, why?

- 8<sup>th</sup> February – The Claimant e-mails Ms Wood stating that he is off ill and that he is awaiting some blood tests as *“the doctor thinks its most probably some virus”*. The claimant also states that he is seeking another position within the Respondent and that the vacancy he is potentially interested in is in Risk. The Claimant speaks positively of Ms Martin in this e-mail.
- 12<sup>th</sup> February 2018 – The Claimant e-mails Ms Wood complaining about the bad evaluation report he had received for the month of January.
- 13<sup>th</sup> February 2018 – The Claimant had a meeting with HR with regard to job opportunities within the Company. As a result the Claimant applies for the job of business analyst.

- 14<sup>th</sup> February 2018 – Ms Martin is informed that she is to go on a personal improvement plan (PIP) due to the issues that have arisen within her team.
- 15<sup>th</sup> February 2018 – The Claimant returns to work and in the course of the day e-mails Ms Wood stating that Mr Asnar did not greet him or acknowledge his presence and that Ms Kessissa reacted awkwardly to him and that they had all sat in silence for hours. Ms Martin was off work that day.
- 15<sup>th</sup> February 2018 – Ms Wood replies to the Claimant's e-mail stating that the situation is being reviewed and in the meantime the Claimant should report his concerns to Ms Martin.
- February 2018 – The team is down in numbers from eight to four members and the Claimant states that he was now sitting entirely alone during most of the time on his shifts, as a result of which he complained to Ms Mouhayar who suggested he sit with the English team.
- I pause to note that if the Claimant was sitting alone and/or with the English team during these days he could not have been bullied by Camp 2 members.
- February 2018 – The Claimant alleges that whilst he was sitting with the English team and working with clients Ms Martin approached him in a rude manner and argued with him *“about something that we were actually both agreeing”* on and this caused him distress and humiliation. Ms Martin however, whilst recollecting that she did approach the Claimant, denies speaking to the Claimant in the manner alleged and that on seeing he was busy told him they would speak later.
- February 2018 – Ms Martin chooses the Claimant to do a new project, which is referred to as a calibration exercise. The Claimant alleges that one day whilst busy at work answering chats Ms Martin approached him to discuss the calibration exercise and in the Claimant view this was unnecessary and designed to start a fight. Ms Martin denies the Claimant's interpretation of her reasons for speaking to him.
- February 2018 – The Claimant states that he met Mr Roni Maman at a calibration meeting. Mr Maman has no recollection of this. The Claimant alleges that everything he learnt at this meeting is contrary to the instructions given by Ms Martin and that on answering a question Mr Maman looked at him as if he was stupid.
- 16<sup>th</sup> February 2018 – The Claimant has a video conference with Mr Kalcher with regard to the business analyst job.
- 19<sup>th</sup> February 2018 – Ms Martin is informed of the outcome of the HR interviews conducted with members of the Dutch/Scandinavian teams.
- 20<sup>th</sup> February 2018 – Ms Martin commences her PIP in which she is instructed of the Respondent's need that she take *“a more proactive and structured approach to both*

*processes and people management in your role as team leader”.*

23<sup>rd</sup> February 2018 – Mr Dorland terminates his employment with the Respondent.

27<sup>th</sup> February 2018 – The monthly quality meeting is held between Ms Martin and the Claimant for the purposes of discussing the Claimant’s performance. At the meeting minutes are taken, an event which the Claimant alleges had never before been the case. Prior to the monthly meeting Ms Wood exchanges “chats” with the Claimant. In these chats the Claimant states *“I feel unhappy in my job above all at the moment”.*

I pause to note that there is no allegation of bullying or victimisation in this communication by anyone and/or that he feels alarmed, distressed, humiliated or intimidated.

4<sup>th</sup> March 2018 – Ms Martin sends the Claimant his Performance Card for the month of January.

5<sup>th</sup> March 2018 – The Claimant sends a long e-mail to Ms Martin copied to Ms Mouhayar and Ms Wood in which he complains about the comments made therein with reference the poker training incident. In the e-mail the Claimant also refers to having asked for leave for week 12 but that this was now a problem since another colleague had been given this week off.

5<sup>th</sup> March 2018 – The Claimant sends Ms Martin an e-mail in which he asks for the agenda for the meeting due to take place the next day with Ms Mouhayar also being present. Ms Martin replies that the Claimant does not need to prepare for this as it concerns *“general team atmosphere and expectations”.*

5<sup>th</sup> March 2018 – The Claimant e-mails Ms Martin complaining that his monthly evaluation for January was unfair but accepting the result.

5<sup>th</sup> March 2018 – The Claimant alleges that Ms Martin nagged him for 25 minutes solidly for not having done the work load sheet and states that the reason he had not done it was because he was waiting for Mr Asnar to commence his shift so that he could discuss and agree it with Mr Asnar. Ms Martin states that it was not up to the Claimant to decide whether a management instruction to the work sheet was to be done or not and that she did not nag him or go ballistic over it. The Claimant alleges he was humiliated in this incident.

6<sup>th</sup> March 2018 – Ms Martin e-mails the Claimant pointing out that she had never received a reply to her e-mail concerning his leave request for week 12 and that week’s 14 and 15 were fine. The Claimant replies to the effect that since he had applied for week 12 another colleague (Kieran) had been given that week off.

7<sup>th</sup> March 2018 – The meeting between Ms Wood, the Claimant and Ms Mouhayar was cancelled.

- 7<sup>th</sup> March 2018 – Ms Martin sent the Claimant his quality feedback for February 2018.
- 8<sup>th</sup> March 2018 – Ms Martin e-mails the Claimant stating that Kieran had asked for week 12 off two weeks before the Claimant and asking whether the Claimant wanted week 14 or 15 off.
- 8<sup>th</sup> March 2018 – The Claimant e-mails Ms Martin stating that he has to have week 12 off as he has friends from Northern Ireland out in Gibraltar during this time.
- 8<sup>th</sup> March 2018 – Ms Martin has a meeting with the Claimant at which Ms Mouhayar was present. Minutes of the meeting are taken. The Claimant disputes the accuracy of the minutes recorded and alleges that Ms Wood and Ms Mouhayar had teamed up to make him look bad so as to get rid of him.
- 9<sup>th</sup> March 2018 – The Claimant alleges that Ms Martin during the latter part of a shift sat opposite him and spent four hours nagging, criticising and questioning everything he did. Ms Martin denies doing so.
- 9<sup>th</sup> March 2018 – Ms Martin e-mails the Claimant stating that week 12 was not possible for him to have leave on unless he could find someone from the team to swap with him.
- 10<sup>th</sup> – 11<sup>th</sup> March 2018 – The Claimant was off work.
- 11<sup>th</sup> March 2018 – The Claimant e-mails Ms Mouhayar and Ms Wood complaining about Ms Martin's nagging and criticisms on the 9<sup>th</sup> March and that Ms Martin had not granted him leave for week 12. In this e-mail the Claimant states he wishes to speak to Ms Mouhayar on the 12<sup>th</sup> March about (i) holidays for week 12 (ii) continuing to sit with the English team (iii) transfer to the English team.
- 12<sup>th</sup> March 2018 – The Claimant complains that Ms Mouhayar intentionally ignored him and took steps not to have the meeting he had requested.
- 13<sup>th</sup> March 2018 – Ms Mouhayar e-mails the Claimant stating that she did not see the Claimant's e-mail until after she had left work on the 12<sup>th</sup> March and that they would speak the next day.
- 13<sup>th</sup> March 2018 – The Complainant is given a sick note for "*stress related anxiety*". The sick note is renewed on the 21<sup>st</sup>, and again on the 29<sup>th</sup> March 2018, for the same reason as in the first case. The Claimant is therefore on sick leave between the 13<sup>th</sup> March 2018 and the 10<sup>th</sup> April 2018 inclusive, which period includes the week 12 period referred to earlier.
- 16<sup>th</sup> March 2018 – The Claimant spoke to Mr Kalcher and sat the test set for the business analyst's job.

It is to be noted that the Claimant sat a test, which obviously would have carried a certain amount of stress for him, just three days after being given a sick note for stress related anxiety entitling him to be off work because of stress.

