EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		**RESPONDENT**
MRS J BARTON	**V**	**(1) MR E J LEWIS** **(2) MR J YOUNG** **(3) ROYAL MAIL GROUP LTD**

HELD AT: **CARDIFF** **ON:** **HEARING: 12,13, 14 & 15 JUNE 2017**
CHAMBERS: 16 JUNE 2017

BEFORE: **EMPLOYMENT JUDGE N W BEARD** **MEMBERS: MR CHARLES**
MRS SOUTHALL

REPRESENTATION:
FOR THE CLAIMANT: **MR R VAUGHN (FATHER)**
FOR THE RESPONDENT: **MR GREGSON (SOLICITOR)**

JUDGMENT

1. The claimant's claim of sex discrimination pursuant to section 13 of the Equality Act 2010, as against each of the respondents, is not well founded and is dismissed.
2. The claimant's claim of sex discrimination pursuant to section 19 of the Equality Act 2010, as against each of the respondents, is not well founded and is dismissed.
3. The claimant's claim of sex discrimination pursuant to section 26 of the Equality Act 2013, as against each of the respondents, is not well founded and is dismissed.
4. The claimant's claim of victimisation pursuant to section 27 of the Equality Act 2013, as against each of the respondents, is not well founded and is dismissed.
5. The claimant's claim of unlawful deduction of wages pursuant to section 13 Employment Rights Act 1996 is well founded and the respondent is ordered to pay the claimant the sum of £1,266.90 as calculated below.
6. The respondent is ordered to pay to the claimant the sum of £250.00 pursuant to Rule 76(4) of the Employment Tribunal Rules of Procedure 2013

Holiday Pay 2016/17 agreed sum:	£648.90 Gross
Bank Holiday Credits: 10 days @ 6 hours per day @ £10.30	£618.00 Gross
Total	**£1,266.90.**

REASONS

Preliminaries

1. The claimant claims sex discrimination and unlawful deduction of wages. The respondent denies all claims in respect of sex discrimination but accepted that there was some substance to the unlawful deduction of wages claim and calculated the claimant's loss as £896.10, although it raised an issue that the claimant would have to have an amendment allowed in in order to make that claim. The issues between the parties were reduced to a "Scott" schedule, which set out each of the claimant's complaints and the respondent's response. At the outset of the hearing, during discussions, the claimant's father (after a private consultation with the claimant) withdrew a number of those issues with the claimant present. Those aspects of the schedule not pursued were set out at sections 1, 2, 5, 6 and 8, the tribunal was asked to adjudicate upon the remaining sections in the schedule. In closing submissions the claimant appeared to withdraw the complaint of discrimination by dismissing the claimant, however the tribunal, consider that it is appropriate to consider the issue. The issues to be determined are:
   1.1. Section 3 (relating to the first and third respondents) that the claimant was subject to harassment, direct discrimination and/or indirect discrimination by being required to carry out "cut off" duties. The respondents accept that the claimant was required to carry out these duties but indicated that this was nothing to do with her gender but because these were here "templated" duties.
   1.2. Section 4: (relating to the first and third respondents) that the claimant was subject to harassment, direct discrimination and/or indirect discrimination by being required to undertake excessive duties on a round designated "38". The respondents accept that the claimant carried out this duty but contends it had nothing to do with her gender but was the templated duty for the claimant.
   1.3. Section 7: (relating to the first and third respondents) that the claimant was subject to harassment and/or direct discrimination when the first respondent said "if I were to move you to work Monday to Wednesday, the men would see that as a favour to you and complain to the trade union". The respondents deny that such a comment was made and even if it was made the respondents contend that it is unrelated to the claimant's gender.
   1.4. Section 9: (relating to the second and third respondents) that the claimant was subject to harassment and/or direct discrimination when assaulted by the second respondent. The respondents deny that there was an assault and argue that whilst there was contact between the second respondent and the claimant that was accidental. In the alternative, they argue that the conduct is unrelated to the claimant's gender.
   1.5. Section 10: (relating to the third respondent) that the claimant was subject to direct and/or indirect discrimination by work colleagues filling bags of mail such as to make them too heavy. The respondent contends that this allegation was brought out of time, in any event it denies that bags were too heavy and finally contends that this conduct is unrelated to the claimant's gender.
   1.6. Section 11: (relating to the first and third respondents) that the claimant was subject to direct and/or indirect discrimination by the respondent discouraging the use of trolleys. The respondents deny that there was any such discouragement but in any event deny any connection to the claimant's gender.
   1.7. Section 12: (relating to the first and third respondents) that the claimant was subject to direct and/or indirect discrimination by the failure to rotate the claimant's shifts over working days. In respect of this complaint the respondents

contended that the claimant's shift pattern was contractual as set out in a letter offering the claimant employment.

1.8. Section 13: (relating to the third respondent) that the claimant was subject to victimisation and/or direct discrimination by being dismissed. The respondent denied that the claimant's dismissal was because of the protected act (which it admitted had taken place) but was because the claimant had been absent from work for a considerable period.

2. The claimant also claimed an unlawful deduction of wages. The schedule of loss breaks that down as unpaid overtime between October 2015 and March 2016, unpaid holiday pay for two periods the holiday year ending on 31 March 2016 and the Holiday year ending on 31 March 2017 and failure to pay "bank holiday credits" throughout 2015 and 2016.

3. The claimant gave oral evidence. The first and second respondent gave oral evidence and the third respondent called oral evidence from Mr Shaun Williams, Mr Gavin Smart and Mr David Morgan all colleagues of the claimant. In addition we heard from Ruth Dickson a senior manager who dismissed the claimant. The tribunal were also provided with a bundle of documents running to nearly 700 pages.

The Facts

4. The third respondent is a postal delivery organisation, the first and second respondents are employees of the third respondent. The third respondent operates under a service delivery regime controlled by a regulator; it sets the standards the third respondent is required to meet in the delivery of the post. The first respondent was the claimant's line manager at the relevant times; the second respondent a work colleague. The claimant was employed as a postal delivery worker and "OPG", she presented her claim on the 23 August 2016. The claim form at that stage claimed discrimination only, the relevant box for unpaid wages was not ticked.

5. The claimant began working for the third respondent on 27 May 2016. Initially the claimant was employed on a fixed term contract with a review period at three months, there was a regular renewal of the contract at each three-month period. The claimant was offered employment in a letter which set out that she would be expected to work 20 hours per week on a Wednesday through to Saturday inclusive. The claimant was also provided with a document headed terms and conditions of employment, this indicated that the claimant would be expected to work 20 hours a week but set out no indication as to the days of week which she would be expected to work.

