



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Richardson

Respondents: (1) Neovia Logistics Services (UK) Ltd
(2) Flex Recruitment Plus Ltd (In Creditors Voluntary Liquidation)

Heard at: Leicester

On: 13 -16 March 2017

Before: Employment Judge Ahmed

Members: Mr A Beveridge
Ms R Wills

Representation

Claimant: In person

Respondent (1): Mr Kam Bains, Solicitor, EEF

JUDGMENT

The unanimous judgment of the tribunal is that:

1. The proceedings in case number 2601718/16 are adjourned and stayed until further order.
2. The complaint of sexual harassment under Section 26(2) Equality Act 2010 against the First Respondent succeeds.
3. The complaint of victimisation against the Second Respondent also succeeds.
4. The issue of remedy is adjourned to a date to be fixed. Directions in relation to the remedy hearing are issued separately.

REASONS

1. In these proceedings, the First Respondent is a Logistics business based in Desford, Leicestershire. The Second Respondent was at all material times a recruitment agency supplying workers to the First Respondent. The Claimant was an agency worker supplied by the Second Respondent to the First Respondent. There is no issue that the Claimant was an 'employee' of the Second Respondent only.
2. On 11 April 2016, Mrs Richardson issued proceedings in the employment

tribunal alleging sexual harassment against the First Respondent and also bringing a complaint of victimisation by the Second Respondent. It is alleged that as a result of the treatment which the Claimant was subjected to she has suffered severe anxiety and consequently was unable to return to work.

3. On 2 September 2016, following the Claimant's resignation which took effect on 3 June 2016, she issued further proceedings (hereinafter the 'second set of proceedings') under case number 2601718/16 against Flex Recruitment Plus Ltd ("Flex") only. Shortly before this hearing, it was discovered that Flex had entered into creditors' voluntary liquidation. The Claimant nevertheless wished to have a number of witnesses from Flex appear at this hearing and consequently an urgent preliminary hearing was convened. At that hearing, the Claimant made an application for various witness orders against employees and officers of Flex. She also sought a postponement of the hearing. Both of those applications were refused. Consequently, at this hearing Neovia Logistics Services (UK) Ltd ('Neovia') appeared and was legally represented but Flex, the Second Respondent in the first set of proceedings and the only Respondent in the second set of proceedings, did not appear nor was it represented. We will refer to Neovia as the First Respondent and Flex as the Second Respondent throughout in this decision.

4. Also shortly after the preliminary hearing, the former legal representative of the Second Respondent sent an email to all other parties and the tribunal to say that he had recently received notice of liquidation proceedings for a company called 'SM11112016' Ltd trading as 'Flex Recruitment Plus'. His enquiries revealed that Flex had sold its agency worker business to a company called 'People Solutions Group' in Walsall sometime in November 2016. This included the business in which the Claimant previously worked. The nature of the sale was unknown. At the same time, Flex had changed its name to 'SM11112016 Ltd'. The representative went on to say that People Solutions Group now traded as 'Flex Recruitment Plus' and continued to provide agency staff to the First Respondent. Furthermore, he understood that SM11112016 Ltd was also shortly due to go into liquidation. A company search undertaken just before this hearing against SM11112016 Ltd reveals that this Company was indeed formerly known as Flex Recruitment Plus Ltd and was now in creditors' voluntary liquidation with the Liquidator having been appointed on 3 February 2017.

5. In those circumstances, and armed with that information, the Claimant applied at the commencement of this hearing to effectively 'decouple' the two sets of proceedings which had earlier been consolidated. It was her intention to make further enquiries and, if she was able to do so, to bring those whom she regarded as partly responsible for her situation to a tribunal hearing. Whilst the prospects of that happening seem fairly remote at present, it is conceivable that if there is a chain of TUPE transfers the Claimant may still be able to progress her claim against Flex or its present business, whatever form and name that may now take. Given that the Second Respondent had no direct interest in that issue it did not object to the application and accordingly we consider it appropriate to 'de-consolidate' the second set of proceedings stay them for the time being. The Claimant may apply to have them restored for hearing when further information is available.

