

mf



EMPLOYMENT TRIBUNALS

Claimant: Mrs P Worboyes
Respondent: FDR Limited
Heard at: East London Hearing Centre
On: 31 October and 1 November 2017
Before: Employment Judge C Ferguson
Members: Mr T Burrows
Mr P Pendle

Representation

Claimant: In person
Respondent: Mr J Susskind (Counsel)

JUDGMENT having been sent to the parties on 15 November 2017 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013.

REASONS

1 By an ET1 presented on 4 April 2017 the Claimant brought complaints of direct age and race discrimination and victimisation against the Respondent, the end user with whom the Claimant was placed by an agency as a contract worker. The Respondent defended all the claims.

2 The Claimant is black and is 50 years old. She compares her treatment with the treatment of white colleagues and colleagues in their 20s.

3 The issues were set out at a preliminary hearing on 4 August 2017 as follows:

Factual Allegations

3.1 Did the Respondent do the following:-

- 3.1.1 Danielle Crawford deciding that she had “had enough” of the Claimant and that she was going to have the Claimant “file noted”.
 - 3.1.2 Matthew Rowe supporting Danielle Crawford’s decision to file note the Claimant, but deciding not to do the same to Emma after she claimed responsibility and accepted that she should be file noted.
 - 3.1.3 Danielle Crawford not allowing the Claimant to have unpaid leave when another worker, Brittany, was allowed to take unpaid leave.
 - 3.1.4 Mark Peters refusing to hear the Claimant’s appeal against the decision given by Danielle Crawford and the Respondent making the Claimant sit in an appeal meeting with a manager about whom she was complaining.
 - 3.1.5 The Respondent bullying the Claimant into not taking holiday and Mark Peters threatening the Claimant by stating he would send the Claimant back to her agency and that she would not be allowed to return.
 - 3.1.6 Danielle Crawford excluding the Claimant from the list of candidates for the opportunity of a permanent position when Brittany was included.
 - 3.1.7 The Respondent failing to act according to good practice when the Claimant had spoken to Laura Homer informally complaining of discrimination, bullying and victimisation.
 - 3.1.8 The Respondent decision not to give the Claimant permanent full-time working hours.
 - 3.1.9 The Respondent engineering a reason to return the Claimant to her agency.
- 3.2 The Claimant relies on subparagraphs 1 to 8 as direct race discrimination; 1 to 5 and 7 to 8 as age discrimination and subparagraphs 6 and 9 as victimisation.

Legal tests: Race and/or Age discrimination

- 3.3 If the Respondent did those things, in doing so, did the Respondent treat the Claimant less favourably than it did treat or would have treated a comparator in the same or not materially different circumstances? In her race discrimination complaints, the Claimant relies on her black colour and compares herself with white people. In her age discrimination complaints, the Claimant is aged 50 and compares herself with people in their 20s.
- 3.4 If so, did the less favourable treatment amount to a detriment or other unlawful act under s.41 Equality Act 2010?

- 3.5 If so, has the Claimant shown facts from which the Tribunal could conclude that the less favourable treatment was because of race and/or age?
- 3.6 If so, has the Respondent shown that race and/or age was no part of the reason that it acted as it did?

Legal tests: Victimisation complaints

- 3.7 Did the Claimant do the following protected acts:-
 - 3.7.1 In December 2016 making a complaint to Laura Homer that Danielle Crawford and Mark Peters were behaving unfairly to her?
 - 3.7.2 In February 2017 the Claimant making a written complaint of race and age discrimination?
- 3.8 If the Respondent did the acts in [paragraph 3.1.6 and 3.1.9] above, in doing so, did the Respondent subject the Claimant to a detriment?
- 3.9 If so, has the Claimant shown facts from which the Tribunal could conclude that she was subjected to a detriment because she had done either of the protected acts?
- 3.10 If so, has the Respondent shown that the protected act or acts were no part of the reason that it acted as it did?

4 We heard evidence from the Claimant and, on behalf of the Respondent, from Danielle Crawford, Matthew Rowe, Mark Peters, Tracey Yorwarth, Laura Homer and Janice Hogger, Director of the agency for whom the Claimant worked.