6. We should mention at this stage that throughout the evidence of the respondent's witnesses reference was made to individuals being or not being a "Royal Mail" type of person. What was meant by this was that, whatever a person's previous work experience, level of fitness or general abilities there were some people suited to delivering mail and others who were not able to do the job through no fault of their own. This is important to some of the conclusions we draw below in particular as to the expectations of the claimant's colleagues.

6.1. In evidence, witnesses spoke of individuals such as policeman or soldiers who had not been able to carry out the work of an OPG.

6.2. In particular, we were told of an person who had been prior to employment with the respondent, pizza delivery driver, of whom expectations were high, but who was not able to live with the expectations and left.

6.3. We heard of a work culture of "job and finish", where general expectations were that any OPG would finish a duty as quickly as possible.

7. On the claimant's first day of work she attended an induction day in Bristol, thereafter the claimant worked from her base at the Rhondda sorting office.

7.1. The third respondent's training system shares the training process beginning with the induction to be followed by on-the-job training at the sorting office to which the new employee is allocated.

7.2. It is clear to the tribunal that the Rhondda sorting office did not operate a proper system for that on-the-job training. Whether this is because the staff were unaware of the system, or because a local practice had grown up the tribunal is unable to say.

7.3. It is clear to us from the description of the appropriate process of training (outlined by the claimant's CWU representative) that the following steps should have been taken with the claimant upon her arrival in the Rhondda:

7.3.1. The claimant should have been welcomed by the local manager and given a guided tour of the Rhondda sorting office;

7.3.2. The claimant should have been introduced to the local CWU representative;

7.3.3. The claimant should have been shown the workplace and introduced to her other colleagues;

7.3.4. The claimant should have been given an introduction to health and safety at work in a safe systems of work talk,

7.3.5. Whilst the claimant would have been introduced to the national standards on the induction day (dealing with operational and customer service standards), there should have been an outline for a 13 week training period with a complete training log at the local sorting office.

7.4. We are satisfied from the evidence that we've heard from both claimant and respondent that in the claimant's case, the training was to place her with an experienced postal delivery worker (OPG) and to shadow that person for three days. The claimant was expected to "learn on the job".

7.5. Mr Lewis, as the claimant's line manager, had no explanation for the fact that no record of training was kept on the claimant's personnel file. The tribunal do not accept that the claimant was trained to the standards we have outlined above.

7.6. Whilst Mr David Morgan became a workplace coach at some point, it is not clear that he was a workplace coach at the time when the claimant was working with him (described below)

7.7. What is certain is that none of the specific training referred to, particularly that of manual handling, was given to the claimant.

8. After three days of shadowing the claimant was placed to work, generally, on a duty with Mr Morgan. There was a dispute between the parties as to whether this was duty 26 or duty 27. The respondent contended that this was duty 26; the claimant duty 27.

8.1. The tribunal have come to the conclusion that although both duties had been designed as individual duties for one OPG, they were organised by requiring those OPG's to share a van.

8.2. The practical result of this was that both OPG's would each deliver part of duty 26 and part of duty 27.

8.3. The description we were given was that there were driving loops and walking loops (loops being a route of delivery, starting and finishing at the van).
8.4. The claimant e would do the walking loops and Mr Morgan would do the driving loops of both duty 26 and duty 27.
8.5. It is clear to the tribunal that the claimant was slower in delivering on this duty than was expected by Mr Morgan (and indeed others who worked with the claimant on the duty).
8.6. It is also clear that in one way or another Mr Morgan and others communicated their impatience with the claimant's slow delivery (as they saw it).

9. The claimant did not commence work until 8:30 or 9:00 o'clock in the morning. That meant that very often her mail for delivery was packed into mailbags by other colleagues.
9.1. There was no attempt by those colleagues to weigh those bags in accordance with specific weights that were recommended to apply and set out in notice board signs posted by the CWU.
9.2. Those who were filling the bags loaded each bag to a weight level which they thought appropriate. In our judgment those individuals did not consider whether that weight would or could be heavy for the claimant.
9.3. However, this approach was taken without any particular thought being given to it. We do not consider there is any evidence to indicate that this was being done in order to cause distress to the claimant in particular.
9.4. This approach was taken because of the general expectation that an OPG would be able to deliver in this way and be a "Royal mail person".

10. The respondent had arranged, prior to the claimant's appointment, for a particular employee to permanently work Monday, Tuesday and Wednesday on duty 26 and 27. The claimant was, therefore, allocated to and expected to work on the Thursday, Friday and Saturday on these duties.
10.1. This had been Mr Lewis' intention when he arranged for the advertisement which led to the claimant being employed.
10.2. Four people were employed at or about the same time as the claimant; two male, two female.
10.3. Mr Lewis had a plan in place: the first two of the new employees to begin were to be employed covering long term sickness duties, they would work throughout the week. Another new employee was to cover general duties including the "cut-offs" (dealt with below), again throughout the week. Finally, another new employee would be employed to cover the latter part of the week covering duty 26 and 27.
10.4. The claimant came to fill this latter role, and the letter offering her employment reflected this by indicating that she would be employed to work Wednesday to Saturday.
10.5. It is clear that the offer letter to the claimant specifically set out that she was expected to work the latter part of the week. Mr Lewis could not tell us the contents of the offer letters the other individuals. However, it was certainly his intention to employ them in this way. We consider it unlikely that those employees that were working throughout the week had offer letters which limited them to a part of the week as the claimant was. The others were offered employment on a more flexible basis in our judgment.
10.6. Mr Lewis told us, and we accept, that he had been specifically brought in to deal with problems at the Rhondda sorting office. It appears to us that the approach he took was to place these new employees on existing duties as

quickly as possible. This approach may explain the ad hoc methods of training adopted in Rhondda sorting office.

10.7. Mr Lewis understood that there was a lead time of at least 12 weeks in order to employ someone new at the sorting office. The individuals employed would be expected to work independently very quickly after their appointment.

10.8. The claimant complains that these other employees had some Saturdays off, whereas, because of her particular duties, she would not.

10.9. Mr Lewis' evidence was that these individuals have some Saturdays off because they were working five days out of six. The system in operation was that there would be a rotating rest day. In other words, in week one, the rest day would fall on a Monday, in week two fall on Tuesday, et cetera, et cetera.