6. Because the case had been prepared on the basis that the Second Respondents would be defending the proceedings (before they went into voluntary liquidation) a bundle of witness statements was submitted by them and available at this hearing. This included witness statements of various officers and employees of the First Respondent, namely Mrs Amanda Davey (Onsite

Manager), Mrs Jackie Jackson (Operations Director), Mr Matt Angell (Onsite Co-ordinator) and Mr Adrian Hobbs (Managing Director). Whilst they did not attend the hearing they have nevertheless been useful in understanding what went on. Only Mr Scott Jowett, who is employed as a Warehouse Associate and against whom the allegations of sexual harassment are made, gave evidence on behalf of the First Respondent. The Claimant gave evidence on her own behalf.

7. In terms of the issues to be determined we can do no better than to repeat the relevant paragraphs of the case management orders made by Employment Judge Solomons at a preliminary hearing on 10 June 2016. They are as follows:

“1. The Claimant was formerly employed by the second Respondent an employment agency who supplied her to the first Respondent at their warehousing operation. Her complaint is in essence that during the course of her employment in a period of about 6 weeks leading up to and including 13 November 2015, she was sexually harassed by an employee of the first Respondent, Scott Jowett, whom she alleges repeatedly grabbed her in the form of a bear hug and in particular on the last occasion on 13 November and brushed his hands across her chest. She contends that she objected to such conduct on all occasions and that the conduct amounted to unwanted harassment of a sexual nature. Her case is that this happened 2 or 3 times per week over that 6 week period.

2. On 13 November she began grievance proceedings which were conducted by her employer the second Respondent. The grievance proceedings did not succeed and in essence both Respondents say that although it is conceded that Mr Jowett on occasions did hug the Claimant, that such an act was consensual and that the Claimant also hugged Mr Jowett and that there were no such sexual connotations to those acts. The Claimant also alleges against the second Respondent, her employer, that that was an act of victimisation as a result of a protected act in the form of her complaint of sexual harassment against Mr Jowett.

3. There are no other claims despite the fact that the Claimant had ticked the box in Section 8(1) for other payments owed, she explaining that that was a mistake when she filled the form in.

4. Although the second Respondent takes a time point, it now concedes that given the early conciliation procedure which operated between 11 February 2016 and 11 March 2016 that there is in fact no time point in particular because the Claimant’s case will be that although there were acts prior to 13 November they were part of a course of conduct by Mr Jowett which continued up to and including 13 November.

5. The first Respondent also puts forward in the alternative the statutory defence that it had taken all reasonable steps to prevent acts of sexual harassment. The first Respondent accepts that the burden of proof in respect of that matter lies with it.”

8. In those circumstances Mr Bains’ submission at the start of the hearing, which we accept, is that the relevant timeframe of the allegations stretches no further than 6 weeks before 13 November 2015. Any incidents before then are by way of background only. Mr Bains confirmed at the commencement of the hearing that First Respondent was no longer relying on the statutory defence that it had taken all reasonable steps to prevent sexual harassment which it had sought to rely on earlier. He agrees that our findings of fact will ultimately be determinative of the case.

9. Mrs Richardson has a long history of working in the Transport industry. She began her first job as a 16 year old as a Transport Clerk. She later successfully passed her Haulage Contractor Certificate of Professional Competence qualification. In 2013 she joined the Second Respondent, an agency which works very closely with the First Respondent to provide agency workers in the transport business. Such workers are integrated very closely with Neovia’s own workforce and are deployed and directed in their day to day work by Neovia’s team leaders and management. At the relevant times the Second

Respondent had an onsite contract team to liaise with the First Respondent to deal with the agency workers supplied. During the Claimant's employment there were 5 members of the Second Respondent in the onsite team, including Ms Amanda Davey.

