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EMPLOYMENT TRIBUNALS

Claimant: Miss M Gabriel

Respondent: Tower Hamlets Homes

Heard at: East London Hearing Centre

On: 28-30 March & 4-6 April 2017

Before: Employment Judge C Lewis

Members: Mrs P Alford
Mr D Kendall

Representation

Claimant: In person

Respondent: Ms A Palmer (Counsel)

JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

- (1) The Claimant's complaint of sexual harassment fails and is dismissed.

- (2) The Claimant's complaint of victimisation fails and is dismissed.

REASONS

1 This is a claim brought by the Claimant, Miss Gabriel, of sexual harassment and victimisation when she was employed by Tower Hamlet Homes.

2 The issues that the Tribunal had to decide were agreed by the parties in December 2016 at a time when the Claimant was represented by Counsel and at the outset of this hearing it was confirmed that those were the issues that we had to decide.

3 The Tribunal heard evidence from both parties. There was an agreed bundle of documents consisting of two lever arch files and we heard evidence orally from the Claimant on her own behalf and for the Respondent we heard from Mr Jeffers, Mr Dodia, Ms Greenidge and Mr Curley. We also had witness statements from Ms Prajapati, Ms Munn and Ms Kelly which were read and those witnesses were not called to give evidence.

4 The Claimant's claims of harassment under section 26 of the Equality Act 2010 and 27 victimisation under the Equality Act during the period that she was employed by the Respondent falls within section 39 of the Equality Act and the Respondent is liable for the actions of its employees under section 109 of that Act and those complaints fall within the jurisdiction of the Employment Tribunal and the requisite time limit that applies is set out under section 123 and each of those sections are set out helpfully in the written submissions prepared by Ms Palmer for the Respondent so I will not repeat those here. Those are the relevant statutory provisions.

5 In approaching the evidence we were conscious that this is a complaint of

harassment consisting of a number of incidents and that in complaints such as this instance taken on their own may seem minor or trivial and that we are required to look overall at the bigger picture and not to take each incident on its own to diminish the overall picture. However, we do need to make findings on each of the incidents that are in dispute and we were also referred to matters that did not make their way into the list of issues but which were relied on as background and we took into account the evidence we heard in relation to those in reaching the decision on the specific incidents so although it is not necessary to make findings on each of those. We were however faced with a number of incidents that were disputed some of which were flatly denied on behalf of the Respondent and others where the interpretation are put on events by the Claimant was disputed by the Respondent.

6 In respect of the direct conflict in the evidence we found it necessary to consider the credibility of the respective witnesses. We reminded ourselves that witness can be credible on one aspect of the evidence and lack credibility on another also be credible and mistaken. We are also conscious of the fact that where allegations of harassment are concerned it may well be that a harasser would take the opportunity of being on their own with the victim in order to say or do something which they later deny.

7 The Respondent's Counsel made submissions in respect of the Claimant's credibility asking us to find that she was not a reliable witness or that her account was not reliable and gave some specific examples in respect of things that had been said by the Respondent's witnesses the Claimant had reported to them and which she later denied for instance and we did take those into consideration reign the credibility of the Claimant we had to form our view as to what her credibility was in respect of those

concerns.

8 We considered the evidence for instance of Ms Greenidge and the evidence she gave in respect of a meeting she had with the Claimant on either the 24 or 28 July in which the Claimant raised her concerns about Mr Jeffers' behaviour. Ms Greenidge account of that meeting set out in her witness statement and at paragraph 5 she states that the Claimant alleged that Mr Jeffers had touched her and when she asked the Claimant to clarify this allegation the Claimant clarified that he had not touched her physically and reported that he had lifted her breast in a dark spiritual way or words to that effect. Ms Greenidge's evidence was that as a result of this allegation she was concerned for the Claimant and offered to refer her to counselling with MIND. It is not disputed that Ms Greenidge did follow-up that meeting with a referral and that the Claimant decided not to take up the referral to MIND. The Claimant does however deny stating that Mr Jeffers had touched her in the way that is recounted by Ms Greenidge. There was also a reference in the account that Ms Greenidge gives of her discussion with the Claimant in respect of the incident on 2 June in which Ms Greenidge recalls the Claimant referring to Mr Jeffers having aggravated an injury to her back.

