Appeal No. UKEAT/0348/12/JOJ

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8JX

At the Tribunal
On 23 May 2013

Before

HIS HONOUR JUDGE SEROTA QC

MR A HARRIS

MR S YEBOAH

MRS G UCHE — APPELLANT

OXFORDSHIRE COUNTY COUNCIL — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR A KAMARA (Representative) Free Representation Unit 60 Grays Inn Road London WC1X 8LU
For the Respondent	MR J DAWSON (of Counsel) Instructed by: Oxfordshire County Council Legal Services County Hall New Road Oxford OX1 1ND

SUMMARY

UNFAIR DISMISSAL

The Claimant's appeal against the finding that she had not been unfairly constructively dismissed was refused on the basis of the facts found by the Employment Tribunal. The Employment Tribunal was entitled to conclude that she had not been dismissed at all, nor had she been the subject of sex or race discrimination. A complaint that the judgment failed to give adequate reasons and was not **Meek** compliant was also rejected on the facts.

When giving judgment Employment Tribunals are well advised to follow the guidance of Buxton LJ in **Balfour Beatty Power Networks v Wilcox** - [2007] IRLR 63 **and** recite the terms of rule 30(6) of the **2004 Employment Tribunal (Constitution and Rules of Procedure) Regulations** and to indicate serially how their determination fulfils its requirements.

HIS HONOUR JUDGE SEROTA QC

Introduction

1. This is the full hearing of an appeal of the decision of the Employment Tribunal in Reading of 26 July 2011, the Employment Judge was Employment Judge Hardwick who sat with lay members. The Employment Tribunal found that the Claimant had not been dismissed within the meaning of section 95(1)(c) of the **Employment Rights Act** so her claim for constructive dismissal failed, the Employment Tribunal also dismissed her claims for discrimination on the grounds of race and sex.

2. The case was referred under rule 3(7) of the Employment Appeal Tribunals Rules of Procedure by HHJ Peter Clark on 15 February 2012. On 22 June 2012 HHJ David Richardson on the application of the Claimant under rule 3(10) referred part of the matter to a preliminary hearing and made an order under the Employment Appeal Tribunal's **Burns/Barke** procedure seeking further information from the Employment Tribunal. He also gave permission for there to be an amended Notice of Appeal.

3. The case came before HHJ McMullen QC on 29 November 2012 at a preliminary hearing. He gave again permission to amend the Notice of Appeal limited to points on discrimination only and referred the matter to a full hearing. One of the grounds of appeal was dismissed by me on 17 April 2013 because of defaults on the part of the Claimant in agreeing notes of evidence.

4. The Employment Appeal Tribunal received a response from the Employment Tribunal pursuant to its request on 4 July 2012 and it was apparent from that response as pointed out to us by Mr Kamara that the Employment Tribunal had conducted the case without there being a list of issues and without any issues being defined for the Employment Tribunal to determine.

5. I now want to say something about the factual background to the proceedings which we take largely from the decision of the Employment Tribunal. The Claimant is of black African ethnicity originally from Nigeria and on 19 November 2008 was employed by the Respondent Council as a financial planning assistant. On 20 May 2009 she successfully completed her probationary period. On 23 May 2009 the Claimant commenced her maternity leave, she returned from maternity leave on or about 4 January 2010, she then sought flexible working. This was refused by the Respondent's Principal Financial Manager, Mrs Wilcox. Mrs Wilcox in fact, although originally she oversaw the line manager of the Claimant, ultimately became herself the Claimant's line manager. When the Claimant had gone off on maternity leave and had completed her probationary period it was considered that she would need monitoring in the office when she returned and for that reason Mrs Wilcox declined to allow the Claimant to work out of the office. I also think the Claimant wished to work for nine days out of every fortnight as opposed ten. Mrs Wilcox considered that the Claimant could not work effectively from home. In January there was a recurrence of competency issues that required monitoring. Mrs Wilcox was aware in January 2010 from her own knowledge of supervising the previous line manager, Miss Leach, that there were performance concerns about the Claimant and Mrs Wilcox in January, for reasons that are set out in the Judgment of the Employment Tribunal, came to share those reasons.