10.10. The claimant being employed to work the latter part of the week would not have a rota with a Saturday off. However, Mr Lewis made it clear to us that the claimant could have requested Saturdays off if she wished.

10.11. In evidence before us the claimant's complaint about working Saturdays appeared to be that she had no opportunity of working overtime on Saturday. The claimant understood that more overtime was available on Saturday than any other day of the week. Mr Lewis told us, and we accept, that overtime was available on every working day.

10.12. In our judgment the claimant's Saturday working arose out of her being employed to cover the latter part of the week.

11. We conclude from the evidence of the claimant and others and from our own observations that the claimant is a perfectionist.

11.1. We are driven to ponder whether that perfectionism, in combination with a lack of training, was the reason for the claimant being slower than the expectations that that were placed upon her.

11.2. Whatever the reason, it is clear that the claimant was not someone with whom others wish to work in a van share system. This is evidenced by the conduct of Gavin Smart on one occasion. When told that he would not have to work with the claimant, Mr Smart raised his arms in celebration and gave a cheer.

11.3. We have no doubt that this was an attitude toward the claimant that began to pervade the sorting office and to impact upon relationships between the claimant and her colleagues.

11.4. In our judgement, the impact on relationships meant that, over a period of time, a general air of concern and hostility developed toward the claimant.

11.5. We consider that this hostility arose because of a general attitude towards the claimant that she was not "a Royal mail person"; that she was unable to do the job.

11.6. There was also a problem because Mr Lewis had placed the claimant on a a regular duty (the cut-offs and later duty 38: see below). The claimant's colleagues considered that the claimant was being treated with some favouritism (regular rounds were given to employees entirely on a seniority basis).

11.7. We consider that this was not helped by the overt manner in which the claimant appeared to be recording diary entries in front of her colleagues which they considered related to them and their conduct.

12. In early September, the claimant became ill with back problems.

12.1. There is a correlation between the claimant working at the sorting office, delivering mail and the onset of these problems. However, the tribunal are not

able, in the absence of medical evidence, to comment on the causation of the claimant's back problems. The tribunal consider that it remains a possibility that the claimant's back was injured because she had had no proper training in manual handling.

12.2. In addition to this, the absence of training, may be an explanation as to why the claimant was not able to meet the expectations of her colleagues in terms of delivery times.

12.3. Whatever the truth behind the reason for the claimant's illness, Mr Lewis saw it as the opportunity to ensure that the claimant did not work with others on the shared duties, upon her return to work.

12.3.1. The claimant returned to work at the beginning of October 2015 with a rehabilitation plan from occupational health.

12.3.2. Mr Lewis admitted before us that he did not follow that plan correctly. The tribunal take the view that his failure to follow that plan was because he had no real understanding (nor did he attempt to gain one) of what that plan meant.

12.3.3. Mr Lewis moved the claimant to a four-day week from the three-day week she had previously been working on duty 26 and 27. This was for two reasons: firstly, because he believed that the claimant was on a four-day contract and he did not understand that the rehabilitation plan advanced by occupational health in its report was based on three-day working as the claimant had been before her illness: secondly he was planning that once the rehabilitation process had been completed the claimant would then be working alone.

12.4. In our judgement, Mr Lewis was attempting to solve what he saw as two problems. The first was the complaints from colleagues which had filtered through to him about the speed of the claimant's working and the second was that he thought the claimant working alone would not be in such difficulty because she would not be pressurised in terms of the time taken to complete her work.

13. Mr Lewis' approach meant that on her return to work in October the claimant was placed on duties which had normally been used for overtime. These were generally referred to as the cut-offs; they were, in fact, part of other numbered duties which had grown to the extent that they were too large for an individual OPG to operate and elements had been "cut off".

13.1. The cut offs were a series of separate elements. Sometimes overtime on these elements would be worked as one duty, at other times the individual elements would be operated by different OPG's as an addition to their existing duties.

13.2. The claimant described these duties as "brutal" and told us that it was generally impossible to complete the duty within her normal working hours.

13.3. We saw text communication between the claimant and another female OPG, which appeared to demonstrate that that individual also had difficulty in completing this particular duty.

13.4. However, we also heard evidence that others, both male and female, were able to complete this duty within the usual time when the elements were operated as a single duty. The claimant did not contradict this evidence.

13.5. The claimant's evidence was that her position was particularly difficult because she worked the latter part of the week and this part of the week had the heaviest levels of post.

13.6. Mr Lewis's evidence was that there was no "heavy" part of the week as such. He told us that Thursday and Wednesday were the busiest days for delivery; that Tuesdays and Saturdays were the lightest days for delivery and that Mondays and Fridays were the medium days. In any event, the evidence was that there was no difficulty for these individuals. Whichever days of the week were worked.

13.7. We preferred the evidence of Mr Lewis as to the distribution of work for the following reasons.

13.7.1. As sorting office manager, it would be part of his role to understand the levels of post and average distributions of mail through the week. It was apparent that Mr Lewis was able to refer to statistics without difficulty and appeared confident in repeating them.

13.7.2. The claimant's evidence was given based on her general understanding and it is to be remembered that she did not work the early part of the week and she had no direct experience of mail levels on those days.

14. The claimant complained that the respondent had frowned upon, the use of trolleys and had prevented her from doing so. The claimant has developed an impression that use of the trolley was a mandatory requirement. The respondent contested this. We preferred the evidence of the respondent that the use of the trolley was not mandatory but limited to those areas where it's use would be of practical assistance.

14.1. The area served by the Rhondda sorting office in the south Wales valleys is one where there are many streets with steep inclines.

14.2. In addition to this there are many properties with steep sets of steps up or down to their front doors.

14.3. Because of this trolleys were not generally part of equipment used in this sorting office.

14.4. We were told that, in part, security reasons prevent trolley use given that mail would have to be left at the bottom of steps, whilst the delivery was undertaken to the door of a property.

14.5. Because of this the use of vans was the more common approach taken to the design of the duties in this area. This was so that bags of mail could be left in the locked van, whilst deliveries were made by the individual OPG.

14.6. Whilst the tribunal are clear that use of the trolley was not mandatory we also recognise that using a trolley would result in the time taken to undertake any duty being extended.

14.7. The claimant's real complaint about the cut-offs duty and duty 38, as developed in her evidence, was not that she was being refused the use of a trolley, but that a trolley if used, would mean that the round was even more impossible to finish within the time allotted.