9 The Claimant before us denies having made reference to a pre-existing back injury or aggravating her back injury. However we were taken to and considered her statement that she made shortly after the incident which is at page 276 of the bundle and which she refers to "having jarred by back and aggravated a condition" and at page 298 in the Claimant's account of the incident in the health and safety incident report how she informed her team leader of the incident that occurred and how her

back felt and how “Mr Jeffers had jarred my back and aggravated a condition I recently had a treatment for”. We also saw in the bundle reference to a referral confirmation from Homerton University Hospital at page 673 of a referral for physio in June 2015 which was for the Claimant having presented with an acute flare up of a chronic left lower lumbar spinal pain and knee pain.

10 The Claimant before us categorically denied having referred to aggravating a back condition and in her evidence both in her cross-examination following her own evidence and in putting her case to Mr Jeffers in cross-examining him because he also referred to her having mentioned in his meeting with her on 3 June that he had caused an aggravation to her back problem and we also saw in the grievance appeal a reference to a previous back injury following a car accident in 2006 and this is at page 555. We found Ms Greenidge’s evidence to be credible and we found her to be an honest and credible witness and we found this to undermine the Claimant’s credibility.

11 We were also referred to the cross-examination of the Claimant and Ms Palmer made reference to this in her submissions on credibility. The facts that the Claimant had on three occasions in her evidence before us referred to Mr Jeffers coming on to the pitch in the middle of the game which refers to the “popable” incident and this was put by the Claimant to Mr Jeffers in her cross-examination of him whereas her original account was that the incident had occurred at the end of the game and we also find that she exaggerated her account of that incident from that previously given.

12 In respect of findings of fact on the issues we bore in mind our findings as to credibility in weighing up the evidence on each of the disputed issues.

13 The first issue, **Issue 1(a)**. The allegation was that Mr Jeffers in or about July 2014 said to the Claimant that over the weekend he was thinking of the Gabriel name and how it always gets a bad press. Mr Jeffers refutes saying anything in relation to thinking about the Claimant over the weekend to her. He accepts that he had a conversation with Mr Aman Berhanu which they were chatting about what they had done over the weekend and Mr Jeffers referred to having seen a film called Legion in which there is a character Gabriel and that he referred to the portrayal of the character of the angel Gabriel in that film and in another film Constantine and Mr Jeffers accepts that Miss Gabriel may have overheard that conversation but that the comment was not directed at her. The Claimant also alleges that Mr Jeffers repeated the same comment to her a month later.

14 We having carefully weighed up both accounts have accepted Mr Jeffers' account. The Claimant may have heard him refer to the name Gabriel but his comment was not directed at her and nor was it about her. We considered whether Mr Jeffers had used this conversation to try to get a reaction from Miss Gabriel but found no evidence to support that suggestion and are satisfied that is not a reasonable interpretation to put on the conversation that we find took place.

15 The next issue, **Issue 1(b)**. The allegation is that on occasion in or about February 2015 Mr Jeffers said to the Claimant "you think you are a good girl but you are not you're a bad girl". Again there is a direct conflict of the evidence. Ms Gabriel's allegation is that on this occasion Mr Jeffers took the opportunity of when they were alone on the staircase to make this comment to her. Mr Jeffers flatly denies having

said the comment ascribed to him and we have to weigh up the evidence before us to decide which of the two conflicting accounts we believe. Miss Gabriel made no complaint at the time in respect of that comment and did not raise it until her grievance following the June incident. We find that if such a comment had been said that it had potential for bearing a sexual connotation and would be objectionable. We find that it could objectively amount to harassment. We also heard evidence from the Claimant and she accepted that she was someone who was capable of making complaint about matters in the work place if she found them unacceptable but no such complaint was made in respect of this remark.