6. Mrs Wilcox declined to agree to the flexible working sought by the Claimant I believe on or about 13 January 2010. She was concerned that if the Claimant were to work longer hours over reduced days this was likely to be detrimental to her and as I have already said her performance required her to be in the office to be monitored. On 15 March 2010 Mrs Wilcox wrote to Mr Purves of the Respondent's Human Resources Department with her concerns about the Claimant and whether she should implement the six steps. The six steps are the

Respondent's Performance Management System or Performance Improvement System. There were other issues raised at the time relating to the Claimant's work involving annual leave cards, inaccurate output and other matters which were regarded as unsatisfactory and which Mrs Wilcox tried to address informally.

7. On 26 April 2010 Mrs Wilcox met the Claimant and raised her concerns. The Claimant was upset and said she would be complaining. The Employment Tribunal found expressly that Mrs Uche did not say what she intended to complain about; that is borne out by the notes of evidence that I have seen prepared by the Respondent's solicitor. On 30 April the six steps were initiated by Mrs Wilcox. Mrs Wilcox, it was found by the Employment Tribunal, considered that the Claimant had not responded to the earlier discussion. On 5 May a meeting took place and although Mrs Wilcox tried to explain that the six steps and the informal performance process were not disciplinary the Claimant asserted that she was being victimised, and suffering racial prejudice, collusion and unfair treatment and if these matters were not resolved she would take matters to an the employment tribunal.

8. Mrs Wilcox was most upset at the way the Claimant had reacted to her, shouting and being difficult and making the allegation of racism which was very hurtful. Mr Purves decided he needed to meet the Claimant and arranged a meeting. He did arrange a meeting on 13 May 2010 which Mrs Uche did not attend. In the meantime Mrs Wilcox had raised a complaint against the Claimant under the Respondent's Dignity at Work Policy. Mr Purves had a conversation with the Claimant about her non-attendance and shortly afterwards received an unpleasant call from the Claimant's husband, Dr Uche, in which Dr Uche accused Mr Purves of bias, of having already made his mind up and again threatening proceedings in the employment tribunal.

9. On 17 May Mrs Wilcox received a call from the Claimant which again was an unpleasant call and the Claimant sent her an email accusing her of bullying, victimisation and racial prejudice. Mrs Baxter, who was the Acting Head of Corporate Finance, in those circumstances told Mrs Wilcox that she should no longer be involved in the Claimant's line management because she was concerned at the effect of the issues between Mrs Uche and Mrs Wilcox was having on Mrs Wilcox. Mrs Baxter wrote to the Claimant that her complaints were being investigated and a meeting arranged, she reminded the Claimant as well to provide a fit for work certificate from her doctor covering her absence that week. A meeting took place on 29 May 2010 involving the Claimant, Mrs Baxter and Mr Purves. The Claimant objected to Mr Purves' presence and he told the Claimant, who was described as combative and hostile from the outset, that she was not going to be permitted to dictate who could attend meetings either from Human Resources Department or from management.

10. On 11 June 2010 Mrs Baxter, having investigated the Claimant's complaints, wrote that she was unable to find evidence to support any of the Claimant's allegations and that Mrs Wilcox had acted fairly and reasonably throughout. On 21 June Mrs Baxter received a telephone call from the Claimant saying she was coming to collect her things and did not want to work for the Respondent any longer. On 24 June she made it clear she was resigning and going to the employment tribunal and considered herself dismissed that day, but in fact the resignation took place and the claim of constructive dismissal was made on the following day, 25 June. She also sent an email contesting Mrs Baxter's findings. On 28 June I have a note that the Claimant said she was treating that date as the date she had been dismissed.

11. I now turn to the Judgment of the Employment Tribunal. The Employment Tribunal set out the facts as I have briefly referred to them, it set out the parties submissions, it referred to the law on constructive dismissal and the decision in **Western Excavating (E.C.C) v Sharp**

[1978] ICR 221. It went through the various allegations of breach of contract and found none of them proved. I do not think I need go through the details but these are to be found in paragraphs 5.2 through 5.4 of the decision.

12. There was a reorganisation being undertaken and a job evaluation of the Claimant's post. The Employment Tribunal was satisfied this could not be described as a breach of contract, it was part and parcel of a general restructure. The Employment Tribunal also found that the Claimant's new role did not differ from her old role; she remained a Finance Assistant. The post included a requirement to do administrative roles but the predominant part of her job was the same after the restructure, she did lose one grade but this did not found a claim for repudiatory breach of contract as the Claimant was given protection for all benefits and salary for three years.