The facts

5 The Respondent provides e-commerce and payment solutions to merchants, financial institutions and card issuers including the leasing of equipment to process transactions. It manages financial institutions' customers for those sorts of clients by manning call centres on their behalf. It employs call centre agents to take incoming calls and make outgoing calls to customers. It has a "collections team" which talks to customers about missed payments on their credit cards. Between 12 September 2016 and 18 February 2017 the Claimant was engaged as an "agency temp" in the collections team.

- 6 In a preliminary hearing judgment given on 4 August 2017, the Tribunal found that:-
 - 6.1 The Claimant was employed by Objective People Solutions Ltd during her assignments with the Respondent under a contract personally to do work.
 - 6.2 The Claimant was supplied to the Respondent under a contract with Objective People Solutions Ltd and the Respondent made work available to her so that the Respondent was a principal and the Claimant was a contract worker under section 41 of the Equality Act 2010.

6.3 The Claimant was not employed by the Respondent, either under an express or implied contract of employment.

7 On 23 August 2017 the Claimant attended an assessment/interview at Objective People's premises for a placement at the Respondent as a call centre operative. She was interviewed by two managers from the Respondent. Somewhat oddly there is no record of that interview but it is not in dispute that the interviewer asked the Claimant whether she had any pre-booked holidays coming up. The Claimant said that her family usually go to Trinidad for Christmas but said nothing about precise dates. In notes taken by Objective People on the same day it is recorded that the Claimant mentioned taking a few days over Christmas.

8 The Respondent's unchallenged evidence is that agency staff are recruited for the Christmas period because it is a particularly busy time. If an agency temp mentions pre-booked holiday during their interview the Respondent tries to honour that but it is not guaranteed. The Respondent operates a holiday booking system through an online tool called "Empower" which all staff are required to use. The terms of engagement applicable to the Claimant contain the following clause in respect of annual leave:

"7.5 If the Agency Worker wishes to take paid annual leave during the course of an assignment s/he should notify the employment business of the dates of his/her intended absence giving notice of at least twice the length of the period of annual leave that s/he wishes to take. In certain circumstances the employment business may require the Agency Worker to take paid annual leave at specific times or notify the Agency Worker of periods when paid annual leave cannot be taken..."

9 The Claimant started work with the Respondent on 12 September 2017, beginning with four weeks' training. She was due to be placed into Ms Crawford's team when she completed her training. For obvious reasons there is some competition for annual leave during December so Empower does not allow staff to book holiday in December until the system is opened and staff are notified of this date.

10 During the training period Chris Pollock who was conducting the training asked all the trainees whether they were intending to take holiday over Christmas. At this stage the Empower system had not opened for December. The Claimant said she wish to take the 13 to 30 December off. Towards the end of the training period Ms Crawford came to the training room and asked the Claimant about this. The Claimant told her that she always goes away at that time and it was particularly important this year because her mother had recently died. Ms Crawford said she would look into it. Ms Crawford then spoke to Mark Peters about it.

11 Mr Peters' evidence, which we accept, was that he kept a spreadsheet showing whether agency workers had requested holiday during their interview. He checked the sheet and the Claimant was not on it. He told Ms Crawford about this. Ms Crawford then spoke to Abbi Needham Operations Director. Ms Needham said that the Claimant would need to book the dates in the system. That message was relayed to the Claimant by Ms Crawford. The Claimant alleges that Ms Crawford told her at that stage that she could have the time off but because she had only accrued four days' holiday the rest would have to be taken as unpaid leave. Ms Crawford disputes this. She says that she told the Claimant she could not promise that she would get the holiday but that the Claimant

should try to book it on the system and that she, Ms Crawford, would do what she could to help. We prefer Ms Crawford's evidence on this issue. We accept that she had no knowledge of how many days holiday the Claimant would have accrued. It would have been odd for Ms Crawford to promise the Claimant that she could take unpaid leave at such a busy time of year and when there was such strong competition for annual leave.