15. The respondent created a new duty "38" as part of an overall revision of its duties. This had been planned for a considerable period of time, and was in part why Mr Lewis was brought in to manage the Rhondda office. The claimant complains that this duty was made up of the worst part of the cut-offs with additional and more difficult areas tacked on. The claimant's conclusion was that duty 38 was created deliberately in order to overwork the claimant to make her decide to leave. The claimant also concluded that Mr Lewis had deliberately setting out to injure her by creating this duty. The tribunal do not accept the claimant's interpretation.

15.1. The creation of duty 38, was part of an overall revision of the duties operating from the office. This meant that a number of duties had additional elements added to them, in particular duties 18,33 and 34.

15.2. Mr Lewis's decision that the claimant should undertake duty 38, was because it was a singleton duty and it was a duty not already allocated to a more senior employee.

15.3. Mr Lewis could allocate this duty to the claimant and by doing so, would avoid the problem that he had identified of the claimant working with others on a van share.

15.4. The respondent operates a system of allocating duties where seniority counts above all. OPG's are not usually allocated a regular duty until they have reached a sufficient level of seniority.

15.5. When someone retires and a duty becomes available it is advertised. OPG's are required apply for such a duty. The most senior person who applies will be allocated that duty.

15.6. Mr Lewis told us that there was a deal of resentment in the office because he did not advertise duty 38. He told us that there were others, senior to the claimant, that wanted to work that duty as their regular round. He considered that he was treating the claimant more favourably because her seniority would not have warranted her having a regular round.

16. The claimant left work on 4 June, 2016, having complained about an incident involving Mr Young the second respondent. There are two starkly differing accounts as to what happened. The claimant describes the incident as an assault, Mr Young describes the incident as an accident. Mr Young's feet or foot came into contact with the claimant's.

16.1. The claimant's description of the incident is that Mr Young moved towards her deliberately in order to kick her feet from underneath her. The claimant's account is at that point Mr Young apologised to her that in sarcastic manner.

16.2. Mr Young's description is that he was, as part of his work in the sorting office, moving around a narrow area heading towards the IPS section in order to check that he had all of the relevant post, when he accidentally caught the claimant with his foot. Mr Young's account is that he apologised because he'd accidentally hit the claimant.

16.3. The claimant had been subject to the hostility of her colleagues for a considerable period in that she was not a "Royal mail person". In our judgement that is likely to have coloured the claimant's view of this incident, attributing to Mr Young an intent that was not actually there.

16.4. In our judgment it is more probable than not that this was an accident rather than a deliberate assault on the claimant.

17. The claimant was dismissed on 29th of December 2016. Mrs Dickson had been in touch with the claimant a number of times in written correspondence, warning her of the potential for dismissal because she had been absent since early June 2016. On the documentation available to Mrs Dickson, it appeared that the claimant was not co-operating with the respondent at all in terms of occupational health or meeting with management of the respondent. The claimant did not contact Mrs Dickson or attend any meetings with her. In her evidence before us the claimant told us that she was grateful to be dismissed as she "had had enough". Mrs Dickson told us that she was unaware that the claimant had made an employment tribunal claim in August 2016 (the protected act upon which the claimant relies). We have no reason to doubt

that evidence and no contrary evidence was put before us. Mrs Dickson's decision was entirely based on the claimant's absence.

18. A number of specific comments are attributed to Mr Lewis. Mr Lewis, accepts that he made some comments similar to those attributed to him by the claimant. In section 6 of the Scott schedule the comment related is Mr Lewis asking the claimant why she is unable to carry out work when colleagues can.
    18.1. The reference in section 6 of the Scott schedule "they", the claimant equates this to male employees.
    18.2. We are aware that there were male and female workers who carried out the duties at the Rhondda sorting office. In particular, female colleagues were named who, we accept, had no difficulty in completing the duties which the complained about.
    18.3. We conclude that Mr Lewis was dealing with the claimant's complaint that she was having difficulty dealing with her workload, and responding with a question as to what particular difficulties she faced in comparison to colleagues generally; it involved no reference, specific or implied to her gender.

19. In respect of other comments relied on by the claimant in section 7 of the Scott schedule there is a specific dispute as to whether Mr Lewis used the word "others" rather than "men" in the comments attributed to him.
    19.1. The comment relates to Mr Lewis, indicating to the claimant that her colleagues would consider he was treating the claimant with favouritism and would complain to the union if he gave further advantage to her.
    19.2. In cross examination, Mrs Barton indicated that she understood him to mean men, because it was mainly men that worked in the office. In her view, therefore even if the word "others" was used it meant "men" in context.
    19.3. The evidence in the claimant's diary and her complaints at the time showed that she recorded Mr Lewis using the word "others". Whereas in her evidence to the tribunal she uses the word "men".
    19.4. In our judgment, Mr Lewis used the word "others" as the contemporaneous notes demonstrate.
    19.5. Additionally, as we have indicated above there was a mixed workforce and there is no indication that Mr Lewis was singling out the male workers in his use of "others".
    19.6. Further in our judgment, the reality of the comment is that Mr Lewis was not speaking to the claimant in relation to her gender, but in respect of duty 38. He was explaining that he was already under pressure because he had not advertised that duty to other senior employees.

20. The respondent does not dispute that the claimant has not been paid holiday pay, overtime pay and the bank holiday allowance.
    20.1. In terms of holiday pay for the 2016, 2017 year it accepts that the claimant was entitled to that payment upon dismissal and that an amendment in respect of that claim had been granted; the claimant was not paid that by the time of this hearing.
    20.2. The respondent agrees with the claimant who calculates that loss as £648.90 Gross.
    20.3. However, the respondent indicates that any claim for the previous holiday year is lost because there is no provision to carry that forward in the claimant's contract.

20.4. It argues that the claimant's overtime payment claims are clearly out of time and no amendment should be allowed.

20.4.1. The overtime issue is something that the claimant raised with the respondent during the course of her grievance discussions. That grievance was concluded at the end of September 2016.

20.4.2. The claimant sought an amendment for victimisation, dismissal and to clarify her sex discrimination claims. This application was discussed in a preliminary hearing on 22 February 2017. That amendment did not specifically include the overtime claim. However, the claimant also provided a schedule of loss which set out in some detail the overtime amount claimed. EJ Davies specifically reserved the amendment issue to the substantive hearing.

20.4.3. The last date the claimant alleges that the respondent failed to pay overtime is on 23 March 2016. Even if we consider that the claimant would not have received payment for that until her next pay day, and even if we generously assume that this would not be until 31 May 2016. Any claim should have been presented by no later than 30 July 2016.