- 22<sup>nd</sup> March 2018 – The Claimant e-mails Ms Wood asking for a copy of the minutes of the meeting between Ms Martin and himself at which Ms Mouhayar was present.
- 22<sup>nd</sup> March 2018 – Mr Ringleberg finishes his employment with the Respondent.
- 23<sup>rd</sup> March 2018 – Ms Wood e-mails the Claimant a copy of the minutes requested.
- 29<sup>th</sup> March 2018 – Ms Wood e-mails the Claimant to inform him that as he had exhausted his statutory sick pay allowance the sick leave taken (3 days) and to be taken (20 days) would be processed at half pay.
- 3<sup>rd</sup> April 2018 – The Claimant e-mailed Mr Kalcher regarding his application for the business analyst role.
- 6<sup>th</sup> April 2018 – Whilst on sick leave, the Claimant raises a grievance with the Respondent with regard to the contents of the minutes of a meeting he had held on the 8<sup>th</sup> March 2018 with his team leader and departmental manager.
- 6<sup>th</sup> April 2018 – The Claimant is informed by e-mail that he had not been successful with his application for the business analyst job.
- 9<sup>th</sup> April 2018 – Ms Wood replied to the Claimant's e-mail of the 6<sup>th</sup> April 2018 and stated that she had been on leave and that she could see the Claimant either that day or the next. The Claimant replied asking for the meeting that same day.
- 9<sup>th</sup> April 2018 – The Claimant and Ms Wood meet in the presence of Ms Horwood who takes the minutes of the meeting. At this meeting the Claimant states that he cannot return to work and asks for four days of annual leave, which request is accepted. The Claimant is off work until the 18<sup>th</sup> April.
- 10<sup>th</sup> April 2018 – The Claimant is e-mailed the minutes of the meeting held on the 9<sup>th</sup> April 2018.
- 11<sup>th</sup> April 2018 – The Claimant e-mails Ms Wood copies of his e-mails of the 29<sup>th</sup> July 2017 and 2<sup>nd</sup> August 2017.
- 12<sup>th</sup> April 2018 – Ms Martin provides Ms Wood with her replies to the allegations contained in the Claimants e-mail of the 6<sup>th</sup> April 2018.
- 13<sup>th</sup> April 2018 – Ms Wood sends the Claimant corrected minutes of the 9<sup>th</sup> April 2018 meeting.
- 13<sup>th</sup> April 2018 – The Claimant sends Ms Wood an e-mail and in it he states that the minutes of the 9<sup>th</sup> April 2018 are approved and that the Respondent's solution is for the Claimant to go *"back to the bullies without any solution of the on going problems"* which meant *"going back to Yousri and Jose Luis and also back to Susana and Samira"*.
- 13<sup>th</sup> April 2018 – The Respondent agrees to the Claimant being suspended on full pay whilst his grievance was



investigated. The suspension was to last until the 20<sup>th</sup> April, but it was subsequently extended until the 25<sup>th</sup> April 2018, as the grievance investigation had not been completed.

- 17<sup>th</sup> April 2018 – The Claimant requests from Ms Wood annual leave for the period 8<sup>th</sup> to 15<sup>th</sup> May 2018, as he required to go to Belgium to attend his godsons confirmation and to renew his passport. In the e-mail the Claimant states he booked the flights on the 2<sup>nd</sup> November 2017 and that Ms Martin had verbally agreed this prior to the booking. In the e-mail the Claimant also states the flights are on the 9<sup>th</sup> and 14<sup>th</sup> May but that the travelling to Malaga is done before and after those dates.
- 20<sup>th</sup> April 2018 – Ms Wood replies to the Claimants e-mail of the 17<sup>th</sup> April 2018 informing him that as the investigation had not been concluded his suspension was being extended to the 25<sup>th</sup> April and that his leave request had been passed onto Ms Martin.
- 20<sup>th</sup> April 2018 – Ms Wood e-mails the Claimant inviting him to attend a meeting with Mr Maman on the 24<sup>th</sup> April; an invitation accepted by the Claimant.
- 20<sup>th</sup> April 2018 – Ms Martin informs Ms Wood by e-mail that as a result of a resignation that same day in the team she could only authorise the Claimant leave for the period 10<sup>th</sup> May onwards.
- 20<sup>th</sup> – 23<sup>rd</sup> April 2018 – On a date unknown Mr Maman holds a meeting with Ms Martin.
- 22<sup>nd</sup> April 2018 – Ms Wood e-mailed the Claimant advising him that the meeting to be held was part of the investigation, that Mr Maman had met with Ms Martin and that he was to be provided with the relevant minutes and correspondence.
- 22<sup>nd</sup> April 2018 – Ms Martin confirmed the leave request but only for the period 10<sup>th</sup> to 14<sup>th</sup> May 2018.
- 23<sup>rd</sup> April 2018 – The Claimant e-mailed Ms Wood pointing out that he had asked for leave for the 8<sup>th</sup> to 15<sup>th</sup> May and asking whether the e-mail of the 22<sup>nd</sup> April was therefore an error.
- 23<sup>rd</sup> April 2018 – Ms Wood e-mails the Claimant stating that it was not possible to give him leave before the 10<sup>th</sup> May.
- 23<sup>rd</sup> April 2018 – The Claimant e-mails Ms Wood stating that he strongly disagreed with the decision and objected that the one making the decision was Ms Martin.
- 23<sup>rd</sup> April 2018 – Further e-mail exchanges occur between Ms Wood and the Claimant with the Claimant asserting that it was possible to grant him leave on the days he had requested.
- 24<sup>th</sup> April 2018 – The Claimant has a meeting with Mr Maman in the presence of Ms Wood and Ms Horwood with regard

to his grievance complaint. Minutes of the meeting are taken and are extensive.

- 25<sup>th</sup> April 2018 – Mr Maman wrote to the Claimant confirming the outcome of the grievance investigation conducted, stating what steps were to be followed by the Respondent and including the statement that:-
- “I believe the above brings a solution enabling you to return to work on Friday 27<sup>th</sup> April 2018 safe in the knowledge that all relevant managers will be aware of what the expectation is regarding conduct going forward”.*
- and pointing out to the Claimant that he had a right to appeal within 5 working days of receipt of the letter clearly setting out the reasons for the appeal.
- 26<sup>th</sup> April 2018 – The Claimant receives by e-mail the letter of the 25<sup>th</sup> April.
- 26<sup>th</sup> April 2018 – Ms Martin amends the shift roster for the week 10<sup>th</sup> to 15 May.
- 27<sup>th</sup> April 2018 – The Claimant informed the Respondent that he wished to appeal the result of the investigation, that in order to prepare the appeal properly he required all of the five days provided in the complaints procedure in which to submit the appeal and requesting that his suspension on full pay continue until the 7<sup>th</sup> May 2018, so that he could work on the appeal.
- 27<sup>th</sup> April 2018 – The Respondent informed the Claimant that the appeal did need to be filed by 6 pm on the 7<sup>th</sup> May 2018 and that the request to continue on suspension could not be granted because as the investigation had been completed internal company regulations only permitted suspension on full pay whilst a complaint was being investigated.
- 28<sup>th</sup> to the 30<sup>th</sup> April 2018 - The Claimant did not attend work.
- 28<sup>th</sup> April 2018 – The Claimant is telephoned by his shift supervisor in order to enquire why he has not gone to work but his (the Claimant’s) phone is off.
- 28<sup>th</sup> April 2018 – A catch up meeting between the Claimant and Ms Martin does not take place and Ms Martin reports to Mr Maman and Ms Mouhayar that the Claimant has his telephone switched off.
- 28<sup>th</sup> April 2018 – Mr Maman states that they are to work “by the book” with the Claimant like everyone else in reply to Ms Martin’s e-mail.
- 29<sup>th</sup> April 2018 – Ms Martin reports to Mr Maman and Ms Mouhayar (copied to Ms Wood) that the Claimant had not attended work and that as a result she had phoned the Claimant and spoken to him; the Claimant stating that he was disappointed with and appealing the decision of Mr Maman and that Ms Wood had told him (the Claimant) that he did not need to go back to work until the 7<sup>th</sup> May.

- 30<sup>th</sup> April 2018 – Ms Wood replies to Ms Martin’s e-mail putting forward her version of what the Claimant had said and what she had informed him of and advising Ms Martin to contact the Claimant and inform him that he needed to attend work.
- 30<sup>th</sup> April 2018 – Ms Martin telephones the Claimant and speaks to him. Following the conversation Ms Martin e-mails Ms Wood, Ms Mouhayar and Mr Maman with her version of what the Claimant had said to her.
- 30<sup>th</sup> April 2018 – Ms Wood sent an e-mail to the Claimant pointing out that he had not attended work and that:-

*“At the moment you are currently absent without leave. If you are absent without leave for 3 days or more it could adversely affect your continued employment with the organisation. I would urge you to read clause 10 of your attached contract. We will expect you back in the office for your next shift”.*

In a statement made to the Tribunal the Claimant stated that he was confused, perhaps because at the time he was drinking in excess, as to when he had to return to work and that he thought his request to extend his suspension on full pay had been granted. I have difficulty in accepting this since in the letter of the 25<sup>th</sup> April from Mr Maman it is clearly stated that he was to return to work on the 27<sup>th</sup> April and in Ms Wood’s e-mail of the 27<sup>th</sup> April she stated that suspension was only possible whilst an investigation was being conducted.

It is to be noted that the five working days for filing an appeal was actually longer than 5 days since because of weekends and public holidays the five days ended on the 7<sup>th</sup> May and therefore in effect the Claimant actually had 11 days in which to file his appeal.

1<sup>st</sup> May 2018 – Mr Asnar transfers to VIP.

1<sup>st</sup> May 2018 – The Claimant e-mailed Ms Wood and Ms Horwood stating:-

- (i) that the e-mail he had received was confusing to him, that it did not specify a particular date on which he had to return to work, that he interpreted the e-mail to mean that it had been agreed that he was on suspension until the 8<sup>th</sup> May;
- (ii) the e-mail was not his appeal to the investigation since:-

*“I need much more time for that and you will receive my appeal on the 7<sup>th</sup> May before 6 pm although only 5 working days is a ridiculously short time for an appeal as I have to go through thousands of e-mails”.*

*“I already assured you some days ago that I will definitely need every day till 8<sup>th</sup> May to go through thousands of e-mails for a proper documented appeal. That you now revoked the suspension that I am convinced was granted initially is pure sabotage of my right to appeal and defend myself”.*

- (iii) that, significantly enough:-

*“During the time of preparing my appeal I consider myself to be on extended suspension until 8<sup>th</sup> May. On that date I will go on the requested annual leave till the 16<sup>th</sup> May. Till then I definitely can’t go back to all the bullies without an acceptable solution it will be worse than ever and the risk of revenge is 100%”.*

It is clear to me from this e-mail that (i) if the Claimant did not know before he most certainly knew then that he was required to go back to work immediately (ii) he refused to go back to work because he needed the time to prepare his appeal document (iii) he unilaterally decided that his next working day was the 16<sup>th</sup> May (iv) he disregarded the Respondents decision as to the days on which he could take leave and (v) by implication at least, he suggested that after the 16<sup>th</sup> May it would be acceptable for him to go back to work but not before.