12 The booking for annual leave from 1 to 19 December opened on 11 October and was operated on a first come first serve basis. Any leave from the 20th to 31 December could also be booked but would be automatically refused and then considered by management. It appears that due to Ms Crawford being on annual leave at the time the Claimant was probably not informed about the annual leave window opening until the following week. The Respondent's records from Empower suggest, and the Claimant did not dispute this, that on 25 October, some two weeks after the booking opening, the Claimant attempted to book 13, 15, 16 and 17 December as annual leave. The Claimant says that a colleague, Emma Stratton, did the booking for her and that it was successful. The Respondent's records show the status of the request on that date as failed. The Respondent's witnesses speculated that this was probably because other people had already booked holiday on those dates.

13 Soon after this there was an incident where the Claimant was on a call and the date of birth given by the customer, 1990, differed from the date on the system, 1900. The Claimant spoke to Emma Stratton about it and Ms Stratton advised her to change the date on the system to 1990 because 1900 was clearly wrong. It is not in dispute that that was not the correct course of action but Mr Rowe also said that he would not have expected either Ms Stratton or the Claimant to know what to do in that situation because it was very unusual.

14 Ms Crawford noticed the Claimant changing the date on the system and was annoyed with the Claimant. She had a conversation with Ms Stratton, overheard by the Claimant, in which Ms Crawford complained that this was not the first time the Claimant had made a mistake with ID checks and she expressed her frustration at the Claimant. She said she would speak to Mr Rowe about "file noting" the Claimant (a precursor to disciplinary action). The Claimant alleges that Ms Crawford said she had "had enough" of the Claimant. Ms Crawford does not recall saying that but given that Ms Crawford accepts the general tone of the conversation we find it is likely that she said something along those lines. The Claimant does not dispute that there were two earlier incidents when she had made mistakes; one where she had given another customer's name to the person on the call and another where the customer had given a false date of birth and she had not noticed.

15 The Claimant was somewhat confused about what happened next. Her evidence was that Emma Stratton told her that she went to speak to Mr Rowe and Ms Crawford who were discussing the issue and explained that the Claimant was acting on her advice so it would not be fair to file note her. The Claimant says that Ms Stratton reported to her that Mr Rowe supported Ms Crawford's decision to file note the Claimant and said that Ms Stratton should not be file noted. The Claimant accepts, however, that she was not in fact file noted. She has known this since at least 26 January 2017 because she mentioned it in a grievance letter of that date but the impression given in her ET1 and witness statement was that she believed she was file noted.

16 The Respondent's evidence was that Ms Stratton went to speak to Mr Rowe about the situation; this was the first Mr Rowe had heard of the incident. He immediately agreed that neither the Claimant nor Ms Stratton should be file noted and he informed Ms Crawford of this.

17 We find that the Claimant's belief as to what happened was mistaken. It was based only on what Ms Stratton had said to her and Ms Stratton has not given evidence to the Tribunal. We accept Mr Rowe and Ms Crawford's direct evidence that Mr Rowe never agreed that the Claimant should be file noted and he communicated this to Ms Crawford. That is consistent with the fact that she was not ultimately file noted. The Respondent accepts that no-one communicated this directly to the Claimant.

18 It is not in dispute that the Claimant had not met Mr Rowe by this point.

19 Around this time Ms Crawford told the Claimant that she could not have the time off that she wanted in December because she had not booked it. The Claimant believes that Ms Crawford had unbooked the four days leave for some reason. We do not accept that that is what happened. Ms Crawford said she noticed that the Claimant's attempt to book the four days' holiday had failed and that was why she spoke to her about it again. There would be no reason for her to unbook the holiday if it had been accepted and we accept her version of events. The Claimant was extremely upset and asked for the matter to be referred to someone more senior. Ms Crawford arranged a meeting with the Claimant and Mark Peters the team manager. Mr Peters said that he supported Ms Crawford's decision that the Claimant was not authorised to take leave for any of the period the 13 to 30 December and that if she did so she would be considered absent without leave (AWOL) and returned to the agency. The Claimant requested written confirmation and the Claimant and Mr Peters signed a note saying that the Claimant could not have unpaid leave because she was not an employee.