16 Having carefully considered the evidence we have come to the conclusion that this was not said by Mr Jeffers.

17 **Issue 1(c)**. The allegation is that following a team social gathering in or about April 2015 when the Claimant came into work the next morning and was walking over to her locker Mr Jeffers asked her where she had been the previous day and said to her "I wanted you and Leona to have an eat off I would have paid for it". Mr Jeffers denies saying any such comment but he also disputes that there was any social gathering that took place in April as alleged by the Claimant. He recalls attending an outing in September but he certainly stated that he was not present at any outing if any did take place in April and he had no reason to refer the Claimant not having been present at the gathering.

18 We accept that if Mr Jeffers had made the remark as alleged that would be capable of bearing a sexual connotation and objectively capable of amounting to

harassment. However, there was no evidence to support Miss Gabriel's contention that the social gathering had taken place in April and none of the Respondent's witnesses were able to confirm that this had happened and we accept Mr Jeffers' evidence that no gathering of that nature took place and that he did not say this comment to Miss Gabriel.

19 The next issue is **Issue 1(d)**. The allegation is that on an occasion sometime between 5 and 14 May 2015 Mr Jeffers knocked the Claimant's chair and walked off without apologising before looking back at her with a smirk on his face. Mr Jeffers does not recall an incident where he knocked the Claimant's chair; his evidence was that if he had knocked her chair he would have apologised and he certainly did not deliberately knock her chair and walk off and he denies smirking at her. The Respondent's witnesses Mr Dodia and Mr Jeffers both agreed that they would on occasions go over to the windows behind the Claimant's desk to look out of the window. There was a building site that could be viewed from that window and other members of the office had an interest in watching the construction of the flats that were being built there. Mr Dodia gave evidence that he was not aware of Mr Jeffers knocking the Claimant's chair or in the manner described by the Claimant. It was not something that the Claimant complained of at the time. We find that Mr Jeffers did not deliberately knock into the Claimant's chair and if there was any contact then it was accidental and it is not something that Mr Jeffers recalled so we again accept his account on this issue.

20 The next issue, **Issue 1(e)**, is that on another occasion during the last week in May 2015 Mr Jeffers pushed down the Claimant's raised arm on to her desk again

displaying a smirk on his face. The Claimant was clear that this was a deliberate contact and a deliberate action in pushing her raised arm down to her desk. She stated that she looked around to see if anyone had seen what had happened but she did not say anything to draw attention to what Mr Jeffers had done. Again the Claimant accepted that she had the opportunity to say something and she accepted that she was an assertive person. She could not explain why she had not said anything at the time. Mr Jeffers for his part categorically denies ever having touched the Claimant and he similarly denied this incident when interviewed about it in the grievance process.

21 We find that if this had happened the Claimant would have drawn it to the attention of those present at the time either by objecting or by asking them afterwards if they had seen it and we find that this incident did not take place.

22 **Issue 1(f)**. Is the allegation that on 2 June 2015 Mr Jeffers kicked a hopper ball on which the Claimant was sitting thereby causing injury to her back before running off and turning back to look at her with a smirk on his face. In respect of this incident Mr Jeffers accepted that he had touched the hopper ball with his foot. He describes the contact as a gentle tap.

23 Mr Jeffers' account was that he saw the Claimant on the hopper ball at the side of the pitch. He went over and tapped the ball with his foot to get the Claimant's attention and then asked her how she was enjoying the day of a first away day. He said that he did this because he was aware that it was the first away day that the Claimant had attended. It was intended to be an informal environment where staff enjoyed themselves. He had not spoken to her on the day so he made that enquiry.

He denies targeting her in any way but put it as being an attempt as an informal greeting on what was meant to be an informal day out for staff.