13. The Claimant alleged that a Mrs Done had taken her job, this was rejected by the Employment Tribunal. Mrs Paton, who had given evidence in relation to this, was described as organised, whereas the Claimant became excitable and would not give straight forward answers to fairly simple questions, especially when the matter put challenged her testimony. There was then an issue investigated by the Employment Tribunal that the Claimant had been denied further training whereas other employees who were white had access to that training. The Employment Tribunal looked at a CV sent by the Claimant which contained grammatical errors and it was clear to the Tribunal that such an application written by anyone, no matter of what ethnic background or whether they were male or female, would have been rejected for such a post having shown such an amazing lack of care and attention to detail in presenting a formal document; which was a job application. It was no surprise that the application was rejected there and then.

14. Various other matters were raised by the Claimant which are referred to in paragraph 5.9 of the decision of the Employment Tribunal and none of those could found a claim for unfair constructive dismissal. They were, in the Tribunal's view, normal management interventions in the case of a poorly performing employee. Indeed, if Mrs Wilcox had an animus against the Claimant she would have started formally to minute her initial meetings with the Claimant when she had concerns regarding the performance. She in fact deferred for nearly four months before putting the matter onto the six steps performance programme. At paragraph 5.8 the Employment Tribunal explained why it was satisfied that the refusal of flexi-time was perfectly understandable against the concerns regarding the Claimant's performance and the need for her to be monitored. It was clear to the Tribunal that the driver for the request for flexi-time was that the Claimant was having difficulty in obtaining child care cover and the flexi work policy of the Council said that such a facility should not be used for the purpose of child care.

15. The Employment Tribunal at paragraph 5.10 rejected any suggestion of harassment of the Claimant by Mrs Wilcox. One of the allegations made was that she was excluded from being made tea by Mrs Wilcox unlike her white colleagues. The Employment Tribunal simply did not believe this and they accepted Mrs Wilcox evidence and rejected that claim.

16. I then need to refer to paragraph 5.11 of the decision of the Employment Tribunal:

> **"5.11 As far as the Tribunal is concerned the pure fact is that the Claimant despite her assertions of having a masters degree, which is fine, did not apply herself and was an underperforming employee which had raised considerable concerns about her commitment, attention to detail and following instructions. For the simple task of cancelling a journal subscription this took nearly 3 months. When the Claimant was given time off for medical appointment, instead of using her lunch hour she chose to take the lunch hour before going on the appointment. She was also in breach of the Respondent's flexi time procedures by not attending during core times and running up a negative balance on flexi time. We are clear that any prudent line manager would have acted in the same way as Mrs Wilcox in an endeavour to rectify matters. The Claimant would not tolerate being taken to task regarding her performance. The Tribunal members believe that the Claimant saw the writing was on the wall and decided to leave in advance of what was going to be an inevitable capability performance process of indeed disciplinary process."**

17. So far as the issue of discrimination was concerned the Tribunal was concerned that the Claimant was more concerned with the issue of discrimination on the grounds of race as opposed to receiving less favourable treatment by reason of her gender.

18. At paragraph 5.17 the Employment Tribunal directed itself as to the reverse burden of proof under the former statutory provisions, section 54 of the **Race Relations Act** and section 63A of the **Sex Discrimination Act** and they say in terms:

> **"We have to say the Claimant has not got past first base. If she is able to show a prima facie case of discrimination then the burden of proof shifts to the employer to show on the balance of probabilities that it did not commit the act or acts complained of. The Claimant has put forward a farrago of unrelated issues that essentially relate to her dissatisfaction with the Respondent attempting to performance manage her. In our view she was a wholly unsatisfactory employee and her demeanour before the Tribunal exhibiting intemperate and argumentative responses shows the difficulties presented to the Respondent's management."**

19. At paragraph 5.18 the Employment Tribunal was satisfied that Mrs Wilcox was not against her because of her race and presumably because of her sex. It noted it had already rejected the allegation of harassment, included in which was an allegation that being placed on the six point scheme was an act of harassment or victimisation.

20. At paragraph 5.19 the Employment Tribunal contrasted the Respondent's witnesses who had given clear and measured evidence, which was to be preferred, to the evidence of the Claimant. They found that Mr Purves had the detachment from line management and gave very credible evidence of his conversations with Mrs Uche and Dr Uche which they found to be wholly persuasive.