- 1<sup>st</sup> May 2018 – Ms Wood, by way of reply, informed the Claimant that (i) he (the Claimant) was expected to be back at work the next day (ii) if he (the Claimant) continued to be absent without leave the Respondent reserved the right to invoke clause 10 of his contract and (iii) that the reason for refusing some of the days on which he (the Claimant) had requested leave was justified. If there was before, there could at this point now not be any confusion as to the contents of this communication.
- 2<sup>nd</sup> May 2018 – Ms Wood e-mailed the Claimant reminding him that he was due back at work that day. The Claimant failed to turn up for work and nothing was heard of him until the 4<sup>th</sup> May when there was a flurry of e-mail exchanges.
- 2<sup>nd</sup> May 2018 – Ms Horwood telephoned the Claimant but was unable to reach him so she sent him an e-mail pointing out that he had failed to attend work and to contact her immediately.
- 2<sup>nd</sup> May 2018 – Ms Martin amends the shift roster for the week of the 10<sup>th</sup> to 15<sup>th</sup> May.
- 3<sup>rd</sup> May 2018 – Ms Horwood unsuccessfully telephones the Claimant and sends him another e-mail pointing out he had not attended work.
- 3<sup>rd</sup> May 2018 – Ms Horwood e-mailed the Claimant pointing out that he should not forward work e-mails to his private e-mail address.
- 4<sup>th</sup> May 2018 – The Claimant e-mailed Ms Horwood and Ms Wood pointing out that (i) he needed a lot of time to prepare for his appeal (ii) he logged onto the office e-mail to send e-mails to himself as this was more convenient (iii) asking what his present situation with the Respondent was and (iv) stating that he wanted suspension until the 8<sup>th</sup> May and then annual leave up to the 16<sup>th</sup> May as this would give him enough time to write an appeal and the company to investigate it.
- 4<sup>th</sup> May 2018 – Ms Horwood replied to the Claimant’s e-mail pointing out that (i) the appeal was only against Mr Maman’s decision and therefore old ground was not to be gone over again (ii) that Company policy/procedure did not allow for an employee to be on suspension for the purposes of preparing an appeal (iii) he only had approved leave for the period 10<sup>th</sup> to 15<sup>th</sup> May (iv) he was still employed with the company but

currently absent without leave which was contrary to the terms of his contract and could lead to dismissal for gross misconduct and (v) the Claimant was expected to return to work the next day since failure to do so would adversely affect his employment status.

- 4<sup>th</sup> May 2018 – The Claimant e-mails Ms Horwood requesting that she provide him with scans of the terms and conditions of the appeal process.
- 4<sup>th</sup> May 2018 – Ms Horwood e-mails the Claimant a step-by-step guide as to how the appeal process works.
- 4<sup>th</sup> May 2018 – The Claimant e-mails Ms Horwood suggesting that if Ms Horwood's e-mail is correct the Respondent should update the policy on the intranet.
- 5<sup>th</sup> – 6<sup>th</sup> May 2018 – The Claimant failed to attend work and/or to contact the Respondent.
- 7<sup>th</sup> May 2021 – By e-mail timed at 12.37 hrs the Claimant informed Ms Malmagren that, amongst other things:-

*“So what then with my loss of income of 18 days of sick leave at half pay? “My stress related anxiety” was a direct consequence of the bullying and that loss of income is a punishment for me being victim of bullying. Now I have been put on leave without pay although I was made to believe that my suspension would continue. The company is doing its best apparently to make me a criminal instead of a victim. I’m the bad guy now apparently.*

*As part of my appeal I have been preparing a timeline of all relevant events and communication regarding my bullying. Unfortunately Danielle and Emma are now refusing to send me copies of certain documents I asked for my appeal and I don’t want to send an incomplete timeline. Under the Data Protection Act the requested information should have been provided so the company is breaching the law now.”*

and

*“Whilst my appeal might now be considered without me being given an honest chance to fully prepare it, I think that the way forward is to let things settle a bit and then organise a meeting in which progress can be discussed. As informed before, tomorrow morning early I leave for annual leave and will be back in Gibraltar 16<sup>th</sup> May. I am willing to meet on that day with HR. I will have spent some quality time with my family in Belgium then far away of all the present issues so could come to a meeting with a fresh mind”.*

- 8<sup>th</sup> May 2018 – The Respondent wrote to the Claimant informing him that clause 10 of his contract had been invoked as he had failed to attend work on the 27<sup>th</sup> to 30<sup>th</sup> April, the 2<sup>nd</sup> and 3<sup>rd</sup> May and the 5<sup>th</sup> and 6<sup>th</sup> May and that consequently his employment was terminated as from the 8<sup>th</sup> May. The letter includes the following paragraph:-

*“As per clause 10.1 of your Employment Contract (which has been highlighted to you on more than one occasion) 3 days or more of unauthorised absence is grounds for gross misconduct which can lead to your dismissal without notice or pay in lieu of notice. Therefore you have left us with no option but to invoke this clause and terminate your contract.”*

11<sup>th</sup> May 2018 – The Claimant wrote to the Respondent stating, amongst other things, that:-

*“Emma also claims I have been absent from work without notification. This is incorrect: I have repeatedly informed the company that I could not return to work without a proper solution for 11 months of bullying and victimisation. I am still awaiting an investigation and reply for my appeal on 07.05.2018 to Cecilia about the Bullying Investigation Outcome. I have also clearly stated on several occasions that from 08.05.2018 till 16.05.2018 I would not be in Gibraltar so unable to attend work”.*

*“Let it be very clear to all that it is the company that is at fault and the company is entirely responsible for creating a situation where it has been made impossible for me to return to work”.*

*“Forcing me to be absence without leave, causing me mental and physical hardship, fabricating evidence to build a case to sack me, confusing e-mails with multiple possible interpretations etc all indicate strongly a conspiracy at several levels in the company against my person and professional interests”.*

*“From a legal point of view the Gibraltar Employment Act states that an employee cannot claim to be unfairly dismissed if he was not continuously employed for a period of not less than 52 weeks. But it also states that the 52 weeks requirement is voided when the dismissal of an employee by an employer if the reason for it was that the employee alleged that the employer had infringed a relevant statutory right. The statutory right of all employees not to be subjected to bullying and victimisation is the one I mentioned before. I’m not a lawyer but I think this is clear enough. The Gibraltar Employment (Bullying at Work) Act 2014 doesn’t even have this 52 weeks requirement.*

*For all of those reasons I appeal the termination of Employment and repeat my proposal to meet on 16.5.2018 when I will be back in Gibraltar. I also demand that my appeal against the Bullying investigation Outcome is properly investigated. Obviously there will be no need to meet if I will still be sacked, for that I ask you to review the decision most urgently. I propose “leave without pay” for the days you claim I have not been authorised but I felt forced to take off. If the dismissal is not fully revoked then there is no reason for me to return to Gibraltar by 16.5.2018 and I will rebook my return flight at a later date so I can spend some extra time with my family and friends in Belgium”.*

- 11<sup>th</sup> May 2018 – Ms Malmgren acknowledges receipt of the Claimants appeal against his dismissal and sets out the procedure.
- 21<sup>st</sup> May 2018 – The Claimant e-mails Ms Malmgren pointing out that he has not heard from her viz the appeal and requesting “*documentary evidence of my rights within the appeal for dismissal*” and “*other documentary evidence relevant to my case*”.
- 22<sup>nd</sup> May 2018 – Ms Malmgren replies informing the Claimant that the appeal has been arranged for the 25<sup>th</sup> May and attaching a letter setting out various matters relating to the appeal process.
- 23<sup>rd</sup> May 2018 – The Claimant e-mails Ms Malmgren complaining that his requests for documentation had been ignored, pointing out that the date set for the hearing was not convenient to him as he had other arrangements, stating that he wished to be accompanied by representatives of various bodies and his lawyers, that it was clear to him that the outcome of the appeal was already decided, that there was no need for him to attend such a meeting, that he wanted them to discuss all his written points and that the courts would have the final say in the matter.
- 23<sup>rd</sup> May 2018 – Ms Malmgren replied asking what documentation relating to the dismissal was missing, pointing out that if the 25<sup>th</sup> May was inconvenient what other date would be suitable and that the appeal process was only dealing with the issue of termination and the reasons for it.
- 25<sup>th</sup> May 2018 – The Claimant e-mails Ms Malmgren complaining that she is being “*ever more obtuse and confusing*” and that “*I can confirm that today the forms for the Industrial Tribunal have been filled in*”.
- 30<sup>th</sup> May 2018 – Mr Fieldhouse, legal counsel for the Respondent, writes to the Claimant stating, amongst other things, that:-
- “We note the allegations you make in your e-mail below, which you will have the opportunity to raise during the appeal process. You have a right to appeal on both the outcome of your grievance alleging bullying and separate to this, the decision to dismiss you. The appeal in relation to the grievance outcome will take place prior to the dismissal appeal hearing. Both can take place on the same day”.*
- 31<sup>st</sup> May 2018 – The Claimant e-mailed Mr Fieldhouse stating that the matter was now with the Industrial Tribunal.
- 31<sup>st</sup> May 2018 – Mr Fieldhouse replied to the Claimant to the effect that the Respondent was still prepared to arrange the stated appeal hearing.
- 1<sup>st</sup> June 2018 – The Claimant wrote to Mr Fieldhouse stating that he had no wish to exchange further e-mails and to await the communications from the relevant authorities.