24 The Claimant's allegation is that Mr Jeffers did more than tap the hopper ball but he kicked it with some force and thereby caused her an injury and that he ran off and turned and looked back at her with a smirk on his face. The Claimant's description in her evidence of the incident as already outlined in our findings set out under credibility has grown from an incident that took place at the end of the game to something that took place in the middle of the pitch in the middle of the game and we have found that to have been an exaggerated account and we are not able to rely on the evidence she gives in respect of this incident and we therefore find on the balance of probabilities that it did not take place in the way described by the Claimant and that we reject the account she has given; there was no targeting of the hopper ball and we accept Mr Jeffers' account of this incident.

25 **Issue 1(g)**. The Claimant alleges that on 23 September 2015 Mr Jeffers came up to the Claimant's desk and stood facing the window then stamped his foot and clapped his hands as though to get her attention. Mr Dodia was present at the time of this incident and he was at the Claimant's desk talking to her. The Claimant's account is that Mr Jeffers' actions were to draw attention to himself. Mr Dodia recalls an incident where he saw Mr Jeffers coming towards where he was at the Claimant's desk and then turning around and walking away and Mr Jeffers' explanation was that he did come towards her desk in order to speak to Mr Dodia realised that he was still talking to the Claimant so turned around to walk away. This was following the complaint the Claimant had made about him in June and he was at that time avoiding having contact

with the Claimant. He denies either stamping his foot or clapping his hand to get her attention.

26 We have found on balance that we refer the account of Mr Jeffers and Mr Dodia and that there was no clapping involved. There may have been the sound of foot force but there was certainly, we find, no attempt to specifically get the Claimant's attention by Mr Jeffers.

27 The next issue we have to decide is the last of the allegations of sexual harassment and that is **Issue 1(h)**. The allegation is that on 29 October 2015 Mr Jeffers hummed and sang the words "shall I kick you yes I'll kick you" which were directed at the Claimant.

28 Mr Jeffers accepted that he did sing in the office. He explained that he sang very frequently, that he was a member of a choir and he was often signing. It was not disputed by the Claimant that he sang on other occasions, indeed there is reference to other occasions when he sang in the office that she has not included as one of the issues for us to decide.

29 The evidence of Mr Jeffers was that he did not sing the words that the Claimant has described but sang the words to a song but rather than saying "shall I kick you yes I'll kick you", "can I kick it yes you can" which was a lyric from a well known dance song from the 80s. This was not directed at the Claimant and he had not intended any reference by singing that song to the incident in June kicking or tapping of the hopper ball.

30 We accept Mr Jeffers' evidence that the singing of that lyric was not directed at her and that he did not amend the lyric to specifically refer to kicking the Claimant. We do not find that was intended to be any reference to the incident in June but unfortunate that Mr Jeffers sang a song referring to kicking anything in the circumstances where the Claimant had made a complaint about his having kicked the hopper ball and we do find that he could have been more diplomatic he thought about his actions but we are satisfied that there was no intention or direction of those lyrics towards the Claimant.

31 The next question we are asked to decide is the list of issues is issue 2 did all or any such conduct have the purpose or effect of violating the Claimant's dignity or creating for her an intimidating, hostile, degrading, humiliating or offensive environment. We go on to make our findings on that even though we have not found the incidents to have taken place in the manner described by the Claimant in that we are satisfied having looked at the evidence overall and the findings we have made that there was no basis for suggesting that Mr Jeffers was targeting the Claimant in a sexual way and that the Claimant's perception of this was not one that was objectively reasonable and in considering that we also took into account some of the background matters that were relied on for instance the Claimant's allegation that Mr Jeffers was following her to the kitchen and which she recounted how she would regularly go to the kitchen to get a coffee at 11 o'clock and that she would find Mr Jeffers also going to the kitchen at around the same time. She described how she on noticing this decided to vary her time and go to the kitchen later and when she did this she arrived at the kitchen to find Mr Jeffers was leaving.