21. The Employment Tribunal at paragraph 5.20 was somewhat critical of the conduct of the Claimant's husband, Dr Uche, who acted as her representative, but I do not think that this really takes matters very much further, other than that the lay members of the Employment Tribunal

found a remark by Dr Uche to the effect that the Respondent's solicitor was referring to something that the Respondent's counsel characterised as a "one off" act, were not accepting its accuracy and Dr Uche had said "… putting the Claimant's allegations to the witness you could say the holocaust was a one off act" and the Employment Tribunal Judge intervened, stating it was a preposterous question and the lay members found it extremely offensive. I do not know that I need to say anything further about that. The Employment Tribunal were satisfied that this was not a case in which there had been a continuous act of discrimination and at paragraph 5.22 the Employment Tribunal said:

> **"In conclusion we find this claim has nothing to do with race or sex discrimination but everything to do with a poorly performing employee who reacted to matters when raised with her as not connected with her performance but because of her race and sex. We unhesitatingly dismiss the claims of race and sex discrimination which we consider to have no merit. We would also wish to record that we find that allegations against Mrs Wilcox which were upsetting to her both prior to the Tribunal and at the Tribunal to be also wholly without merit."**

22. The amended Notice of Appeal to which I now turn has raised a number of matters. It is asserted that key evidence against the Respondent was omitted or ignored. Broadly speaking Mr Dawson challenges whether this evidence in fact was ever given, for example in ground 1(a) it is asserted that Mrs Wilcox during the Tribunal hearing had admitted that she had a negative view of the Claimant prior to managing her. It is said that this perception and prejudice no doubt had far ranging implications on the Claimant throughout the time she was managed by Mrs Kathy Wilcox. Mr Dawson submits that this simply did not happen and has pointed to the absence of any such reference in the notes taken by his solicitor.

23. At paragraph 1(b) of the grounds of appeal it is said that Mrs Wilcox made racial comments. She and others in the Claimant's group made racial comments about the Claimant's accent which was evident in an email written by Mrs Kathy Wilcox where she commented on the Claimant's accent. I have had the benefit of seeing this email, which has not been

accurately referred to by the Claimant and it was the Claimant seeking advice from the Human Relations Department. There was no evidence at all of any discussions taking place.

24. I refer briefly to reorganisation. The Claimant maintains she was demoted and removed from her finance job and it is said that two of the Respondent's employees, Ms Lorna Baxter and Mrs Kathy Wilcox, who are white, admitted during the Tribunal hearing that no other person was demoted from the group or removed from a finance role except the Claimant. Within the same period most white people in the group were in fact promoted. Again, Mr Dawson has submitted there is absolutely no evidence to support this allegation at all and it certainly does not appear in the notes of the Employment Judge.

25. At paragraph 1(d) it is asserted the Claimant's application for training that would have enhanced her skill and competence was turned down and other white staff, such as Mr Cosgrove, were offered training to enable them to move to finance. It is said the Tribunal failed to address this in its determination. The Employment Tribunal in its Judgment, to which I have already referred, gave a clear explanation as to why the Claimant was not permitted to undertake the CIPFA training.

26. At paragraph 1(e) it is said that the Employment Tribunal failed to address the issue of victimisation. It was obvious, says the Notice of Appeal, that the six step process initiated by Mrs Kathy Wilcox was a response to the Claimant's verbal complaint, having also mentioned she would submit a written complaint.

27. It is then said that the Employment Tribunal failed to recognise the cumulative nature of the six steps process which would have identified the Claimant as an underperforming staff member. The answer to that is that the Employment Tribunal, on a number of occasions,

throughout its decision had made clear that there had been no discriminatory conduct on the part of Mrs Wilcox or anyone else and the Claimant's allegations in that regard where dismissed.

28. The Employment Tribunal had also found specifically there had been no harassment and the acts relied upon were the same acts of victimisation and also relied upon as acts of harassment. That I think disposes of that particular point. It is then said that there were several issues shown to the Tribunal where Mrs Kathy Wilcox was unjustly accusing the Claimant of lying; that is a matter which I struck out, the Claimant having failed to produce any notes.

29. It was submitted finally by Mr Kamara that the Employment Tribunal had failed to comply with rule 30(6) of the Employment Tribunal Rules of Procedure. He submitted that the judgment fell woefully short of the expected standard and it is unclear that its factual findings were. It is said that the Employment Tribunal had not specifically directed itself as to the law on unfair dismissal and discrimination under section 1 of the **Sex Discrimination Act** and the **Race Relations Act**. The Respondent's case is that the reasons were adequate and they must be seen in the light of the Employment Tribunal rejecting the Claimant's evidence and there were clear findings that the Respondent's evidence was preferred and discrimination was expressly rejected.