20 The Claimant alleges that Mr Peters refused to listen to her during the meeting. Both Mr Peters and Ms Crawford said that the Claimant explained during the meeting why she was unhappy and we accept that that is correct. Mr Peters may have been forthright about the situation but that was not unreasonable in the circumstances.

21 The Claimant accepts that she never attempted to book any unpaid leave through Empower. She says she believed it would be allowed because Ms Crawford told her it would be given as unpaid leave, but then later told her that she could not take the leave at all.

22 We have already found that Ms Crawford never told the Claimant that she would be allowed to take unpaid leave. The Claimant may have been under the impression that it was going to be considered, even without her making a request by Empower, but she was never given the impression that it would be allowed and certainly by the time of the meeting with Mr Peters she knew that it was not going to be allowed.

23 It is not in dispute that another agency worker, Brittany Rounce, was allowed to take unpaid leave in November. The Respondent's undisputed evidence was that this was because she had mentioned the dates in her interview and November was not such a busy period.

24 Sometime after this in November or early December 2016 the Claimant spoke to Laura Homer, an HR manager at the Respondent. The Claimant said she thought the refusal of her holiday was unfair partly because she heard that Brittany Rounce had been allowed to take unpaid leave. She also mentioned the file note issue. The Claimant alleges that she also told Ms Homer she believed she was being discriminated against. Ms Homer was adamant in her evidence that the Claimant did not say anything about discrimination and if she had done she would have dealt with the complaint differently. We accept her evidence. There is no record of the Claimant saying anything about discrimination until the grievance that she handed to Laura Homer in February 2017. That document does not suggest that any allegations of discrimination had been made before.

25 The Claimant says that Ms Homer said she would look into the issue and get back to her. Ms Homer also disputes that, saying that she simply advised the Claimant to speak to her managers about it. She then mentioned the issue to Abbi Needham, Operations Director, but did not consider anything further needed to be done. On balance we do not accept the Claimant's evidence that Ms Homer promised to get back to her. We have found that the Claimant was mistaken about a number of other matters and overall we consider Ms Homer to be a more credible witness. Having advised the Claimant to raise the issue with her managers, there would have been no reason for her to revert back to the Claimant.

26 There is no dispute that the Claimant did eventually take the four days she attempted to book as annual leave. Ms Crawford said that this was a result of Ms Crawford's discussions with Mr Rowe, and Mr Rowe eventually agreeing to override the failed leave. That is entirely plausible and consistent with the other oral and documentary evidence so we accept that that is what happened.

27 Towards the end of November 2016 Abbi Needham sent an email to all managers in the collections department asking them to recommend any agency staff in their teams whom they wished to put forward for a permanent position. She set out a number of criteria they would need to meet. Ms Crawford had three agency staff in her team including the Claimant. She put the other two forward including Brittany Rounce but not the Claimant. Her evidence was that this was because the Claimant did not meet the performance criteria. The Claimant accepted this in cross-examination and did not challenge Ms Crawford on the reason for her decision. The Respondent's unchallenged evidence was that at the end of 2016 the Claimant was ranked 288 out of 293 agents in the department. The other two members of staff in Ms Crawford's team were ranked significantly higher: in one case between 25 and 63 and in the other case 191.

28 In mid-December 2016 Tracey Yorwarth took over as the Claimant's line manager. The Respondent was looking to move some agency staff from part-time to full-time hours and a number of staff including the Claimant were put onto these hours on a trial basis from 3 January 2017.

29 On 20 January, however, the Claimant went off sick until 2 February with work-related stress. When she returned on 3 February she reverted to her normal part-time hours. Ms Yorwarth's uncontested evidence was that this was because the Claimant had been off sick so she had not completed the trial period and because she had been off with stress it would not have been appropriate to increase her hours.