I now turn to consider individually each of the three different sets of allegations brought by the Claimant. With regard to the various allegations of bullying and of victimisation the Claimant at times interchanges or misses the terminology so that on occasions he refers to a particular allegation as being one of bullying and

then later on as being one of victimisation. There is therefore a certain amount of overlap.

### Law on Bullying

The law on bullying is contained in the Employment (Bullying at Work) Act 2014 (hereinafter referred to as “the Bullying Act”), Section 6 of the Bullying Act prohibits an employer from bullying its employees as it provides as follows:-

“6. (1) *An employer (A) must not, in relation to employment by A, subject an employee (B) to bullying.*

(2) *The circumstances in which A is to be treated as having subjected B to bullying under subsection (1) include those where:-*

(a) *a third party bullies B in the course of B’s employment; and*

(b) *A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.*

(3) *Subsection (2) does not apply unless A knows that B has been bullied in the course of B’s employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion.*

(4) *A third party is a person other than:-*

(a) *A; or*

(b) *An employee of A’s.*

(5) *An employer will not be in contravention of subsection (1) in relation to a complaint of bullying where he can show:-*

(a) *That at the time of the act or acts complained of:-*

(i) *he had in force a Bullying at Work Policy in accordance with the Schedule; and*

(ii) *he has taken all reasonable steps to implement and enforce the Bullying at Work Policy; and*

(b) *as soon as reasonably practicable, he takes all steps as are reasonably necessary to remedy any loss, damage or other detriment suffered by the complainant as a result of the act or acts of which he complains”.*

Section 4 defines “bullying” by reference to the following conduct:-

“4 (1) *A person (“A”) subjects another person (“B”) to Bullying where A engages in conduct which has the purpose or effect of causing B to be alarmed, distressed, humiliated or intimidated.*

(2) *In subsection (1) the reference to conduct includes:-*

(a) *persistent behaviour which is offensive, intimidating, abusive, malicious or insulting;*

(b) *persistent unjustified criticism;*

(c) *punishment imposed without justification;*



*(d) changes in the duties or responsibilities of B to B's detriment without reasonable justification.*

*(3) Bullying does not include reasonable action taken by an employer relating to the management and direction of the employee or the employee's employment".*

Section 4 has to be read in conjunction with section 10 of the same Act which provides that:-

*"10. Where on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent contravened this Act, the Tribunal shall uphold the complaint unless the respondent proves that he did not contravene this Act".*

In the Supreme Court case of Daniel Cassaglia v Lawrence Stagnetto and the Gibraltar Health Authority (2019 Mic/049) Mr Justice Yeats opined that:-

*"84. There are two different elements to section 4(1). Firstly there has to be conduct. The conduct has to be viewed objectively. Is the conduct complained of behaviour which, objectively, could cause alarm, distress, humiliation or intimidation? If the answer is yes, then a subjective test needs to be applied to whether it had the purpose or effect of causing those sentiments. When looking at purpose you look at what the perpetrator intended. When looking at effect, you look at what the victim felt.*

*85. The section 4(3) proviso is then applied as a third element – although for obvious reasons this could only be applied to an "effect" case and not to a "purpose" case. If an employers purpose is to cause alarm etc then it can never be reasonable action".*

Mr Justice Yeats went on to hold that:-

*"205 Bullying conduct under section 4(1) of the Employment (Bullying at Work) Act 2014 can include both a single act or repeated incidents. Section 4(2) does not contain an exhaustive list of examples of bullying conduct. However, if conduct falls within one of the examples in section 4(2), then the conduct only amounts to bullying if it meets all of the criteria set out in the relevant sub-paragraph".*

and

*"207 In order for an employer to be liable for an act of bullying, the conduct complained of must be either effected by, or attributed to, the employer. (Conduct is attributable if, for example, it is persistent). In this case, Dr Cassaglia's actions formed part of a single, isolated and unforeseeable incident. It should not have been attributed to the GHA as the employer".*

I conclude on the law of bullying by pointing out two things. In my opinion the words "*alarmed, distressed, humiliated and intimidated*" that are referred to in section 4(1) of the Bullying Act are powerful words that must be given their ordinary meaning and such meanings must not be trivialised by being applied to minor upsets or differences of opinion or non-social behaviour (eg failing to greet someone or not speaking to them other than for work related matters); although having said this each case is dependent on its own facts. Moreover, in my opinion the word "persistent" has to be given its natural every day meaning; that is constantly repeated and enduring.

The Supreme Court case of Daniel Cassaglia v Lawrence Stagnetto and the Gibraltar Health Authority was appealed and as at the time this judgement is issued

the judgment of the Court of Appeal has not been given and therefore it may well be that all or any part of the decision of Mr Justice Yeats has to be revisited, which if that is the case may well affect what is stated herein and therefore my determination with regards to the bullying aspect of this case.

### **Bullying Claim**

It is the case of the Claimant that:-

- (i) he was bullied by what he termed as Camp 2, namely Messrs Asnar, Amrani, Nouri and Ringleberg from the very second he met them in May 2017 and every day thereafter until he left the employment of the Respondent in May 2018; and
- (ii) he was bullied by Ms Martin from the 31<sup>st</sup> January 2018 until he left the employment of the Respondent in May 2018.

Before proceeding to consider the Claimant's case it appears to me important to highlight the following facts, which as I understand it, both parties are in agreement on and which in any event I have found to be correct; namely:-

- (a) the first week of employment was spent in the classroom and therefore there was little contact if any with Camp 2 members;
- (b) in the second week of employment, four days were spent training and one day with the Dutch team so during that day, if any or all of the Camp 2 members had been on shift, there would have been contact between the parties;
- (c) in the third week of employment, three days were spent training and two days with the Dutch team so during those two days, if any or all of the Camp 2 members had been on shift, there would have been contact between the parties;
- (d) in the fourth week of employment, two days were spent training and three days with the Dutch team so during those three days, if any or all of the Camp 2 members had been on shift, there would have been contact between the parties;
- (e) in the fifth week of employment, one day was spent training and four days with the Dutch team so during those four days, irrespective of shift patterns, the probability is that at some point there would have been contact between the parties;
- (f) from the sixth week of employment onwards, then depending on each team members shifts, holidays and sick leave, one or more of the Camp 2 members would have had contact with the Claimant provided the Claimant was also working;
- (g) Mr Naouri left the customer services department on the 17<sup>th</sup> September 2017 and therefore after this date he could not have bullied the Claimant, and indeed there is no allegation that Mr Naouri did so;
- (h) Mr Amrani left the customer services department in November 2017 and whilst the Claimant states that he continued to be bullied by Mr Amrani after this date this could only have happened on those days when Mr Amrani was on shift at the same time as the Claimant and during those times Mr Amrani visited the customer services department when the Claimant was on shift;
- (i) the Claimant was on sick/annual leave during the 7 to 15<sup>th</sup> February 2018 and therefore he could not have been bullied at work by anyone on those days;

- (j) the Claimant was on certified sick leave between the 13<sup>th</sup> March and the 10<sup>th</sup> April 2018 so during this time he could not have been bullied at work by the Camp 2 members and/or Ms Martin;
- (k) the Claimant was not at work between the 13<sup>th</sup> April 2018 to the date of his dismissal so during those days he could not have been bullied by the Camp 2 members and the possibilities of Ms Martin bullying him were restricted to his leave application for May 2018;
- (l) Mr Ringleberg ceased to be employed by the Respondent on the 22<sup>nd</sup> March 2018, so as from that date he could not have bullied the Claimant;
- (m) Mr Asnar left the Customer Services Department on the 1<sup>st</sup> May 2018, so as from this date he would at best have had restricted contact with the Claimant.

Throughout his evidence or in addresses to the tribunal the Claimant repeated on numerous occasions in an emotive manner that he had been constantly bullied from the day he had started work each and any every day until he had been dismissed. It is therefore important to put such a generalised sweeping statement in to a factual context as set out above.

### **Bullying by Camp 2 Members**

It is the Claimant's case that he was bullied by the Camp 2 members from the first day he met them until the day he left the Respondent's employment but when addressing the Tribunal, he stated that he was bullied as from the 22<sup>nd</sup> May 2017, which was the first time he spent 8 hours with the Dutch team. Irrespective of which day one takes, it is the Claimant's assertion that the conduct engaged on by the Camp 2 members was that contained in section 4(1)(a) or (b) of the Bullying Act; ie conduct which was:-

- (a) *persistent behaviour which is offensive, intimidating, abusive, malicious or insulting;*
- (b) *persistent unjustified criticism;*

This needs to be borne in mind when taking account of the Claimant's allegations, as indeed is the meaning ascribed above to the word "persistent"

In his witness statement, the Claimant states the following about the day he first met the Camp 2 members:-

*"I asked my very first question to Sabir Nouri who by coincidence sat beside me. He immediately replied in a rude, aggressive and brutal way "Don't you see I'm busy"*

whilst in evidence to the Tribunal he said:-

*"On the 22<sup>nd</sup> May I asked Sabir a question. His reply was "Don't you see I 'am busy? I said he replied in a rude, brutal and aggressive manner. I can show what he did, I was very displeased with the reaction from the person. I quickly learnt to stay away from Sabir".*

*"On the 22<sup>nd</sup> May it was eight hours with the team, a full team. I was bullied as from this day".*

With all due respect to the Claimant if he honestly considered this to be an act of bullying then it seems to me that from a legal perspective he is setting the bar at a very low level indeed.