10. The Claimant's marriage of some 30 years ended in divorce in 2012. In February 2015, shortly after she started working at Neovia, she began a relationship with one of the delivery drivers. That is when she says Mr Jowett, a Warehouse Operative whose work involved dealings with the Claimant, began to make crude remarks about her partner and her sex life. Mrs Richardson decided that the best option was to ignore Mr Jowett's conduct and hope that in time he would go and pick on someone else. There has never been any consensual personal relationship between the Claimant and Mr Jowett.

11. In June 2015, the Claimant suffered a car accident as a result of which she found herself having to undertake desk duties in the office where there was likely to be more regular interaction with Mr Jowett. Her relationship with her boyfriend ended in July but Mr Jowett's behaviour, including crude sexual remarks of a personal nature, continued. The remarks – which are unnecessary to repeat here - became more accentuated as time went on. When the Claimant complained or attempted to complain, Mr Jowett became critical of the Claimant's work. At times he would get angry and shout. Mrs Richardson frequently found that Mr Jowett would become angry for the most trivial of reasons and then seek to apologise immediately afterwards. When apologising he would often put his arm around her shoulder or give her a hug. On occasions his loss of temper appeared contrived as though it was a pretext for him to hug the Claimant. We accept her evidence that she did not welcome hugging nor was it ever reciprocated. We also accept the Claimant's evidence that she repeatedly told Mr Jowett not to hug or touch her. The phrase which she repeated at least twice in her witness statement which she also used at work was: 'I don't do hugs'.

12. Over the following months, Mrs Richardson found that Mr Jowett was increasingly finding excuses to give her a hug or to be within physical touching distance. He would recharge his mobile phone in a socket near the side of the Claimant's desk when there were sockets available elsewhere. It sometimes meant Mr Jowett would lean over the Claimant's shoulder when she was at her desk with his left hand reaching across her desk in order to unplug his phone and thereby making physical contact. The Claimant found this very uncomfortable and an invasion of her personal space. She hoped that in time Mr Jowett's behaviour would cease and chose not to make any formal complaint or to have an outright confrontation.

13. There are two specific incidents which lie at the heart of this case and which form the basis of the harassment allegations. They occurred on 6 and 13 November 2015 although for the sake of completeness (whilst not forming part of the allegations in this case falling outside the agreed timeframe) there was also an incident in October when the Claimant was hugged by Mr Jowett. On that occasion the Claimant complained of it to several of Neovia's management and supervisory staff including Mr Stephen Foord, Ms Caroline Neville and Mr Bahlraj Dosanjh. She explained that she was not happy with Mr Jowett repeatedly hugging her. Ms Neville said that Mr Jowett sometimes hugged her too and occasionally also 'squeezed her bum'. Ms Neville dismissed such behaviour saying 'it's only Scott'. No action was taken by in response to the 'informal complaint' and unsurprisingly Mr Jowett continued to behave in the manner he had done. In an effort to get him to stop Mrs Richardson told Mr Jowett that if he touched her again she would spray him with her perfume so that Mr Jowett's

spouse would suspect him of cheating.

14. On 6 November, the Claimant describes the first of the two 'bear hugs'. The incident occurred shortly before the lunch break. The Claimant was sitting at her desk when Mr Jowett leant across the Claimant from her left, sliding his hand across her breast and using both his arms to engage in a full body hug. Mr Jowett's then placed his head close to the front of the Claimant's left shoulder and face. The Claimant froze in shock. Mr Jowett then asked: '*why are you holding your breath? Do I smell?*' Mrs Richardson told Mr Jowett in no uncertain terms to let go that if he hugged her again he would be sorry.

15. On Friday 13 November 2015, the Claimant was booking in a driver as part of her normal duties. As she was doing so, Mr Jowett approached her and once again gave her a hug which involved in Mr Jowett's left hand sliding across the Claimant's breasts and on to her elbow. Again, in no uncertain terms Mrs Richardson told Mr Jowett to cease and withdraw which he did. Mr Jowett looked at the delivery driver and said as he laughed: '*she loves it really*'. Mrs told Mr Jowett: '*You do know this is classed as sexual harassment*'.