30 On 7 February the Claimant submitted grievance alleging race and age discrimination and victimisation broadly along the same lines as her ET1. The document consisted of two letters, one dated 12 January and one dated 26 January but they appeared to be part of the same document and it is not disputed that they were first handed to the Respondent on 7 February. Ms Homer forwarded the document to Objective People and a meeting was arranged on 17 February. Nothing turns on what happened in that meeting so it is unnecessary to say anything more about it.

31 On or around Friday 17 February the Claimant asked Ms Yorwarth if she could take a day's unpaid leave on the following Monday 20 February because of a medical appointment. Ms Yorwarth referred the request to Ms Needham who refused it because the appointment was not during the Claimant's working hours. Ms Yorwarth sent an email to the Claimant at around 3pm that day informing her that the request was refused. It is not in dispute that the Claimant would have left for the day by that time. The Claimant was working on Saturday 18 February but says that she did not see the email. She did not come into work on the Monday and was treated as being AWOL. As a result, the Respondent terminated the Claimant's engagement.

The law

32 Race and age are both "protected characteristics" for the purposes of the Equality Act 2010. The Act provides, so far as relevant:

"13 Direct discrimination

- (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.
- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

...

23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

...

27 Victimisation

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

41 Contract workers

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

...

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

136 Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

..."

33 As to “less favourable treatment”, it is a matter for the Tribunal to determine whether the treatment in question was indeed less favourable, but it should not disregard the perception of the Claimant (see, e.g., R v Birmingham City Council ex parte Equal Opportunities Commission [1989] AC 1155, HL).

34 The effect of section 136 of the Equality Act was recently considered by the EAT in Efobi v Royal Mail UKEAT/0203/16/DA. Laing J held at paragraph 78:

“Section 136(2) does not put any burden on a Claimant. It requires the ET, instead, to consider all the evidence, from all sources, at the end of the hearing, so as to decide whether or not “there are facts etc” (cf paragraph 65 of Madarassy). Its effect is that if there are such facts, and no explanation from A, the ET must find the contravention proved. If, on the other hand, there are such facts, but A shows he did not contravene the provision, the ET cannot find the contravention proved.”

35 Although the concept of the shifting burden of proof, based on the predecessor burden of proof provisions, was disapproved by Laing J, some of the guidance in earlier case law remains applicable. The notion that a difference of status and a difference of

treatment alone are not sufficient to satisfy section 136(2) remains good law (Madarassy v Nomura [2007] IRLR 246). Further, the guidance in Igen v Wong [2005] ICR 9311 on the second stage of the test is relevant and may be summarised as follows:-

- 35.1 To discharge the burden that is in section 136(3), it is necessary for the Respondent to prove on the balance of probabilities that the treatment was in no sense whatsoever on the grounds of the protected characteristic since no discrimination whatsoever is compatible with the burden of proof directive.
- 35.2 That requires a tribunal to assess not merely whether the Respondent has proved an explanation for the facts from which such inferences can be drawn but further that it is adequate to discharge the burden of proof on the balance of probabilities that the protected characteristic was not a ground for the treatment in question.
- 35.3 Since the facts necessary to prove an explanation would normally be in the possession of the Respondent a Tribunal would normally expect cogent evidence to discharge that burden of proof.

Conclusions

Issue 1 – Danielle Crawford deciding that she had “had enough” of the Claimant and that she was going to have the Claimant’s file noted.

36 It is not in dispute that Ms Crawford expressed frustration at the Claimant. Although Mr Rowe’s view was that neither the Claimant nor Ms Stratton would have known what to do in this situation, Ms Crawford’s account that she saw this as another instance of the Claimant not following correct procedure is plausible and we accept that that was the reason for her reaction. There are no facts from which we could decide in the absence of any other explanation that the Claimant’s colour or age were a factor in Ms Crawford’s reaction but even if there were, we accept her explanation and that it had nothing whatsoever to do with the Claimant’s colour or age.

Issue 2 – Matthew Rowe support Danielle Crawford’s decision to file note the Claimant but deciding not to do the same to Emma after she claimed responsibility and accepted that she should be file noted

37 We have found that Mr Rowe did not support Ms Crawford’s decision to file note the Claimant so this complaint falls away.