32 In the Claimant's view this supported her contention that he was following her because his reaction on seeing her entering the kitchen as he was leaving was one of anger that his face was such that she could tell that he was angry about that. However we are aware that that [END OF SIDE 2] account from the Claimant relies on her perception of Mr Jeffers' reaction and that he put forward no basis for this and this is another indication of her perception that things that Mr Jeffers has done or is doing are directed at her when in fact there is a perfectly reasonable explanation i.e. on this instance of the timing of his coffee breaks he had simply maintained his normal habit of going at the same time and was not in fact following her otherwise he would not be leaving the kitchen at the time that she was entering it and we do find that the Claimant has misinterpreted conduct or ascribed to it a interpretation that it does not reasonably bear.

33 The next issue in the list of issues is issue 3 did all or any such conduct relate to the protected characteristic of the Claimant's sex and simply our answer to that is no. We find there was no sexual intent on behalf of Mr Jeffers and that he was not targeting the Claimant in any way related to her sex.

34 We then go on to consider the remaining questions which relate to the complaint of victimisation. Firstly, issue 4 did the Claimant carry out protected act or acts. The first protected act relied upon by the Claimant is having reported incidents of sexual harassment to Ms Greenidge on or about 24 July 2015. The Respondent did not dispute that the Claimant had reported incidents of sexual harassment to Ms Greenidge; there was some dispute as to whether that was the 24 or 28 July but

that made no difference to the question of whether a protected act had indeed been carried out and that was accepted.

35 The second protected act relied upon by the Claimant was approaching Mr Dave Curley on 9 November 2015 to report to him the harassing conduct of Mr Jeffers and this was disputed by the Respondent. It was the Respondent's case that Mr Curley had no knowledge of the sexual harassment allegation made by the Claimant at the point in time on 9 November 2015 when she went to see Mr Curley about Mr Jeffers approaching her desk.

36 The Claimant was unable to point to direct evidence to show that Mr Curley did know that she had made a complaint of sexual harassment or otherwise of conduct that contravened the Equality Act 2010 and based her contention on the assertion that he must have known because he was aware of her grievance.

37 Mr Curley's evidence was that he accepted that he was aware the Claimant had put in a grievance and had complained about Mr Jeffers' conduct on 2 June but he was adamant that he had no knowledge that there was a complaint of sexual harassment included of the content of her grievance itself.

38 Mr Curley was present at a meeting on 28 October with the Claimant and her union representative and a representative from Human Resources at which the fact that she had made a grievance was discussed and we see a note of that meeting summarising that meeting at page 465 to 466 of the bundle is reference to the fact of the grievance and of the complaint about the incident on 2 June but there is no

reference to the content of the grievance, no reference to the complaint of sexual harassment or discrimination having been made. Mr Curley was not interviewed in connection with the grievance but we note from the record of the interviews of those who were interviewed that they were each told to keep the content of the grievance confidential and that is provided for within the Respondent's grievance procedure that grievances are to be dealt with confidentially.

39 We accept Mr Curley's evidence that he was aware of the facts of the grievance but not the content of the grievance. We accept that he was not aware the Claimant had made allegation of harassment or sex discrimination against Mr Jeffers.

40 In respect of what the Claimant said to Mr Curley on 9 November, again Mr Curley accepts that she reported that she was upset that Mr Jeffers was approaching her desk but there was no reference in that meeting by the Claimant to the complaint being one of sexual harassment and again we accept that evidence and that is also consistent with the Claimant's account of the meeting subsequently.

41 We are therefore unable to find that in approaching Mr Curley on 9 November 2015 the Claimant carried out or did a protected act. The acts of victimisation that are alleged are set out at 5 in the list of issues as follows:-

41.1 Did the Respondent subject the Claimant to a detriment in all or any of the following respects because of her doing or having done a protected act:-

41.1.1 By exposing the Claimant to more harm by leaving her in the same hostile environment as the person harassing her and that her managers Mr Dodia and Ms Greenidge ignored her request to be moved out of the office and concerns raised by her. That allegation is put squarely as a complaint of victimisation and that is the case that we have to address and not some other complaint.