16. Mr Jowett was shocked to hear the words 'sexual harassment'. He went to see Mr Justin Carter, a team coach and Mr Corey Knifton, a team leader. It is not clear what he told them but we are satisfied that it was in the nature of the Claimant making a false allegation of sexual harassment. Mr Carter went to see the Claimant and said that Mr Jowett had made a complaint against her. The Claimant said that she was in fact the one who had been wronged and sexually harassed by Mr Jowett who had given her a bear hug. She told Mr Carter that she had made it clear to Mr Jowett in the past not to touch her and had also made it clear that she did not do hugs but despite that Mr Jowett had persisted in his behaviour. Mr Carter said Mr Jowett should not be touching her but that they should both get on with their work. Mr Carter did not report the matter internally nor does he appear to have taken any further action in response to the Claimant's allegation.

17. Mr Carter did not give any evidence at this hearing but in an investigation interview which the First Respondent conducted on 2 November, he said:

"I laid down the rules there and then, verbally, whilst they were both in the room together. I told them that they were only to interact with each other on a professional basis, there were to be no more arguments, no more hugging and any issues that may arise must be reported to myself or Corey. I also said that Lucille [Mrs Richardson] was to come to me specifically if there were any issues."

18. It is the Claimant's evidence that subsequently, and particularly after Mr Jowett had reported the matter to Mr Carter, that she found herself ostracised by colleagues. They no longer engaged with her in the manner previously. On returning to the office after a lunch break a few male colleagues entered the room and pretended to bump into each other to which Mr Jowett said: "*Don't do that, it is sexual harassment*" at which point they all laughed. Mr Jowett continued to make the occasional remark about the Claimant's personal life in the presence of others with no restraint or admonition from his supervisors. It is the Claimant's evidence, which we accept, that at times Mr Carter and others were present on such occasions they took no steps to prevent or condemn such behaviour.

19. Mrs Richardson came to work on the days after the 13 November incident but was very upset. She went to see her GP on 4 December complaining of a lack of sleep, being tearful and being unable to keep calm. The GP notes record the Claimant as suffering from work-related stress. The Claimant was prescribed

Fluoxetine, a well-known anti-depressant. Mrs Richardson visited her GP several times thereafter on the same issue. The notes record her as complaining of having been sexually harassed at work.

20. On Thursday 19 November, the Claimant was due to have an appraisal meeting with Mr Matt Angell of the Second Respondent. She was both surprised and disappointed to receive a negative and unfavourable appraisal. Later on the same day, Mr Jowett came to the office and spoke angrily to the Claimant about not doing gate passes. It was pointed out to him by another member of staff that such duties were not something the Claimant was obliged to do but had undertaken them previously on a voluntary basis. The Claimant noticed that attitudes at work had changed and many of the male managers appeared to show support for Mr Jowett rather than the Claimant.

21. On 20 November 2015, the Claimant suffered from a panic attack and took time off work. She had a similar experience on 30 November but continued working. She was then told that Mr Jowett was going to be moved to be working away from the Claimant and if he was to be moved back at any stage, the Claimant would be informed in advance.

22. On 1 December, the Claimant went home sick after suffering a migraine and feeling unwell which she puts down to stress at work. She then had episodic absences from work between 1 - 7 December when she felt that she needed some advice. She telephoned the CAB and informed them of what had been happening. They advised her to report the matter to the Police. The Claimant did so on 7 December but was unable to compose herself sufficiently to provide a statement as she found herself crying uncontrollably. A formal complaint was subsequently filed. We have seen in the bundle a witness statement taken by the Police on 17 February 2016 of the incidents of 6 and 13 November.

23. On 9 December, the Claimant was told that by Ms Davey that Neovia had investigated both Mr Jowett's complaint against her and her allegations against him. The decision was that Mr Jowett would receive counselling but so far as Neovia were concerned the matter was now resolved. Mrs Richardson strongly disagreed saying that Neovia had done nothing about the bullying and sexual harassment. Ms Davey said that they had fully investigated the matter and it was concluded. When the Claimant continued to express her dissatisfaction Ms Davey became impatient and hostile saying in that case the Claimant ought to make a formal complaint, which she did the following day.