What is more, bearing in mind that it is the Claimant's stated belief that he was bullied by Camp 2 members as a result of aligning himself with Ms Martin, it is not possible for such alleged bullying to have commenced on the 22<sup>nd</sup> May 2017, as he

would not have had the time to side with anyone by then. This is more so, if one takes into account the Claimant's evidence to the effect that:-

*"Ringleberg and I never spoke" ..... Ringleberg was worried how quickly I picked things up as was Dorland and Van Veen".*

*I had a feeling Asnar saw me as a threat to the team leaders role".*

Such matters conflict with the Claimant's evidence to the Tribunal that:-

*"From the first day these guys said we don't like him we are going to bully him out. From the very first second they saw me that guy is going out".*

*"From the very second they saw me they said that guy out. This is what I say. Up to today I still don't know the reason why".*

Be that as it may, there can be no doubt that at the time the Claimant commenced work in the Dutch team there were already existing tensions within the team members, namely between Ms Martin, on the one hand, and Camp 2 members on the other hand. The documentation filed, as well as the evidence given by witnesses, very clearly establishes that such tensions between individuals in the Dutch team existed and I have no doubt this was the case. Tensions which certainly continued at least until the 31<sup>st</sup> January 2018, if indeed they have ever been resolved. The Claimant in his evidence not only referred to tensions but went much further by saying that the Camp 2 members bullied Ms Martin. Whilst not unnaturally the Camp 2 members deny bullying Ms Martin, interestingly enough Ms Martin at no time stated that she was or felt bullied by the Camp 2 members, although she accepted that at times, she had disagreements with some of them and that it was difficult for her to deal with some of them, who at times did not speak to her, other than professionally. The interpretation of the interplay between personnel was obviously viewed differently by the Claimant and the other persons concerned.

Having accepted that there were tensions within the Dutch team already in May/June 2017, which initially at least did not involve the Claimant, I therefore turn firstly to consider the evidence that has been presented, and then to consider what acts committed by Camp 2 members the Claimant alleges constitute conduct which comes within section 4 of the Bullying Act.

The Claimant during the course of his evidence stated that he did not know "*to this day*" why the Camp 2 members acted as they did towards him. It is surprising that he should maintain such a position bearing in mind the evidence on this point.

When giving evidence Mr Dorland stated:-

*"Bart investigated things and he wanted multiple opinions. Other members did not like him doing this".*

*"From the Camp 2 guys it was more agitated when Bart went to ask for a second opinion from a supervisor/team leader and did not speak to Bart on some occasions like in the morning not saying good morning, not engaging in normal conversation".*

In the course of his evidence Mr Van Veen stated:-

*"They took it badly when Bart went to team leaders/shift supervisors and asked them questions. They did not like that. I would say 3/4 times that I have seen Bart double check things ....."*

In the course of her evidence, Ms Martin stated:-

*"It was basically an ongoing issue. Asnar, Amarani, Sabir complaining Bart doesn't want to be helped and if he was helped he would go to other people*

*and ask for 2, 3 and 4 opinions that made them feel very frustrated and then on the other hand Bart was complaining they were ignoring him”.*

*“According to Sabir, Asnar, Amrani they complained to me that Bart was asking for advice and going to the shift supervisor and even second/third opinion”.*

In his evidence, Mr Amrani stated:-

*“This shadowing also quickly stopped but I don’t remember when because Bart would go to other teams and ask them instead of his own team members. This was one of the biggest reasons why it went worse in the team”.*

*“It was not the normal procedure but Bart would be told something by the team and then he would go to other team leaders and check the answers. Bart usually didn’t follow all the procedures which created a lot of tension even if the team leaders and managers did not understand why Bart went to ask them”.*

*“Bart would go to talk to a shift supervisor/team leader. I can’t remember off the top of my head but I am sure it is way more minimum six times but it could be ten times more. I remember well because Daniella Schiera asked the whole team why we would not help Bart, so we explained to her that we did and that he still preferred to double, triple, quadruple check with others”.*

In her evidence, Ms Mouhayar had this to say on the issue:-

*“I can answer in a general sense. It was mainly that Bart was not listening to the shadower when he was sitting with them and seeking advice as well. The complaints were general. I don’t recall who said that, it was things I heard”.*

In evidence, Mr Asnar stated that:-

*“There will be cases in between where he did not do things wrong but he did escalate things unnecessarily and I was asked by the supervisor why he needed help with that again when I should have known what to tell him”.*

The Claimant does not deny that on a hand full of occasions he may have gone to shift supervisors or team leaders to ask for advice/information, indeed it would be strange if he had not done so bearing in mind his stated belief that Camp 2 members were intentionally providing him with wrong information/advice, but appears to be oblivious as to how this could have been perceived by or could have affected Camp 2 members.

I have concluded that the Claimant did on many more than a handful of occasions during his probationary period, and indeed afterwards, approach members outside of his immediate team to ask them for information/advice and that this undoubtedly caused Messrs Amrani, Asnar and Nouri to feel upset and frustrated with the Claimant. This upset and frustration in turn led to complaints being made to Ms Martin with the following consequences.

In his first witness statement, Mr Amrani has this to say:-

*“I complained to Susana Martin about the Claimant quite soon after he started as I could see he would cause trouble through his attitude and I was finding it difficult to work with him ..... Unfortunately Susana completely failed to take control of the situation. She sided with the Claimant”.*

In his evidence to the Tribunal, Mr Amrani had this to say:-

*“I don’t remember individual meetings having been arranged between Susana and Asnar, Sabir and myself. Apparently, they never listened to our complaints. I felt you were protected immediately. Bart was protected by*

*Susana, Samira and shift supervisors and I guess it come from higher up. I am not saying this was correct but it was how we felt, our experience personally”.*

In his first witness statement, Mr Asnar has this to say on the matter:-

*“I found my time at the Respondent company got much harder after the Claimant started. I felt he was protected by Susana Martin and despite me raising with Susana Martin the concerns I had about him, I was ignored”.*

In the course of her evidence, Ms Mouhayar had this to say on the matter:-

*“The start of it was people thinking that Bart was the favourite of Susana and the relationship between these people and Bart was toxic. It was the gossiping that was toxic, for example an agent calling in sick and Bart saying that he was not really sick and Susana not putting Bart in his place”.*

Whether justified or not it is clear that Messrs Asnar, Amrani and Nouri perceived that Ms Martin was not going to act against the Claimant with reference their concerns/complaints about the Complainant, as they put it, escalating things unnecessarily. It is to be noted that there is evidence to suggest that the Claimant purposely banded about within the team a supposedly close relationship between himself and Ms Martin and Ms Mouhayar (which it appears did not exist) whilst at the same time complaining unofficially to Ms Martin about the Camp 2 members. This would only have further entrenched the view that the Claimant was being protected, and therefore increased the frustration and upset.

In his witness statement, the Claimant stated as follows:-

*“On 11<sup>th</sup> July 2017 I have a meeting with Susana Martin in which I mentioned the bullying and that I was having a hard time”.*

*“Around this time during office hours while we were both together on shift, Susana Martin and I also had a lot of off the record chats during walks outside of the office building. I estimate we had about ten of those walks. Susana Martin was visibly suffering from the bullying by Sabir Nouri, Yousri Amrani and Jose Luis Asnar. During these walks, I also told her about the way I was bullied by the same group of people”.*

I pause to note that other than the sentence in the witness statement there is nothing to confirm that a meeting did occur on the 11<sup>th</sup> July 2017, between the Claimant and Ms Martin with reference “bullying” and therefore I am very dubious that such a meeting did take place.

In his evidence to the Tribunal, the Claimant stated:-

*“I reported this to my team leader during the walks or in the office. I reported to management that Asnar’s criticism and bad attitude was a nuisance to me and I know that other colleagues reported it to management as well”.*

*“During office hours Susana and I would leave the office to have informal conversations outside the office about bullying”.*

I pause to note that (i) the Claimant himself states that the talks were informal (ie he had not raised an official complaint) (ii) Ms Martin does not accept she was bullied by any Camp 2 member (iii) the Claimant refers to Mr Asnar’s general criticism and attitude (general rather than directed at himself) as being a nuisance rather than bullying and (iv) there is no evidence to show any complaints were made about Camp 2 members by other colleagues.