30. The Employment Tribunal, it is correct, did not specifically refer to the allegation of victimisation, however it clearly had it in mind because it referred to Dr Uche's submissions in relation to this; see paragraphs 4.2 and 4.3 of the decision, and it found specifically that the six step procedure was imposed as a last resort without any animus and without any discriminatory intent.

31. I will turn shortly to the law relating to the approach that should be taken to the Employment Tribunal decisions. So far as an allegation was concerned that the Employment Tribunal should have constructed or found a comparator, the Respondent's submitted that in this case that the Employment Tribunal had resolved the issue of discrimination with the need for a comparator as approved in the House of Lords decision of **Shamoon v Chief Constable RUC** [2003] IRLR 11 by asking itself how and why the Claimant was treated and it rejected the suggestion there was any discriminatory element in her treatment.

32. I will firstly deal with the "reasons point" in coming to my conclusions. It is clear there was no list of issues, it is clear that the Employment Tribunal did not specifically remind itself of all of the relevant law. There is some measure of substance in what Mr Kamara says about the failure of on the part of the Employment Tribunal to comply with rule 30(6), to which I shall come shortly.

33. Mr Dawson drew my specific attention to passages in the decision to which I have referred making clear that the treatment received by the Claimant was not for any discriminatory reason. For example, at paragraph 3.18 there is an express finding that Mrs Wilcox only instituted the performance monitoring and six step scheme because she did not feel that the Claimant had responded to their discussions a few days earlier.

34. At paragraph 5.10 there is the passage again to which I have referred already where the Employment Tribunal rejected any suggestion of harassment of the Claimant by Mrs Wilcox. He also submitted that the imposition of the performance monitoring and six point plan was before the Claimant had actually made allegations of racial prejudice, which she did for the first time on 5 May. The Employment Tribunal found specifically that at the earlier meeting the

Claimant had not specified the nature of the complaint that she intended to make and I have also referred to the evidence Mrs Wilcox gave to the Tribunal.

35. At paragraph 5.11, again I have already referred to this, the Employment Tribunal found that they were clear that any prudent line manager would have acted in the same way as Mrs Wilcox; that is to impose the performance monitoring six point plan in an endeavour to rectify matters, but the Claimant would not tolerate being taken to task regarding her performance. The Tribunal members believed that the Claimant saw that the writing was on the wall and decided to leave in advance of what was going to be an inevitable capability performance process or indeed disciplinary process. A performance improvement plan (PIP) is not a punitive measure although placing someone on a PIP could possibly constitute victimisation. Mr Dawson also drew my attention again to the passages to which I have referred at paragraph 5.17 and the conclusion at 5.22 that the claim had nothing to do with race or sex discrimination, but everything to do with a poorly performing employee who reacted to matters when raised with her as not connected with her performance but because of her race and sex and that the Employment Tribunal had unhesitatingly dismissed those claims of race and sex discrimination which they considered to have no merit and have also recorded the allegations against Mrs Wilcox were wholly without merit.

36. Mr Dawson submitted that the Employment Tribunal had given sufficient reasons and drew my attention to the decision of the Court of Appeal in the case of **Balfour Beatty v Wilcox** [2007] IRLR 63 to which I shall now turn. This was a case again in which an Employment Tribunal had failed to explicitly to produce a Judgment in accordance with rule 30(6) of the **2004 Employment Tribunals (Constitution and Rules of Procedure) Regulations**.

> **"(6) Written reasons for a judgment shall include the following information -**
>
> **(a) the issues which the tribunal or chairman has identified as being relevant to the claim;**
>
> **(b) if some identified issues were not determined, what those issues were and why they were not determined;**
>
> **(c) findings of fact relevant to the issues which have been determined;**
>
> **(d) a concise statement of the applicable law;**
>
> **(e) how the relevant findings of fact and applicable law have been applied in order to determine the issues; and**
>
> **(f) where the judgment includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated or a description of the manner in which it has been calculated."**

37. I draw attention to the Judgment of Buxton LJ at paragraph 25:

> **"25. I do not doubt that in future Employment Tribunals would be well advised to recite the terms of rule 30(6) and to indicate serially how their Determination fulfils its requirements, if only to avoid unmeritorious appeals. But the rule is surely intended to be a guide and not a straitjacket. Provided it can be reasonably spelled out from the determination of the Employment Tribunal that what rule 30(6) requires has been provided by that tribunal, then no error of law will have been committed."**