24. Ms Davey arranged a meeting to consider the matter further on 9 December. Mr Didier Carrara an Operations Manager was also present at the meeting. Unfortunately, Mr Jowett had also been invited to attend and was seated next to the Claimant. The Claimant protested and said that Mr Jowett should leave the room. Ms Davey eventually agreed and Mr Jowett left but was then asked to return so that the Claimant could tell him face to face what she wanted by way of an outcome. Mrs Richardson said that she did not want Mr Jowett to speak to her or to touch her. In the course of the meeting Mrs Richardson asked Mr Jowett directly whether she had ever asked him to hug her. Mr Jowett replied that she had not. She further asked Mr Jowett whether she had told him that she did not want to be hugged and Mr Jowett replied, 'yes, but only once'. Mr Jowett was told by Ms Davey that he was not to approach the Claimant in future. It was agreed that there would be a further meeting on Monday 14 December.

25. As instructed, the Claimant re-submitted her formal written complaint in

brief terms on 10 December. Although short of detail it is clear that the written complaint was one of bullying and sexual harassment. The Claimant was led to believe that if she made a formal complaint Mr Jowett would be placed on suspension with pay. However when she arrived in the office she found that instead of being suspended Mr Jowett was not only at work but working in close proximity to her.

26. On Monday 14 December, the Claimant sent Mr Davey an email to say that she had suffered a panic attack the previous Friday and needed to return home. She said that she nevertheless expected her complaint of bullying and sexual harassment to be investigated.

27. On 16 December, the Claimant was asked to attend a team brief in an office of the Second Respondent. When she arrived, Ms Davey said that she was going to move the Claimant to undertake Picking duties in the warehouse. Mrs Richardson said that she was unable to do this because of the injuries sustained in the car accident. Ms Davey then said that she would get occupational health to pass the Claimant fit for warehouse Picking. She then accused Mrs Richardson of secretly recording conversations on her mobile phone.

28. On 18 December, the Claimant was given a letter inviting her to attend an investigation meeting about unsatisfactory attendance, failure to clock out and using a mobile phone during working hours. The meeting was scheduled for 21 December but was subsequently cancelled. The Claimant was told that Mr Jowett had been suspended on pay. In his evidence, Mr Jowett denies that he had ever been suspended. There is certainly no evidence of suspension in the bundle of documents.

29. On 21 December, Mrs Richardson sent an email to Ms Davey to ask whether Mr Jowett had been placed on suspension. In reply, Ms Davey said that she was not suspending and had no authority to suspend a member of [Neovia] staff. She went on to add:

“If you do not work your hours you are contracted it will be a breach of contract and may lead to further investigation or disciplinary.

30. The Claimant subsequently submitted a sick note from her GP signing her off from work from 18 December. The Claimant did not return to work thereafter.

THE LAW

31. Section 26 of the Equality Act 2010 (“EA 2010”) states, so far as it is relevant states:

- “(1) A person (A) harasses another (B) if—
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (2) A also harasses B if—

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.”

32 Section 41 of EA 2010, so far as it is relevant, states;

- “(1) A principal must not discriminate against a contract worker—
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
 - (d) by subjecting the worker to any other detriment.
- (2) A principal must not, in relation to contract work, harass a contract worker.
- (3) A principal must not victimise a contract worker—
 - (a) as to the terms on which the principal allows the worker to do the work;
 - (b) by not allowing the worker to do, or to continue to do, the work;
 - (c) in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;
 - (d) by subjecting the worker to any other detriment.”

33. Section 27 of EA 2010, so far as it is relevant, states

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

THE ISSUES

34. The issues are agreed as follows:

34.1 Did the alleged conduct of which the Claimant complains actually occur?

34.2 If so, was it unwanted conduct of a sexual nature having the purpose or effect referred to in Section 26(1)(b), taking into account the matters listed within Section 26(4) EA 2010?