42 The Respondent's evidence on that issue was that the request to move was not ignored; the request was considered by Mr Dodia but he rejected the request to move from the bank of desks at which he sat to a bank of desks on the other side of the room because he had to be able to listen in to the Claimant on the phone in responding to calls for managerial reasons; that is in order to carry out part of his managerial function in monitoring those calls and in giving his evidence he explained that sometimes those calls could be difficult calls to handle and there could be sensitive or difficult conversations.

43 Ms Greenidge's evidence was that he did not believe the request to move was ignored; it went to Mr Dodia and he considered it and she accepted the reasons that he gave for refusing the request.

44 There was a move after sometime of the Claimant requesting to move from one desk in the same bank of desk to another that was at the Claimant's request and meant that she no longer sat next to the **Tambours** which Mr Jeffers had to access in the course of his work. However it did leave her directly opposite him in terms of sight line.

45 The allegation as it is put is that the ignoring of request to move and the ignoring of concerns raised by the Claimant was an act of victimisation and that requires an element of motivation because the Claimant had carried out a protected act.

46 We accept the evidence of Mr Dodia as to the reasons for not moving the Claimant's desk and those were managerial considerations and that in his view he had to be able to overhear the Claimant whilst she was carrying out her work including phone calls to members of the public.

47 It was suggested to Mr Dodia that he ignored the Claimant's request to move and ignored her concerns because he was friendly with Mr Jeffers and that he was supporting Mr Jeffers against the complaints made by the Claimant. We do not find that Mr Dodia was friendly with Mr Jeffers beyond a professional working relationship. We accept that they had worked together for a large number of years but we accept Mr Dodia's evidence as to the reasons why he did not move the Claimant as she had requested and we also accept his evidence as to not ignoring her concerns and we were taken to by the Claimant and in respect of Mr Curley's and Mr Jeffers' evidence to email from Mr Dodia which he requested Mr Jeffers to refrain from approaching the Claimant at her desk which is not consistent with the Claimant's allegation that he ignored her concerns and her requests.

48 The next allegation of victimisation is that on 9 November 2015 Mr Curley reacted dismissively and aggressively towards the Claimant leaving her traumatised. We have already indicated that Mr Curley was not aware of the complaint of

harassment and therefore he was not acting in any way as a result of that or motivated by the complaint of discrimination. There was no protected act for which he could victimise the Claimant. However, we did consider Mr Curley's conduct on 9 November 2015 and we find that he may have demonstrated an element of frustration with the Claimant in that meeting.

49 We accept that the meeting on 9 November was a difficult meeting for both the Claimant and for Mr Curley and we find that the Claimant left that meeting in a more distressed state than that in which she had arrived at the meeting.

50 We, for the avoidance of doubt, do not find that Mr Curley conducted the meeting of 9 November in the way that he did in any way because he had a friendship with Mr Jeffers or was seeking to protect Mr Jeffers in any way.

51 The last issue is the allegation under 5(c) that the Respondent victimised the Claimant in failing to record any minutes of the grievance hearing that took place on 4 December 2015 so that the outcome letter lacked any points of reference and recommendations proposed at the hearing regarding the conduct of Mr Jeffers were omitted from it. It is not in dispute that there were no minutes of that meeting on 4 December. The Claimant clarified at the outset of the hearing that her complaint was that Ms Greenidge victimised her by failing to provide the minute. Ms Greenidge's explanation for there being no minute was that it was not in fact her who made the arrangements for that meeting. The arrangements were made by Human Resources and that no minute-taker had been provided. Her evidence was not her decision but faced with the situation of not having a minute-taker she did decide to go ahead with

the meeting. She took into account she told us that she had HR support and the Claimant had trade union support. She considered the Respondent's procedure and in her view it did not require there to be a minute-taker so she decided to go ahead.