20.4.4. The claimant was represented by her trade union throughout internal grievance proceedings. She also had some, albeit limited, assistance in the presentation of her claim.

20.4.5. There are no overtime records on this. The claimant's contention is that she was late back from her delivery round and therefore should have received an overtime payment. Therefore, the tribunal is reliant on the claimant recollection and any contradiction of this by other staff as to the extent of overtime because there were no records made contemporaneously

20.5. The respondent's position is that the bank holiday credit scheme provides payment on an annual basis for work undertaken on bank holidays. The respondent contends that this is a claim made out of time and no amendment should be allowed. However it does indicate that it accepts that the last bank holidays of 2016 (the Christmas period) prior to her dismissal, the August bank holiday being more than three months prior to her application to amend. On that basis the respondent accepts that the claimant is entitled to £247.20 Gross, we were provided with no breakdown for this calculation. The claimant claims credit for 10 days (covering 2015 and 2016) at 6 hours a day and at an hourly rate of £10.30, a total of £618.00.

20.6. The respondent argues (save as admitted) on that basis that the claimant's application to amend to include those claims should not be allowed. The claimant's position is that she raised these matters as a grievance with the respondent, there is no prejudice to the respondent in the tribunal dealing with them.

The Law

21. The Equality Act 2010 relates to a number of aspects of the claimant's claim.

Section 4 of the Act provides:

The following characteristics are protected characteristics—

---

sex;

Section 13 of the Act provides:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Section 19 of the Act provides:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—(a)A applies, or would apply, it to persons with whom B does not share the characteristic,
(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c)it puts, or would put, B at that disadvantage, and
(d)A cannot show it to be a proportionate means of achieving a legitimate aim.

Section 26 of the Act provides:

(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.
----
(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.

Section 136 of the Act provides:

If there are facts from which the court could decide, in the absence of any explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

22. In the statutory definition in section 13 EA 2010 the words “A treats B less favourably” necessarily involve a comparison. In order for the claimant to prove direct discrimination she must demonstrate that the respondent has treated her less favourably than it would an actual or hypothetical person (with similar characteristics to the claimant other than her gender), in the same circumstances. The claimant must show therefore that she has been treated less favourably, and the reason why she was treated less favourably is because she is female. That treatment can be conscious or unconscious. The claimant must also establish that she has suffered a detriment. In ***Ministry of Defence v Jeremiah*** **[1980] QB 87, 10**4 Brightman LJ said that 'a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment.' The decision in **Anya –v-University of Oxford & Anr. [2001] IRLR 377** demonstrates that it is necessary for

the employment tribunal to look beyond any act in question to the general background evidence in order to consider whether prohibited factors have played a part in the employer's judgment. This is particularly so when establishing unconscious factors.

23. We must also reflect the decisions in ***Igen –v- Wong and Ors. [2005] IRLR 258,*** and ***Madarassy v Nomura International PLC [2007] IRLR 246***. Guidance to the effect that the employment tribunal should go through a two-stage process, the first stage of which requires the claimant to prove facts which could establish that the respondent has committed an act of discrimination, after which, and only if the claimant has proved such facts, the respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. The ***Madarassy*** case also makes it clear that in coming to the conclusion as to whether the claimant had established a *prima facie* case, the tribunal is to examine all the evidence provided by the respondent and the claimant.

24. The tribunal also takes account of the decisions in ***Bahl v The Law Society [2004] IRLR 799*** and ***Network Rail Infrastructure Limited v Griffiths-Henry [2006] IRLR 865.*** The tribunal must, as part of its reasoning, consider whether any discrimination is conscious or subconscious, and in particular must find that there are, subjectively, considerations relating to the claimant's gender in the mind of the discriminator. The tribunal note in addition the admonition in ***Bahl*** that unreasonable conduct, even in the absence of an explanation, cannot, of itself lead to an inference of discrimination. In a case involving unreasonable treatment it is the absence of an explanation that can lead to the inference being drawn and not, without something more, the unreasonable treatment itself.

25. In dealing with the section 19 claim for indirect discrimination, four requirements must be met: firstly the employer applies (or would apply) a provision, criterion or practice equally to everyone within the relevant group including the particular worker; secondly the provision, criterion or practice puts, or would put, people who share the worker's protected characteristic at a particular disadvantage when compared with people who do not have that characteristic; thirdly, the provision, criterion or practice puts, or would put, the worker at that disadvantage; and finally the employer cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim. It is important therefore, in order to make a proper comparison between the claimant and others, to identify the correct group for comparison which will generally relate to the PCP and would be likely to be all the workers that the particular PCP impacts upon. The employer has a defence if it can justify the PCP: The legitimate aim of the PCP should not be itself discriminatory and must be real issue for the employer, although it cannot be a solely economic one. The aim must also be proportionate, if there is a way to achieve the aim without discrimination it is not proportionate.

26. In dealing with issues of harassment, the Tribunal has to have in mind the guidance given by Mr Justice Underhill, the President of the Employment Appeal Tribunal in ***Richmond Pharmacology V Miss A Dhalliwell [2009] ICR 724*** where it is said that prior case law in respect of harassment is unlikely to be helpful in interpretation of the statutory tort of harassment that we are dealing with, and that even less assistance is likely to be gained from the provisions of the Protection from Harassment Act 1997.

    26.1. We must note that there is a formal breakdown of element 2 within the harassment provisions into two alternative bases of liability, that of purpose and

effect, which means that the Respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so.

26.2. Thirdly, the proviso in Sub Section 2 is such that the Respondent should not be held liable merely because his conduct has had the effect of producing the prescribed consequence. It should be reasonable that the consequence has occurred and that the alleged victim of the conduct must feel that their dignity has been violated or that an adverse environment has been created.

26.3. Therefore, it must be objectively decided whether or not a reasonable person would have felt, as the claimant felt, about the treatment in question, and the claimant must, additionally, subjectively feel that their dignity has been violated, etc.

26.4. Finally, we must consider an enquiry into why the perpetrator acted as they did. This is distinct from the purpose question and relates the reasons why the person has done something not the results they intended to produce.

In respect of harassment the tribunal must also consider the decision in ***Grant v HM Land Registry [2011] IRLR 748***. This case demonstrates that in examining whether there has been detriment to a complainant in harassment claims the tribunal must be careful to apply an objective standard to the reasonableness of the complainant's reaction to any treatment. This means that the words of the Act "intimidating, hostile, degrading, humiliating or offensive" should not be "cheapened" by being applied to trivial matters.