CONCLUSIONS

35. Before setting out our conclusions in this case, we would wish to make a few observations as to the evidence that has not been presented in this case. Apart from Mr Jowett, the First Respondent has not called any other witnesses. This is despite the fact that there was an internal investigation in February 2016. The internal investigation appears to have been conducted by Ms Jackie Jackson, a Director of the Second Respondent. A number of the First Respondent's employees were also interviewed. They included Mr Carrara, Mr Foord, Mr Chana, Mr Dosanjh, Mr Desai, Ms Connelly, Ms Marshall, Mr Carter, Mr Jowett, Mr Knifton and Ms Neville. None of those potential witnesses have been called to give evidence despite the fact that their evidence would clearly have been relevant to the issues in this case.

36. Having regard to all of the evidence, we prefer the evidence of the Claimant over that of Mr Jowett for the following reasons:

36.1 The Claimant's evidence of the incidents has been consistent throughout;

36.2 The Claimant's evidence is much more detailed than that of Mr Jowett. The Claimant is able to pin down the specific dates and times of the events. For example in relation to the 6 November incident the Claimant is able to say specifically when this occurred ('before the lunch break') whereas Mr Jowett not only fails to remember that it was 6 November but believes it was 'sometime towards the end of October'.

36.2 Mr Jowett gives very little detail on the first of the alleged bear hugs. His description of the second bear hug contains little more real information. His witness statement and evidence lack particularity and detail.

36.3 The Claimant reported the allegations to the police complaining of a sexual assault. We think it highly unlikely that the Claimant would have gone to such lengths (and possibly exposing herself to the risk of a criminal prosecution) if her account had been wholly fabricated as is suggested. The fact that there was no subsequent prosecution is irrelevant.

36.4 The Claimant's account of sexual harassment is consistent with her medical records and discussions with her GP from 4 December onwards.

37. Mr Bains' principal argument is that the Claimant has added to the details of the allegations and embellished matters as time has gone on. He highlights how at the case management discussion on 10 June 2016 the Claimant merely

said that she was 'repeatedly grabbed in the form of a bear hug' but there was no reference to a hand sliding across her breasts; that the grievance of 10 December 2015 did not make any reference to bear hugs or hand over breasts nor did the Claimant's email of 25 November 2015 refer to Mr Jowett touching her breasts. The witness statement also contains no such reference. He took the Claimant to a lengthy email sent by her on 18 December which does not make any reference to Mr Jowett's hand going over her breast. The first reference to such matters is the police statement in February 2016.

38. We do not find there to be any real substance in those points. The case management order of 10 June 2016 makes it clear that the Claimant contended that Mr Jowett 'brushed his hands across her chest'. The Claimant did not go into any detail in her grievance of 10 December as she was asked only to make a 'brief statement' and that is what it is. It was not the Claimant's intention in that document to go into any factual detail. In relation to the Claimant's email of 25 November 2015, the Claimant makes it clear that she told Mr Jowett that his actions amounted to sexual harassment and that his *'unwanted physical attention ... was not acceptable behaviour towards me'*. She goes on to say: *'He physically touched me by hugging me while I was trying to work'*.

39. Moreover, in her email of 18 December 2015, the Claimant makes the following statement:

'In the middle of September after a couple of times of him deliberately causing the friction, I soon realised this was intentional so it then gave him an excuse as a way of making things ok. I made it clear that I was not upset by a minor comment or slight disagreement and told him I don't take anything he says to heart or personally and told him I don't do hugs on several occasions but he still persisted in physical behaviour over the following weeks.

After numerous times of telling Scott Jowett that I did not want him to touch me or hug me, he again physically touched me by hugging me while I was trying to work, I was trying to book in a DHL driver with a delivery. I told him don't touch me, get off. As he didn't stop. I said you know this is classed as sexual harassment. It was only then he stopped and moved away.'

40. It is clear that the Claimant has been consistent throughout in referring to physical touching of an unwanted nature and sexual harassment. So far as the statement taken by Second Respondent on 26 November is concerned the Claimant believes this to be a fabrication. Whilst it is accepted that the second page is correct we agree that the remainder of the document is so disjointed that in large parts it does not make sense. We have grave doubts as to the authenticity of the document.