Ms Martins’ take on these walks/conversations is somewhat different to that of the Claimant. Hence in her second witness statement, Ms Martin states as follows:-

*"I cannot specially recall the content of these casual conversations with the Claimant. Naturally, when spending many hours with colleagues, private lives are discussed. However, during these walks with the Claimant, I would act as a listener and try to motivate him positively. The Claimant was fixated on his perception that the team were against him and the team in turn, perceived that the Claimant was against them".*

*"It is correct that the Claimant regularly used the word "bullying" in meetings with me. However, this appeared to me to be a perception of his, rather than a reality. He often took the slightest miscommunication, disagreement or his misinterpretation of others attempting to support him, as bullying".*

In her evidence to the Tribunal, Ms Martin had this to say:-

*"During the first two months of employment I did go for walks with Bart and all the other agents. Its not the same as going to a meeting room, things are discussed in an informal way".*

*"During these walks Bart did bring up issues of tension. I can't recall whether in these walks Bart mentioned bullying or the word bully but I recall him being upset and wanting to discuss the tension between the agents in the team, disagreements between them. It was mentioned more than once".*

I pause to point out that what I distil from the above is that (i) the Claimant and Ms Martin did have informal conversations in and outside the office on an unspecified number of occasions (ii) during these conversations the Claimant complained to Ms Martin about the behaviour of one or more Camp 2 members either generally or towards him and (iii) irrespective of whether or not the Claimant used the word "bullying" in these conversations Ms Martin, either did not consider the conduct complained of to be bullying or did not consider it to be a serious matter. It occurs to me that if the Claimant is correct, and Ms Martin was being bullied by Camp 2 members, and if the Claimant did complain to Ms Martin about Camp 2 members bullying him, then surely Ms Martin would have jumped at the chance of bringing official action against the Camp 2 members, and therefore encouraging the Claimant to make official complaints; especially if Ms Martin is the vindictive and nasty person that the Claimant alleges, she is. It would have been the perfect opportunity to rid herself of, or put down, individuals bullying her without her being seen as being the direct cause of the problem or complaint. Yet even though the Claimant and Ms Martin got on well together at this point, this did not happen. It does make one wonder whether the Claimant in these conversations did in fact use the word or refer to bullying or acts amounting to such. It seems to me more likely than not that in these conversations' issues akin to disagreements/personality clashes/misinterpretation between individuals was the order of the day rather than complaints about bullying.

Up to this point everything that occurred is essentially based on the recollections of individuals as to what was said or done and based on generalisations made in the course of informal conversations. This changed on the 24<sup>th</sup> July 2017, and what sparked it off was a simple e-mail. The e-mail was sent by Mr Asnar to Ms Martin, and copied to the Claimant and reads as follows:-

*"I have tried to work together and to advise with every query. With every step that I explain something, he doubts it and tries to find someone else help. If my thoughts doesn't help him, I will not be able to help him further as I lose time and efforts for nothing.*

*When I try to ask something about a case where already has been worked, he shuts down to protect himself for mistakes which have no meaning to me, I only try to figure out what occurred in the last communication to be able to solve the users query as fast as possible on live communication".*

The Claimant's reaction to this e-mail is a lengthy reply that same day since he perceived that:-

- (i) he had been falsely accused of being unprofessional;
- (ii) it was entirely unreasonable for Jose Luis to accuse him of not listening to his (Mr Asnar's) thoughts and advice; and
- (iii) Mr Asnar had tried to misrepresent what *"actually happened with the obvious intention of creating a negative image around my work"*.

In the e-mail the Claimant refers to two specific cases at some length, and tries to make the point that whilst Mr Asnar was loud and unreasonable, he (the Claimant) was being conciliatory, following MOSS and looking after the interests of the company. Bearing in mind that Mr Asnar in his e-mail makes no reference to any particular case, indeed he seems to be referring to a series of events over time in the e-mail, it is perplexing why the Claimant felt the need to either mention the two specific cases in question and/or reply in the unfavourable manner that he did. The e-mail suggests the adoption of the maxim of attack is the best form of defence before your superiors. Having said this, there are some points that are worth highlighting:-

- (a) the e-mail contains the statement *"I can assure you that I have asked Jose Luis advice constantly in the past and was so happy with it that I gave him the maximum of kudo points at the end of last month"*. This statement, if honestly held, appears to contradict the Claimant's evidence that Camp 2 members including Mr Asnar were giving him incorrect information and advice, that Camp 2 members ignored him and that Mr Asnar and the others bullied him constantly. I also note that at the end of the e-mail the Claimant refers to *"continue working together in a positive atmosphere"*; an indication perhaps that matters were not as bad at that point as is subsequently alleged;
- (b) the e-mail does not contain the words "bully" or "bullying" which is rather surprising if matters were as bad as is alleged by the Claimant; ie in his witness statement he refers to *"I was by this date already so continuously bullied that I indeed closed myself off from the world every time another bullying attempt was made"*. Having said this, the Claimant does refer to feeling *"humiliated by the loud tone that Jose Luis seemed was appropriate for this occasion"* and to Mr Asnar exploding and in an aggressive way shouting at him, both being conduct which may imply bullying; and
- (c) I have difficulty in understanding why the Claimant came to the conclusion that the e-mail from Mr Asnar intended to create *"a negative image around my work"*. Mr Asnar's e-mail is about the Claimant's behaviour and not about the quality of his work. Indeed Mr Asnar, as indeed all other witnesses, considered the Claimant to be a good worker.

The Claimant's e-mail was replied to some fourteen minutes later by Mr Asnar requesting from Mr Martin a meeting *"whenever it suits everyone that should join"*; this e-mail being copied to the entire Dutch team. It is frankly difficult to understand why Mr Asnar felt the need or justification to circulate this e-mail to everyone on the Dutch team. Certainly Ms Mouhayar, who was sent a copy of the e-mail by Ms Martin some hours later thought that:-

*"My problem is that Jose Luis included all the team in the thread and I'm not sure how Bart will react to that because it looks a bit like a call to other members to gain (sic) against Bart"*.

Indeed, it does, but surprisingly the Claimant has not, as I understand it, claimed that this was the case.

In evidence, Mr Asnar had this to say about it:-

*"The response from Bart I copied to the whole team because you had replied the way that you did. I felt the tension was not me and Bart, the whole team"*



*had a tension. I was not aware that this was an attempt to get the whole team against Bart”.*

Ms Martin replied to Mr Asnar’s e-mail, copied to all the Dutch team, stating that she would be having a meeting the next day with *“the 2 involved persons”*.

It would appear that a meeting or meetings took place on the 25<sup>th</sup> July with Ms Martin and the Claimant and Mr Asnar but what was discussed or said is not referred to in any extent in the statements or the evidence of the persons concerned. That a meeting(s) occurred is shown by an e-mail Ms Martin sent to Ms Wood on the 25<sup>th</sup> July 2017, in which she refers to having *“discussed things to have a better communication, understanding of the issue”*. However, what is relevant about this e-mail is that in it, Ms Martin refers to the following:-

*“One of the things what has happened and I do not like at all, is that somebody from the Dutch team has shown/spoken about the issue to one of the Scandinavian team members. This morning two of the Dutch team members came to work, said hello to everybody except Bart”.*

Who the member of the Dutch team was is not known, but there can be no doubt, it occurred. This incident, together with the circulation by Mr Asnar of the e-mail thread to all Dutch team members, certainly at the very least indicates an attempt to influence the Dutch team members and others on the floor against the Claimant.

On the 26<sup>th</sup> July 2017, the Claimant sent Ms Martin an e-mail in which after thanking her *“for the constructive meeting we had yesterday”*, the Claimant went onto allege that:-

- (i) Messrs Asnar, Amrani and Nouri had been trolling through the Claimant’s cases to find mistakes in them and then telling him in a loud voice to check again the cases which had mistakes, which the Claimant stated were not mistakes;
- (ii) Messrs Asnar, Amrani and Nouri had told other team members that the Claimant had since commencing employment asked them a question and then proceeded to go to another person to ask the same question;
- (iii) Messrs Asnar, Amrani and Nouri had given him advice without the Claimant asking for it and that they were now saying that the Claimant intentionally did things wrong in order to make them look bad;
- (iv) Mr Amrani had refused to greet him or shake hands when the Claimant finished his shift; and
- (v) He was worried that people in the company could think he was *“an unprofessional guy who is a shit stirrer”*.

I pause to note that in this e-mail, whilst the Claimant makes reference to a campaign to discredit him, to set up other colleagues against him and to make him look unprofessional, at no time does he state that such behaviour alarmed, distressed, humiliated or intimidated him.

Ms Martin forwarded this e-mail to Ms Mouhayar, and on the 27<sup>th</sup>/28<sup>th</sup> July Ms Martin spoke to Messrs Amrani, Asnar and Nouri separately. In this e-mail, Ms Martin states:-

*“They are fully aware that I have asked them for a good collaboration, they have had also their say in this whole collaboration story.*

*I really think they have nothing further against Bart, at least that is my opinion and after had the individual chats, therefore I hope this will not go further”.*

On the 29<sup>th</sup> July, the Claimant sent Ms Martin and Ms Mouhayar another complaint in which he alleged that:-

- (i) Mr Amrani had arrived late and spent an hour shouting at him before going "*entirely mad, shouting and screaming*" at him;
- (ii) Mr Amrani had regularly in a loud voice stated that he was sending e-mails of mistakes committed by the Claimant to Ms Martin/Ms Mouhayar;
- (iii) Mr Amrani had left work without greeting him;
- (iv) As a result of all that had occurred, he had got a terrible headache; and
- (v) He feared that his days working for the Respondent were numbered.