38. And the Judgment of Maurice Kaye LJ at paragraph 64.

> **"64. I agree and shall add a few words of my own on two matters. The first is that Interserve can be in no doubt as to why it lost on the facts. Quite simply and in particular, the Employment Tribunal did not accept the evidence of Mr McLean about the events of December 2001 and January 2002, but did accept the evidence of the employees. These were permissible factual findings and were adequately reasoned, as my Lord, Lord Justice Buxton has demonstrated."**

39. Mr Dawson submitted to us, and we accept, that an Employment Tribunal does not have to refer to every issue or every fact, but simply those necessary to determine the issues and in any event the Employment Tribunal have dealt with the points raised by the Claimant and they have applied to her the law as they understood it; there is no evidence to suggest they have misapplied the law. We agree with that submission. The Claimant has absolutely no doubt why she lost because the Employment Tribunal has roundly rejected her case that she had received the treatment she did on the grounds of her race. I also found helpful the recent decision of the Supreme Court in the case of **Hewage v Grampian Health Board** [2012]

UKSC 37 and at paragraph 26 the Supreme Court found that it is well established, and has been said many times, that one ought not to take too technical view of the way an Employment Tribunal expresses itself and that a generous interpretation ought to be given to its reasoning which ought not to be subjected to an unduly critical analysis. In that case, the Supreme Court said it was not necessary to rely on that principle because it was perfectly clear from the reasoning that the Employment Tribunal had examined the evidence to decide what in the absence of an adequate explanation it could hold to be proved.

40. I was also referred to the decision of the Employment Appeal Tribunal in the case of **Greenwood v NWF** [2011] ICR 896 at paragraph 63. This was a decision of the Employment Appeal Tribunal, presided over the HHJ Hand. At paragraph 63 he was comparing the effect of rule 30(6) and the well known decision of the Court of Appeal in **Meek** requiring the Employment Tribunal to set out clearly a basis upon which Claimant and Respondent would each know why they had respectively won or lost. He said:

> **"It seems to us that is why Buxton LJ kept it in mind when considering whether there had been substantial compliance with rule 30(6)(c) and (e) in *Balfour Beatty*. Substantial compliance with the rule can only be achieved by sufficient detail in respect of its components to enable a party to understand the conclusions reached and how their application has resulted in the outcome. It seems to us however closely *Meek* may resemble *English*, Tribunals would be better to refer to *Meek*, which is the Court of Appeal decision relevant to this jurisdiction. Furthermore, without attempting to lay down any rigid guidance and mindful that all cases are different, we think most cases are likely to call for rather more explanation than that envisaged by the last sentence of paragraph 19 of the judgment in *English*"**

41. I do not think I need to go beyond that. Here, as we have already said, the Claimant clearly understands the reasons why the decisions were reached. I have already explained why we do not consider there to be anything in the first grounds of appeal about various evidence that was not referred to or allegedly was not given sufficient weight to and I do not propose to repeat it, other than again to repeat that we accept that the Employment Tribunal found that the

conduct of the Respondent were the normal management interventions without there being any harassment or on the grounds of race.

42. Also we repeat the finding that any prudent line manager would have acted as Mrs Wilcox did, including the imposition of the six point performance plan.

43. In the light of the authorities it is clear, as we have said, why the Judgment decided as it did essentially on a factual issue. The finding that there was no discriminatory intention needs to be seen in the wider context. The issue before the Tribunal was essentially had the Claimant's treatment been on the grounds of her race or not; that was the scope of the case. All the Employment Tribunal needed to do therefore was to ask itself has the Claimant been treated less favourably than others on the grounds of her race. A specific reference to section 1 of the **Race Relations Act** and section 1 of the **Sex Discrimination Act** would, as submitted to us by Mr Dawson, have added nothing to the Judgment.

44. It is clear to us that the law in this case has been applied correctly. The Employment Tribunal has explained why the Claimant was treated as she was and it was not on the grounds of her race or gender. We do not consider we should take too technical a view as to how the Employment Tribunal expressed itself, we think there has been substantial compliance with the requirements of rule 30(6) although the Employment Tribunal would have done well as Employment Tribunals were advised in **Balfour Beatty** to make more explicit reference to the roadmap, so as to speak, set out in the rule.

45. In all the circumstances of the case therefore we do not consider that this appeal that any grounds have been for setting aside the decision of the Employment Tribunal and the appeal therefore stands dismissed.