41. There can be no doubt that the Claimant told Mr Jowett that she did not want any physical contact after the first bear hug on 6 November, if not earlier. This much is admitted by Mr Jowett when in his witness statement he says

'Whilst I did not accept that I had sexually harassed Lucille in any way, I did accept that I should not have given Lucille a hug on 13 November as she had told me not to touch her a few weeks earlier. I therefore accepted the counselling given to me.'

42. In addition, Mr Jowett accepted that on 13 November he said about the Claimant: *'she loves it really'* and also accepts that the Claimant told him that she said this was sexual harassment.

43. We find the Claimant's version of the first bear hug on 6 November to be credible. We find that the Claimant told Mr Jowett that such behaviour was unacceptable and that he should not repeat it but it was not taken seriously and

Mr Jowett proceeded to give her a further bear hug on 13 November. On the latter occasion he withdrew when he was warned that it amounted to sexual harassment.

44. We accept that Mr Jowett had behaved in the manner that he did towards the Claimant for some considerable time and that a culture of accepting such behaviour had prevailed. There is repeated reference in the internal investigation to Mr Jowett being someone who was in the habit of hugging people. The fact that Mr Jowett was able to detect that the Claimant was holding her breath suggests that it was not a momentary act.

45. We are satisfied that the incidents on 6 and 13 November 2015 amounted to physical conduct of a sexual nature. We accept the Claimant's evidence that Mr Jowett's hand touched her breasts, although at no stage has the Claimant made the allegation that he actually *grabbed* her breasts, which is something Mr Jowett said the Police told him he was accused of. If he was indeed told that, it is not an allegation the Claimant has ever made.

46. Mr Jowett accepts that his conduct on 13 November was inappropriate hence his agreement to counselling. We do not accept Mr Jowett's evidence that there was any consensual hugging. Mr Jowett accepts that he 'crossed the line' on 13 November when he had previously been told that he was not to touch her although in reality he had crossed the line earlier. We are satisfied that the acts were such that they had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Having regard to the perception of the Claimant and all of the circumstances, it was reasonable for the conduct to have that effect. The Claimant therefore succeeds in relation to the complaint of sexual harassment under Section 26(2) EA 2010 against the First Respondent pursuant to Section 41 EA 2010 and contrary to Section 41(2) EA 2010.

47. We now turn to the complaint of victimisation which is against the Second Respondent only.

48. The Claimant relies upon various protected acts which include the making of an allegation of sexual harassment on 13 November, an email of 19 November 2015 to Mr Carter of the First Respondent which was forwarded to Ms Davey of the Second Respondent on the same day in which the Claimant refers to sexual harassment and an email of 25 November 2015 by the Claimant to Ms Davey in which she refers to sexual harassment and the grievance of sexual harassment of 10 December 2015. We are satisfied that all of these constitute protected acts within the meaning of Section 27(2)(b)-(d) EA 2010.

49. We are also satisfied that the Claimant has been subjected to a detriment within the meaning of Section 27(1) EA 2010 by:

49.1 being ostracised by her colleagues;

49.2 being threatened with suspension when the Claimant had done nothing wrong event though that was revoked following discussions with HR officers of the First Respondent;

49.3 being blamed by Ms Davey for the ongoing issues at work;

49.4 being told that her complaint had wrongly been labelled as 'resolved' when it was not nor could it have been.

49.5 being told that she was to be moved to the warehouse on Picking duties.

50. The complaint of victimisation is therefore upheld.

51. The issue of remedy is likely to be complex. After the announcement of our decision, and giving the Claimant the opportunity to obtain independent legal advice, an application for an adjournment was made so that the Claimant could seek advice on the remedy issue and in particular for her to obtain advice on the various heads of remedy, including injury to feelings. Directions in respect of that are given separately. The application for an adjournment is granted. The matter will be listed in due course on remedy.

Employment Judge Ahmed

Date: 26 May 2017

JUDGMENT SENT TO THE PARTIES ON
07 June 2017

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FOR THE TRIBUNAL OFFICE