Reading this e-mail, I get the impression that its purpose is two fold; firstly, to point out how hard working and committed to his job the Claimant is and how the atmosphere in the team is only fine when he, but not any Camp 2 member, is present, and secondly, to emphasise how unnecessary, unreasonable, loud and aggressive Mr Amrani is. It's an e-mail that appears to me to have been carefully constructed and thought out and not one that would appear to have been put together shortly after leaving work by a person who alleges that on leaving work had such a terrible headache that "*I could not fully concentrate anymore on what I was supposed to do*". It is also to be noted that this e-mail is all about Mr Amrani and his behaviour towards the Claimant and not other Camp 2 members. It is also an e-mail in which the Claimant does not refer to being bullied.

On the 2<sup>nd</sup> August 2017, the Claimant sends another complaining e-mail to Ms Martin/Ms Mouhayar. In this e-mail, the Claimant covers alleged incidents over three days of that week. In this e-mail, the Claimant alleges that:-

- (i) on Monday, Mr Amrani had been going through his cases but was unable to find any mistakes, that Mr Amrani had been shouting over his head at the French team and that Mr Amrani had lied about speaking to another team member;
- (ii) on Tuesday, Mr Asnar and Mr Amrani had been criticising Ms Martin, and that Mr Amrani "*had the kindness to tell me that he now understand why I did everything different to him .....*";
- (iii) on Wednesday, Mr Amrani had gone "*for me again in front of Leanne about escalations for VIP asking for GWG bonus*" in a very unpleasant and denigrating tone and loud voice and that Mr Amrani had admitted in front of Leanne to collecting a file "*about me or things I do*" which was contrary to the Data Protection Act and that he had been advised to report it to the police.

It would appear from this e-mail that once again it is Mr Amrani who is the focus of the Claimant's attention and the one he is having problems with.

On the 27<sup>th</sup> August 2017, the Claimant sent an e-mail to Ms Martin the purpose of which appears to be to inform her that the next day he was sitting the shift with "*some unpleasant people for most of my shift*" and asking "*to have a motivation chat with*" her the next day.

As a result of these various complaints, Ms Martin proceeded to have discussions with Messrs Amrani, Asnar and Nouri so that on the 9<sup>th</sup> August the Claimant sent an e-mail to Ms Martin thanking her for the interventions which had led to "*the atmosphere at work was back to normal again today and there were no incidents to report with any of my colleagues*".

Following this e-mail, on the 16<sup>th</sup> August Ms Martin informed Ms Mouhayar that:-

*“After having had a chat with all, it seems that everything is back to normal. Bart has come to me to say that things have changed and he is very positive again about the collaboration within the group”.*

Things remained like this until the 5<sup>th</sup> September when Mr Amrani sent Ms Martin an e-mail requesting a meeting *“regarding the working atmosphere”*. This e-mail was once again copied to all members of the Dutch team and once again I see little reason for such action which could only escalate matters.

That same day the Claimant replied to Ms Martin, copying it only to Ms Dyer and Ms Mouhayar. I cannot but wonder whether the Claimant would have sent this e-mail had Mr Amrani not sent his e-mail requesting a meeting. There is a pattern. In the e-mail the Claimant refers to Mr Asnar and Mr Amrani, who he accuses of a lot of screaming and shouting and of accusing him (the Claimant) of being the cause of the trouble and bad atmosphere within the team. There was very obviously an incident that day between Mr Asnar and Mr Amrani on the one hand, and the Claimant on the other, in the presence of Dyer, a shift supervisor; who unfortunately did not give evidence during the course of the hearing.

It is in this e-mail that the Claimant uses the word “bully” for the first time when he stated that Mr Amrani and Mr Asnar (not Mr Nouri or Mr Ringleberg) *“started again with their campaign to bully me”*.

I have been unable to find in the written or verbal evidence given whether the meeting requested by Mr Amrani was held, and, if so, what transpired. Suffice to say that as from this point on during the remainder of the year, and after that, the Claimant did not send any further e-mails to Ms Martin/Ms Mouhayar complaining specifically about Camp 2 members. Yes, the Claimant in his witness statement and in the evidence to the Tribunal referred to continuous bullying by Camp 2 members but his statements are not particularised (other than on the 15 February 2018 when it is said that Mr Asnar did not greet the Claimant) and are phrased in a way that suggests he was referring to incidents up to September 2017, and made in the context of complaints about Ms Martin conduct towards him.

I pause to note that in none of the e-mails referred to above does the Claimant refer to Mr Ringleberg and hence I fail to see why the Claimant, by including him as a Camp 2 member, alleges that he was bullied by Mr Ringleberg. Clearly, he was not and there is no evidence to suggest any conduct on the part of Mr Ringleberg to indicate that he bullied the Claimant; indeed, it may be arguable that the opposite is the case bearing in mind the complaints made by Mr Ringleberg against the Claimant, which Ms Martin did not do anything about, and which eventually lead to the explosion at the meeting of the 30<sup>th</sup> January. Moreover, in the case of Mr Nouri, the Claimants complaints against him are generalised and restricted to attempts to discredit the Claimant or ignoring the Claimant; and let us not forget that Mr Nouri finished his employment with the Respondent on the same day the Claimant was given a fixed contract; ie the 15<sup>th</sup> September. Mr Nouri is very much on the periphery of the Claimants complaints, which were directed specifically at Mr Amrani and to a lesser extent Mr Asnar; this might explain the tone, manner and length of the Claimants cross-examination of both these men.

It is to be noted that the Claimant does not use the words “alarmed, distressed or intimidated” in these e-mails and only uses the word “humiliated” (by Mr Asnar’s loud voice) in the e-mail of the 24<sup>th</sup> July. This would seem to indicate that the conduct/inter relation between the individuals concerned was not as bad as has subsequently been portrayed.

Turning then the verbal evidence given by the various witnesses with regard to the period covering June to September 2017.

In his evidence, Mr Asnar stated:-

*"I complained to Susana, we both know we had disagreements and I wanted to clear them up. I don't remember her reaction".*

*"I had one conversation with Susana about Bart and that is it".*

*I did not go to Samira to complain about Bart. I am not that kind of person. I never went to Samira".*

*"I never went to HR to complain about Bart. I don't think, I don't recall having gone to HR to complain about Susana".*

*"Susana, Bart and I sat in a meeting to discuss our perceptions and views. After this meeting the tensions in the team did not disappear".*

*"I don't recall around this time having any specific meetings with either Susana or Samira".*

*"I am not aware or having been told about any note put in my file following the e-mail of Ms Wood dated the 16<sup>th</sup> August 2017".*

In the course of his evidence, Mr Amrani had this to say:-

*"To be honest it is four years ago and I don't recall if I ever went to Susana to complain about calling Asnar ..... but for sure I did go to Susana to complain about Bart".*

*"I recall several incidents with Ms Dyer. I did share my frustration about Bart with Ms Dyer".*

*"I don't remember individual meetings having been arranged between Susana and Asnar, Sabir and myself".*

*"I was not aware that after the 29<sup>th</sup> July Bart sent detailed complaints to Susana. They might have informed us of this but I don't remember. I was not aware that Barts complaints had gone to HR. It might have happened but I don't remember".*

*"I had gone to Susana and Samira to complain and I could not go any higher up than that".*

*"I did not go to HR. Some people do not run to HR. Some people prefer to solve it internally".*

In the course of her evidence, Ms Mouhayar stated as follows:-

*"There was no formal investigation into these e-mails. There was only the three interviews with team members. We did not for example talk to Leanne officially".*

*"At the time what we did was to have a meeting with the three persons Bart complained the most about".*

In the course of her evidence, Ms Martin had this to say:-

*"It is true that the Claimant used the word "bully" to me. For me it was more of a disagreement between the persons and I did have my investigations with the others as well. I spoke to Asnar, Sabir and Amrani. At this time Ringleberg was not really involved. I had much more than two meetings in general. Bart was saying they are not listening, they are trying to make my life impossible. It was basically an on-going issue. Asnar, Amrani and Sabir complaining Bart doesn't want to help and if he was helped, he would go to other people and ask for 2, 3 and 4 opinions that made them feel very frustrated and then on the other hand Bart was complaining that they were*

*ignoring him. I was in the middle listening to both parties trying to get to a professional understanding and working environment where at times Bart said that I had succeeded and done a wonderful job”.*

The up-shot of all of this is that on the one hand we have Mr Asnar and Mr Amrani requesting meetings with Ms Martin for the purposes of complaining about the Claimant, and on the other hand, we have the Claimant writing lengthy e-mails to both Ms Martin and Ms Mouhayar in which he complains extensively about Mr Asnar and Mr Amrani. As a result of the Claimant's complaints, and not those of Mr Asnar and Mr Amrani, Ms Martin has a series of meetings with Mr Asnar, Mr Amrani and Mr Nouri, which firstly leads to the Claimant stating that the atmosphere had improved, and subsequently, after a few other alleged incidents, resulting in no further e-mails from the Claimant on the matter.

Bearing in mind that Ms Martin accepts that the Claimant used the word “bullying” in the course of informal conversations, that in e-mails sent the Claimant refers to some conduct which in certain circumstances could potentially be seen as bullying and bearing in mind that in his e-mail of the 5<sup>th</sup> September the Claimant does use the phrase “campaign to bully me” I find it surprising and unfortunate that neither Ms Martin or Ms Mouhayar saw fit to escalate the matter to HR so that the issues raised could have been investigated formally and resolved. I can understand that on the surface it appeared to Ms Martin/Ms Mouhayar to be something other than bullying and that the Claimant did give the impression verbally and in correspondence that matters had been resolved but even so they should have caused a grievance procedure to have been formally instituted.