27. In ***Selkent Bus Co Ltd v Moore [1996] ICR 836*** guidance was given by the Employment Appeal Tribunal as to the approach that Employment Tribunals should take to amendment applications.

27.1. The guidance begins by accepting that the discretion of the Tribunal to regulate its procedure includes discretion to grant leave for amendment.

27.2. The judgment notes that this would usually be an application made to an Employment Judge alone prior to a substantive hearing. We note of course that that is not the case here, although the application was made prior to the commencement of these proceedings.

27.3. The guidance continues that whenever the discretion to grant an amendment is evoked the Tribunal should take account of all the circumstances, balancing any injustice and/or hardship to both parties when deciding whether to allow or to refuse the amendment

27.4. The guidance makes it clear that there are far too many circumstances for any judgment to delineate what amounts to the relevant circumstances, but that the following categories are part of that relevancy process.

27.5. The first is the nature of the amendment sought. The guidance indicating that applications are of many different kinds ranging from the minor correction of typing errors through to the addition of factual details on existing allegations. The addition and substitution of other labels for facts already pleaded to and the making of entirely new factual allegations which change the basis of an existing claim. On the far end of this spectrum is the substantial alteration pleading a new cause of action.

27.6. The guidance provides that the applicability of time limits is important when a new cause of action forms the proposed amendment; the hardship to a party may be greater if the new cause of action would be out of time if brought in a separate claim.

27.7. The guidance then makes it clear that the timing and manner of the application should be taken account of by the Tribunal although it is clear that an amendment should not be refused solely because there is a delay in making it.

27.8. Each of the above along with any other relevant circumstances are to be take account of as a part of the discretionary balancing exercise.

27.9. The tribunal should discover why the amendment was not sought earlier. We should take any factors into account which affect that, but we are to consider that relative injustice and hardship involved in refusing or granting an amendment.

27.10. Questions of delay, adjournments, and any additional costs to a party, particularly if that party is unlikely to recover those costs are also part of that process.

28. The prohibition on the unlawful deduction of wages is set out in section 13 and 23 of the Employment Rights Act 1996, which, so far as is relevant, provide:

Section 13

(1)An employer shall not make a deduction from wages of a worker employed by him unless—

(a)the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b)the worker has previously signified in writing his agreement or consent to the making of the deduction.

----

(3)Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

Section 23

(1)A worker may present a complaint to an employment tribunal—

(a)that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

----

(2)Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a)in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

----

(3)Where a complaint is brought under this section in respect of—

(a)a series of deductions or payments, or

----

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

Analysis

29. The tribunal makes it clear that on our findings the training given to and treatment of the claimant fell well below the standards we would expect from an organisation of the respondent's size. It is clear that there are practices in operation which do not comply with the respondent's general policies and which have allowed a culture to develop where individuals are isolated. In those circumstances, we find it unsurprising that the claimant should attribute such treatment to discrimination. Further we consider that the failure to properly train individuals could lead to significant injury to those individuals albeit we are not in a position to say that is what happened here, the tribunal can understand why it is the claimant's clear belief that her injuries were caused by the respondent. We have considered those matters and all of the claimant's complaints in the round in coming to our conclusions. We make clear that whilst we deal with each of the complaints below on the basis of the schedule, these general conditions and the existence and detail of the other complaints was kept in mind. Nonetheless, whatever view we take of the treatment of the claimant we are obliged to apply the law without fear or favour and cannot allow our sympathy for the claimant to outweigh those considerations.

30. The claimant's complaints in Section 3 and Section 4 of the schedule relate to the claimant being required to carry out cut off duties and the newly created duty 38. The claimant's contention is that the cut off duties were specifically used for overtime generally. Her conclusion from her own operation of these duties was that the reason they were offered as overtime was because they were too difficult and could not be completed in time if operated as a single duty, they were brutal. It was clear also that these duties (with some alterations) essentially became the core of duty 38. The tribunal accept that the claimant was unable to carry out the duties in the time available. In addition to that the claimant was allocated those duties in circumstances where she had returned to work after an injury to her back. The tribunal do not accept that Mr Lewis was attempting to injure the claimant further, but it is clear that he was not properly responding to the return to work programme when allocating her the cut off duties. In addition to this the tribunal have found that the claimant was being singled out by colleagues and that this was the motivation for Mr Lewis to allocate both the cut off's and duty 38; in that way others would not have to work in shared duties with the claimant. This is clear evidence of unfavourable treatment.
    30.1. Dealing with direct sex discrimination however, we have no specific evidence that supports a conclusion that this treatment was related to the claimant's gender.
        30.1.1. The tribunal are specifically required to consider, in respect of direct sex discrimination, that the respondents were treating the claimant less favourably than they would a man.
        30.1.2. Whilst the claimant can show that there was a difference in treatment between herself and colleagues, Mr Lewis would not in our judgment have allocated the cut off duties as a specific daily duty to another, she has not adduced evidence (other than the fact that she is a woman) that could allow the tribunal to conclude (in the absence of an explanation) that the reason for that treatment was *because* she is a woman. Women had carried out those duties and had not been subject to singling out by colleagues.
        30.1.3. Even if the tribunal had concluded that the burden of proof fell on the respondents to show that they had not treated the claimant less favourably, the explanation of treatment of the claimant relates to Mr Lewis' wish to avoid difficulties with the workforce by separating the claimant so that

she would work alone. This was not related to the claimant's gender but to the view that the claimant was not capable, not a "Royal Mail Person".

30.1.4. Whilst the tribunal are of the view that the treatment of the claimant beginning with the lack of training, and ending up with the claimant working duties that were patently unsuitable (possibly because of the lack of training and because she had already suffered an injury to her back), we are not in a position to say that this was done because the claimant is a woman. A hypothetical comparator male, who was unable to work deliveries at the speed which was expected, and with whom other individuals did not enjoy pairing up, would in our judgment be subjected to similar treatment. In our judgment that is the correct comparator because those are the reasons which motivated allocation to this work.

30.2. On that basis, we are drawn to the conclusion that the claimant's claim of direct sex discrimination on this basis is not well founded.

30.3. Dealing with the complaint of harassment we are clear that allocating the claimant these duties caused her distress, and could fit the definition of violating dignity etc. However, we have to ask the question was this related to the claimant's gender?

30.3.1. Once again the difficulty faced by the claimant is that allocation of these duties, given the explanation we have referred to above, was not related to the claimant's gender but to her colleagues' view of her abilities.