Issue 3 – Danielle Crawford not allowing the Claimant to have unpaid leave when another worker Brittany, was allowed to take unpaid leave

38 It is not in dispute that the Claimant was not allowed to have unpaid leave whereas Brittany Rounce was. There are, however, material differences in the circumstances of their cases. Brittany Rounce had informed the Respondent of her holiday dates in her interview and the dates fell in November which is not such a busy period, nor so popular for taking annual leave. There is therefore no less favourable treatment. Even if there were, there are no facts from which we could conclude that the treatment was because of the Claimant’s colour or age. Further, the Respondent has explained the reasons for refusing the unpaid leave – that the Claimant was not entitled to it and since it fell within

the busiest period they were not inclined to make an exception. That is entirely reasonable and has nothing to do with the Claimant's race or age.

Issue 4 – Mark Peters refusing to hear the Claimant's appeal against the decision given by Danielle Crawford and the Respondent making the Claimant sit in an appeal meeting with a manager about whom she was complaining

39 We have not accepted the Claimant's account that Mr Peters refused to hear her complaint about the holiday issue. As to making the Claimant sit in an appeal meeting with Ms Crawford, there is no basis on which we could find that Mr Peters would have treated any other member of staff differently. It was not a formal appeal meeting and the Claimant had not requested that it take place in Ms Crawford's absence. There are no facts from which we could conclude that Mr Peters's behaviour was influenced in any way by the Claimant's colour or age.

Issue 5 – the Respondent bullying the Claimant into not taking holiday and Mark Peters threatening the Claimant by stating he would send the Claimant back to her agency and that she would not be allowed to return

40 It is not disputed that Mr Peters said the Claimant would be treated as AWOL if she took the time off without authorisation and that she would be returned to the agency. Those were accurate and not unreasonable comments in the circumstances and there is no basis to find that they had anything to do with the Claimant's colour or age.

Issue 6 – Danielle Crawford excluding the Claimant from the list of candidates for the opportunity of a permanent position when Brittany was included

41 The Claimant did not dispute Ms Crawford's evidence that the reason the Claimant was not put forward for a permanent position was because of her performance rating. We accept that that was a reason. This complaint therefore falls away. For the avoidance of doubt, the victimisation complaint also fails on the basis there had been no protected act by this stage.

Issue 7 – The Respondent failing to act according to good practice when the Claimant had spoken to Laura Homer informally complaining of discrimination, bullying and victimisation

42 We do not accept that the Respondent failed to act according to good practice when the Claimant informally complained to Laura Homer. The Claimant did not mention discrimination or victimisation. Ms Homer advised the Claimant to raise the issue with her managers and she mentioned the complaint to Abbi Needham. Even if any criticism could be made of Ms Homer's conduct there is no basis to find that she would have acted any differently in response to a member of staff who was white or in their 20s.

Issue 8 – The Respondent deciding not to give the Claimant permanent full-time working hours

43 It was not put to the Respondent's witnesses that this decision had anything to do with the Claimant's race or age. In any event a plausible and reasonable explanation has been put forward which we accept, namely that the Claimant had taken a period of sickness absence due to stress at work, which made her unsuitable for full-time hours.

There are no facts from which we could conclude that this decision had anything to do with the Claimant's race or age.

Issue 9 – The Respondent engineering a reason to return the Claimant to her agency

44 This is an allegation of victimisation only. It is not disputed that the grievance submitted on 7 February amounted to a protected act. There is no basis, however, on which we could find that the decision to terminate the Claimant's assignment had anything to do with that grievance. The Respondent's evidence was that it was because the Claimant was AWOL on 20 February. Whether or not the Claimant saw the email refusing the leave that she had requested it was reasonable for the Respondent to conclude that she knew the leave had been refused or at the very least it had not been approved so the Claimant was AWOL and this was sufficient grounds to terminate the assignment. The timing of the termination on 20 February suggests that that was the reason and there is no evidence that there was any other reason.

45 For all of those reasons the Claimant's complaints are dismissed.

Employment Judge C Ferguson

12 December 2017