The Claimants assertion is that the conduct of Messrs Amrani, Asnar and Nouri against him was bullying, assertions which all three men categorically deny and which Ms Martin, and to a lesser extent Ms Mouhayar, consider to be nothing more than personality clashes and disagreements between employees in a working environment. So, what do some of the other witnesses think?

In his evidence, Mr Van Veen had this to say:-

*“I personally would not describe it as bullying. I think everyone played their role in it. The arguing childish immature not relevant to the job and not worth my time getting involved”.*

*“To me you seem to be a confident older person with life experience, quite happy and therefore not the type of person who would be allowed to be bullied”.*

In his evidence to the Tribunal, Mr Dorland had this to say:-

*“It was a case of everyone stopping being childish and being more mature about things. By everyone I mean the whole team including team leaders”.*

*“From the beginning 1/2 months the Camp 2 followers treated Bart good, the training, the shadowing and letting us answer the client questions solo. After this I saw clearly that Camp 2 were giving Bart a hard time”.*

In her evidence to the Tribunal, Ms Mouhayar had this to say:-

*“I blame the dynamic for the breakdown in the team. I don't blame Bart I blame the dynamic of the breakdown in the team. It is a bit of everybody in the team plus Susana could not handle it. This includes a bit of Bart totally yes”.*

Turning then to the specific allegations made by the Claimant against Camp 2 members; these being five in total although to an extent some are interrelated.

Firstly, the Claimant alleges that the Camp 2 members collected his mistakes and then proceeded to tell other members of the Dutch/Scandinavia teams as well as team leaders of those mistakes.

In his evidence to this Tribunal, the Claimant stated:-

*“Camp 2 went to other team leaders to inform them about my mistakes and to others members of the department although they were not mistakes at all”.*

*“I did raise with management that the Camp 2 were going to team leaders telling them about my mistakes”.*

*“Within the first two weeks the Camp 2 went to team leaders and department members to tell them about my mistakes. This was about 31<sup>st</sup> May/1<sup>st</sup> June”.*

*“The e-mail of the 24<sup>th</sup> July 2017 is the evidence that they went to team leaders to criticise’.*

In his witness statement, the Claimant had this to say:-

*“The Camp Two guys also enjoyed going around to the other language teams in the department to inform them about the mistakes I was making according to them. Many of my mistakes were invented by them or misrepresentations. They seemed to do that to gain popularity and initially I did not give it much thought but after some time it started to worry me that people in my department might start to believe that I was not doing my job properly”.*

In his evidence to the Tribunal, Mr Asnar stated as follows with reference this matter:-

*“It is not correct that I was constantly looking for mistakes in the work of Bart”.*

*“I do not agree with Dorland that I searched for any mistake. I did not pass any mistakes to Susana”.*

*“I did not look for mistakes on purpose for you”.*

In his evidence to the Tribunal, Mr Amrani had this to say on this matter:-

*“I saw Bart making mistakes, we are all human beings, no one is perfect”.*

*“I was not constantly checking Barts work to pick up mistakes. If I found mistakes, I don’t recall to whom I sent them, maybe to Martijn as he was the senior or to Susana”.*

Notwithstanding that Mr Amrani does not fully deny having done so, the fact that neither Ms Martin nor Ms Mouhayar or any other third party in any team confirm that Camp 2 members sent them mistakes made by the Claimant, indeed his evaluations at this time are high and indicate that they did not receive such mistakes, or, if they did, ignored them, and/or that there is no documentation or statement (whether in the course of interviews or otherwise) to give credence to the Claimant’s perception, leads me to conclude that no Camp 2 member forwarded any of the mistakes made by the Claimant which they came across to team leaders/supervisors/members of other teams within customer services. In saying this, I do not discard the possibility that one or more Camp 2 members may have been verbally egging the Claimant on to think this by saying that they were collecting or appearing to collect and send on mistakes and/or that in conversations held between individuals that there could have been gossiping about this or that error. If there is one thing that is certain about this case is that the level of gossiping amongst all employees within the building was extremely high. Having concluded that Camp 2 members did not transmit to third parties the Claimants alleged or actual mistakes it follows that there was no conduct which, viewed objectively,

could have caused alarm, distress, humiliation or intimidation. The Claimant in any event does not state that he was alarmed, distressed, humiliated or distressed by this in the documentation created at the time.

Secondly, the Claimant alleges that Camp 2 members shouted at him or shouted in his vicinity to intentionally cause him discomfort or worse. Thus, in his evidence, the Claimant stated that:-

*"I did not say here that the Camp 2 came to where I was sitting but for instance when Amrani came shouting over my head to the French team. It was my feeling that Amrani had purposely come over to my position to shout over my head to the French team because he could have gone a few metres away to do so".*

*"At a certain moment Asnar shouted over Susana's head at me".*

*"I was intimidated by the shouting, alarmed and distressed. They were very clearly intended to touch me. It was very intentional".*

In his witness statement, the Claimant had this to say:-

*"On one occasion Jose Luis Asnar shouted at me directly over Susana Martin's head that I was stupid and a hypocrite for supporting a conspiracy from the company to steal from and defraud our customers. This was done at a very loud tone but still Susana Martin claimed that she had not heard anything at all".*

In his evidence to the Tribunal, Mr Van Veen had this to say on the subject of shouting:-

*"I have seen people shout at Bart. I have seen this a couple of times. There has been arguing more than once of Bart with other team members. I witnessed this 3 to 5 times. There were arguments, misunderstandings".*

*"The persons I remember were Asnar shouting at you. I remember during a meeting Ringleberg shouting at you. I cannot recall Amrani shouting at Bart. There was plenty arguing between each other. Several times I came in and heard about arguing between team members but I wasn't present".*

*"Arguing I saw three to five times, raised voices/heated".*

*"Arguing was when I am sitting at a work place and people close by discussing things in a raised voice/heated, that is not what I like close to me in general and especially not in a work environment".*

In his evidence to the Tribunal, Mr Dorland had this to say on the matter of shouting:-

*"The atmosphere in the team just 1/2 months during training the atmosphere was good, okay, after this it started to go down, tension, aggression, screaming on the floor and threats were made".*

*"I have seen Bart distressed, alarmed, humiliated and intimidated because of the behaviour from one of the Camp 2 guys or when the four were together. The four were ganging up on Bart. Amrani could shout at Bart himself but with the others he had a good back up. They were teaming up to shout at Bart, they would do everything under their powers, screaming, threatening, humiliating".*

In his evidence to the Tribunal, Mr Asnar had this to say on the matter of shouting:-

*"At the meeting of the 31<sup>st</sup> January both Bart and I where screaming at each other and Samira could not be heard".*

In his evidence to the Tribunal, Mr Asnar had this to say on the subject:-

*“When I approached Bart to confront him about his actions the tone used was the tone Bart and I usually used. I did not approach Bart shouting at him waving my arms in the air and invading his space. This is not how I approach people. I doubt I would have been promoted in the company with such behaviour. I did not constantly approach Bart shouting and waving my arms in the air, it did not happen”.*

*“I don’t remember shouting at Bart in this incident with Bart. It could have been raised voices on both sides. We were working in an office environment under pressure and as we know when Bart doesn’t like someone, he throws bad words at them and this is the environment on the floor”.*

*“I don’t think I shouted at Bart in this incident, I may have raised my voice just as Bart would have raised his as we were in an office environment. Asnar might have raised his voice just as Bart would have done. We all had the same tone in the office”.*

*“I do not recall ever having shouted at Bart waving my arms and I am sure that if this had happened, I would have been taken to HR. I sometimes use my hands and arms when I speak”.*

I pause to note that whilst giving evidence Mr Amrani clearly demonstrated that he is a person who naturally waives his hands and arms frequently when speaking.

Having considered all the evidence, I have little doubt that on more than a few occasions (other than the 30<sup>th</sup> January meeting) there were disagreements between the Claimant and Messrs Asnar and/or Amrani and that these disagreements descended to loud and raised voices on both sides, and even to shouting in instances. Apart from the antipathy that existed between the persons concerned, the work environment and potential large number of persons on the floor at any given time, and the noise that this generates, all would have ensured that persons in an exchange, heated or otherwise, would have used loud tones. Moreover, had there been such regular shouting and screaming this would have been noted by shift supervisors/managers of the other teams as well as of the Dutch team. I do not accept the Claimant’s perception that any one or more Camp 2 members would have intentionally gone near him for the purposes simply of shouting at a third party a distance away, although I do not discard the possibility that unintentionally this could have happened. Moreover, any such shouting would have had to be conducted on a persistent basis and there is no evidence to suggest this was the case. In conclusion, I am not persuaded that there was conduct that could be brought within either of the limbs of section 4(1) (a) or (b) and that even if there were, such conduct when viewed objectively would not have caused alarm, distress, humiliation or intimidation for the purposes of the Act.

Thirdly, the Claimant alleges that the Camp 2 members were purposely giving him wrong information whenever he asked them for advice. It is to be noted that no specific example of such alleged misinformation has been produced and no documentation suggesting such a thing drawn to my attention in the course of the hearing.

In the course of the evidence to the Tribunal, the Claimant stated:-

*“Camp 2 on several occasions gave me wrong answers to questions that I had put to them. They were trying to manipulate me to make mistakes”.*

*“Initially I asked Asnar’s advice constantly until I learnt they were giving me wrong advice/answers”.*