30.3.2. If there was evidence that there was a general attitude towards female OPG's and their abilities, or indeed a significant proportion of them, this could be sufficient to support the contention. However, the evidence was contrary to that: both male and females who could carry out the deliveries within expectations were not subject to singling out.

30.3.3. Further (although also related to indirect discrimination) if there was evidence that the proportion of women that could carry out the duties within expectations was significant, there would be a possibility that we could conclude that the treatment related to the claimant's gender. There was no such evidence. The only evidence we had of capability in this sense was that the claimant and one colleague had difficulty with the cut offs and the respondent's evidence was of two female employees who did not have that difficulty.

30.4. On that basis, we conclude that the claimant's claim of harassment in respect of these matters is not well founded.

30.5. We have alluded to the problems faced by the claimant in respect of the claim of indirect discrimination above.

30.5.1. The tribunal accept that there is a PCP that individual OPG's would operate within expectations as to speed of delivery because of the job and finish culture.

30.5.2. We are also able to indicate that those who are unable to match these expectations are likely to be singled out.

30.5.3. We also accept that the claimant was singled out for those reasons.

30.5.4. What is absent is any evidence that the proportion of women able to meet these expectations was significant in comparison to men. We had no statistical evidence at all. The claimant asked us to accept that, in general, women would be less capable than men of meeting these expectations. However, the evidence was that there were both men and women who could not meet those expectations, just as there were women and men who could not.

30.6. We are not able on that evidence to conclude that the claimant's claim of indirect discrimination is well founded.

31. In respect of the claims in section 7 of the schedule we are asked to consider harassment and direct discrimination.

31.1. The first respondent said "if I were to move you to work Monday to Wednesday, the others would see that as a favour to you and complain to the trade union". The first respondent did not say the men. Therefore, there was no specific reference to gender. However, the claimant contends that Mr Lewis meant men because that was the majority of the workforce.

31.1.1. It is clear that the context of this comment was in a conversation that related to requested changes in the claimant's working pattern.

31.1.2. The claimant was working duty 38 on a permanent basis; this duty had not been advertised and allocated to a senior person as would be the normal process.

31.1.3. Mr Lewis was aware of discontent about duty 38 not having been advertised and that there were OPG's, senior to the claimant, that would have liked to be allocated that duty. The tribunal accept that he made this comment to explain that discontent to the claimant.

31.1.4. In our judgment, therefore the comment was not related to the claimant's gender.

31.2. In respect of direct discrimination, it appears to the tribunal that the correct hypothetical comparator is a male OPG who has been allocated a duty when junior to other senior colleagues. On that basis, we consider that Mr Lewis would have approached the matter in exactly the same way. The claimant has not established that the direct discrimination claim in respect of section 7 of the schedule is well founded.

31.3. In respect of Harassment the tribunal do not consider that making this comment to the claimant related to her gender. We do not consider it objectively reasonable for the claimant to consider that it related to her gender given the context. The claimant has not established the claim of harassment ont his basis is well founded.

32. We consider in respect of section 9 of the schedule this was an accident and not an assault. The hypothetical comparator for direct discrimination is a male OPG working at the station which the claimant was working at the time when the second respondent made his way passed. There is no basis for considering that the accident would have been avoided in those circumstances. Similarly, in respect of the harassment claim we consider that this accident was unrelated to the claimant's gender. On that basis, neither the direct discrimination or harassment claims based on section 9 of the schedule are well founded.

33. Dealing with section 10 that the claimant was subject to direct and/or indirect discrimination by work colleagues filling bags of mail such as to make them too heavy.

33.1. This allegation was brought out of time, complaints need to be brought within three months of the events subject of the complaint.

33.1.1. The events referred to by the claimant occurred towards the beginning of the claimant's employment in May 2015 up to her initial absence for illness which ended in September 2015. Her complaint to the tribunal was presented on the 23 August 2016, significantly beyond that three-month limit.

33.1.2. These actions were discrete and at a particular stage of the claimant's employment, they cannot be considered part of a continuing act or state of affairs. This is because, although there was a continuing state of affairs in that the "Royal Mail Person" expectation persisted, this no longer was applied to the claimant who was at the later stages working alone. Therefore, the continuing state of affairs had no continuing impact on the claimant.

33.2. It is for the claimant to show that time should be extended on a just and equitable basis. The claimant gives no specific reason for not pursuing a claim until August 2016 in respect of these matters.

33.2.1. The claimant raised these matters during the course of her employment. The claimant was supported by a trade union during this time.

33.2.2. The balance of prejudice seems to us to fall in favour of the claimant. The respondent was able to bring witnesses before us to deal with the issue. The claimant loses her ability to pursue the claim.

33.2.3. In our judgment, it is not just and equitable to extend time taking those matters into account.

33.3. In any event, whilst the bags were too heavy for the claimant to carry, the conduct in filling them to that level is unrelated to the claimant's gender.

33.3.1. The reason for filling the bags at this level was based on the job and finish culture and the expectations of a "Royal Mail Person" being able to cope with the bag loadings.

33.3.2. On the evidence, we have heard both male and female OPG's would fail to cope or alternatively would cope.

33.3.3. In our judgment, the appropriate comparator is a male employee who was carrying out the shared duty 26/27 on the same days of the week as the claimant.

33.4. On that basis, we have no doubt that the bags would have been filled to the same level for such a comparator. There was, therefore, no less favourable treatment of the claimant and, on the basis of section 10 of the schedule, the claimant's claim of direct discrimination is not well founded.

33.5. The question of indirect discrimination is subject to the same problems for the claimant as set out above in respect of sections 3 and 4 of the schedule. The claimant argues that a woman is simply less capable than a man of dealing with that weight, we simply have heard no evidence to support that proposition. The evidence we have heard is that both men and women fell into the capable and not capable groups. In those circumstances the claimant's claim of indirect discrimination based on section 10 of the schedule is not well founded.

34. Dealing with the claimant's complaint in respect of section 11 of the schedule, the first and third respondent's discouraging the use of trolleys, we did not accept the claimant's assertion that this was discouraged. The claimant giving evidence about this was more nuanced relating to her completing duty 38 taking longer if she were to use a trolley.

34.1. The use of trolleys was related to the geography of the duty in question, there was no attempt to discourage their use by the respondent.