52 The evidence of Ms Greenidge was that she would not have acted any differently in the same circumstances if the Claimant's complaints had been unrelated to harassment or discrimination and that the nature of those complaints had no bearing on her decision.

53 We accept her evidence on that point and as to why she proceeded in the absence of a minute-taker. This was not because of or connected to in any way the fact that the Claimant had done a protected act. However, the Claimant made reference to good practice being for there to be a minute-taker and made reference to the ACAS code. Whilst we note that there is no requirement in the ACAS code for there to be a minute there is reference in the guidance to being desirable. We agree it would be good practice and the fact that members go further than that and are astounded that no minute was taken of that meeting at which the Claimant was informed of the outcome of her grievance.

54 The nub of the Claimant's complaint is that as a result of the failure to provide a minute an outcome from the report was overlooked, namely that Mr Jeffers should receive further training. Ms Greenidge referred to the recommendations of the investigation report and refuted that anything that was contained in there was lost as a result of the absence of a minute-taker. The recommendations at page 535 at paragraph 6.4 included a recommendation that the head of service is to establish

whether Mr Jeffers requires any additional support as a result of this investigation and in the outcome letter sent to Mr Jeffers which is at pages 576 to 578 Ms Greenidge gives what could be described as words of advice to Mr Jeffers in respect of how his behaviour is perceived and how he should conduct himself.

55 We note that the Claimant did rely on the absence of minutes and the lack of recording of recommendation that she said was discussed in respect of training in her appeal and that is at page 592 and the response to the appeal noted that Ms Greenidge accepted that she should try to arrange for there to be a minute-taker in the future and the recommendation are made by Ms Kelly who decided the appeal is contained at page 654 recommendation or at least an acknowledgement the best practice was that a minute should be provided and that Tower Hamlets Homes should endeavour to adhere to the best practice in future and the Tribunal would endorse that to avoid the very complaint or type of complaints that the Respondent is now facing.

56 Lastly, we were addressed on time limits and having reached the findings that we have on the disputed issues we have not found any of the Claimant's complaints to have been made out and time limits therefore are not in issue. However we were invited to address the question of time limits in any event.

57 We considered the question of whether it would be just and equitable to extend time in this case and in considering that we had in mind the principles set out in the case of *Robertson v Bexley Community Centre* which was referred to by Ms Palmer in her submissions that it is for the Claimant to persuade us it is just and equitable to extend time and that it is the exception rather than the rule and we also had in mind the

principles set out in *British Coal Corporation v Keeble* which is reported at [1997] IRLR 336 which refers to consideration of the factors of section 33 of the Limitation Act 1980 including the prejudice to each party and the circumstances of the case, the effective delay and on the cogency of the evidence the promptness with which the Claimant acted once she knew of the facts giving rise to the course of action and steps taken by the Claimant to obtain appropriate advice once she knew of the possibility of taking action. We also considered whether the Claimant's explanation that she was ignorant of her rights was itself reasonable and whether it excused her enquiring as to time limits at a time when she would be in a position to bring her complaints within time.

58 We note that the Claimant had obtained the assistance from a trade union in July 2015 of the events about which she brings complaint and she also refers to having sought or been taking legal advice when she was represented at the appeal in March 2016 specifically in respect of her claim for an industrial injury but its evidence was consistent with her being aware of the availability of advice. The Claimant's evidence was that she went to the government website and to the ACAS website and followed the advice there. However we are not satisfied that explains the delay. Those steps were taken by her in March she was alive to potential claims of sexual harassment which she made allegations in connection with in July 2015 around the same time that she sought advice from the union and she did not pursue those at that time. We would not have been satisfied that there was sufficient basis for us to exercise our discretion in the circumstances of this case to extend time. The claims are dismissed.

Employment Judge Lewis

8 May 2017