34.1.1. The comparator for the claimant would be a male carrying out the delivery duties that the claimant carried out.

34.1.2. There would have been no difference in the approach taken to a male carrying out these duties; no difference in treatment. There was no less favourable treatment.

34.2. In our judgment, the claimant's claim of direct discrimination based on section 11 of the schedule is not well founded.

34.3. The claimant's claim of indirect discrimination again has the difficulties referred to above. We simply have no evidence that the approach to the use of trolleys would negatively impact upon women in comparison to men.

34.4. In our judgment, the claimant's claim of indirect discrimination based on section 11 of the schedule is not well founded.

35. Dealing with the claimant's complaint in respect of section 12 the failure to rotate the claimant's shifts.

35.1. The claimant and respondent are in dispute as to the terms of the claimant's employment. The terms of a contract between an employee and employer may be found across a number of documents and is not necessarily limited to a terms and conditions document.

35.1.1. The claimant was offered employment on the basis of the letter of offer indicating that the working week would be Wednesday to Saturday. That offer was accepted by the claimant.

35.1.2. In our judgment, this document must be read in conjunction with the terms and conditions document indicating that the claimant would be required to work 20 hours a week.

35.1.3. That means that the claimant was employed to work the latter part of the week.

35.2. Dealing with the issue of direct discrimination the correct comparator is a male OPG employed under a contract which set out the working week as Wednesday to Saturday, or if we are wrong about the contract a male OPG who had been offered employment on that basis. In the case of either comparator, in our judgment the treatment would have been exactly the same, there was no less favourable treatment.

35.3. In our judgment, the claimant's claim of direct discrimination based on section 12 of the schedule is not well founded.

35.4. The issue of indirect discrimination, as we understand it, is based on the proposition that the end of the week had heavier levels of mail delivery than the beginning of the week. The PCP therefore must be related to that.

35.5. We do not accept that one end of the week was more onerous to work than another.

35.6. Again there is a difficulty in terms of the impact upon women generally. Even if we had accepted that one end of the week involved harder work than the other, then it would still be necessary to show that this negatively impacted on women to a greater extent than men. We have not heard such evidence.

35.7. In our judgment, the claimant's claim of indirect discrimination based on section 12 of the schedule is not well founded.

36. Examining section 13 that the claimant was subject to victimisation and/or direct discrimination by being dismissed. The tribunal conclude that the comparator would be a male absent for the same amount of time as the claimant and who had not co-operated in dealing with the correspondence. In our judgment, the third respondent would have dealt with such a comparator in exactly the same way as the claimant: there was no less favourable treatment either on the grounds of the claimant's gender or because she had brought a claim to the tribunal. In our judgment, the claimant's claim of direct discrimination based on section 13 of the schedule is not

well founded. Further, in our judgment, the claimant's claim of victimisation based on section 13 of the schedule is not well founded.

37. The claimant contends that she has not received the correct pay at the end of her employment. The respondent contends that the claimant required an amendment in order to make some of that claim, and object to such an amendment being allowed. The basis of the respondent's objection depends on two substantial elements, firstly that this claim is not foreshadowed in the claimant's claim form and secondly that any such claim would be out of time.

38. Dealing first with the issue of overtime. This was not foreshadowed in the claimant's original claim.
    - 38.1. However, it is something that she raised with the respondent during the course of her grievance discussions.
    - 38.2. That grievance was concluded at the end of September 2016.
    - 38.3. The claimant sought an amendment which was discussed in a preliminary hearing on 22 February 2017. That amendment did not specifically include the overtime claim, however a schedule of loss sent did.
    - 38.4. EJ Davies specifically reserved the amendment issue to the substantive hearing.
    - 38.5. The last date where it is alleged the respondent failed to pay overtime is 23 March 2016, any claim should have been presented by 22 June 2016.
    - 38.6. The claimant's original claim was presented in August 2016. The amendment was sought a significant time after that.
    - 38.7. The claimant was represented by a trade union throughout internal proceedings and up to the presentation of her claim.
    - 38.8. The respondent is reliant on the claimant and other staff's recollection as to the extent of overtime because there were no records made contemporaneously.
    - 38.9. In our judgment, the balance of prejudice falls in favour of the respondent. There is no real explanation for the failure to make the claim in August of 2016 let alone June of that year. The claim is not foreshadowed in the claim form and in those circumstances the amendment is refused in respect of the overtime claim.

39. Dealing next with the holiday pay claim. This is either a contractual claim or a claim under the provisions of the working time directive. The working time directive does not automatically permit the carrying forward of untaken holiday. The claimant's contract does not provide for untaken holiday to be carried forward into the next holiday year. On that basis, this claim is not well founded.

40. In considering the bank holiday credits the respondent asks us to consider that each bank holiday year is a separate payment as such payment is made at the end of a year. The claimant contends that this is a series of deductions within the meaning of the Act. Series is not defined by the Act; common sense provides that it is a connected group of deductions e.g. a failure to pay a quarterly bonus for three quarters would be a paradigm series. On that basis, we conclude that this is a series of two deductions, this is an annual payment and has not been paid on two occasions. Thus, this is a claim for which the application to amend was made within the relevant time limit, on that basis we consider we should allow the amendment. We further consider that the claimant's claim in this respect is well founded.

41. On our findings, the claimant's claims of sex discrimination and victimisation are not well founded and are dismissed.

42. The claimant's claim for unlawful deduction of wages is well founded. The claimant is entitled to holiday pay in the agreed sum of £648.90 Gross which we award and order the respondent to pay to the claimant. In addition, on our findings the claimant is entitled to the bank holiday payment credits which are calculated as follows 10 days at 6 hours a day and at an hourly rate of £10.30, a total of £618.00 gross which we award and order the respondent to pay to the claimant. That is a total sum in compensation of £1,266.90.

43. The claimant has paid fees to bring this claim to hearing. The claimant was not successful in respect of her discrimination claim so fees at the higher rate cannot be considered appropriate. However it was not until hearing that the respondent conceded some of the claimant's unlawful deduction claims and it maintained a significant defence in respect of the other claims advanced by the claimant under this head. On that basis we take the view that it is appropriate for the respondent to pay that proportion of the claimant's fees which she would have expended had she brought those claims alone. That is the sum of £250.00 which we order the respondent to pay to the claimant pursuant to Rule 76(4) of the Employment Tribunal Rules of Procedure 2013.

_____

EMPLOYMENT JUDGE W BEARD

Dated: 21 July 2017

Judgment entered into Register
And copies sent to the parties
On 24 July 2017
.....
for Secretary of the Tribunals