Appeal No. UKEAT/0179/13/JOJ

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 28 February 2014

Before

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

MR M CLANCY

MR D G SMITH

BETSI CADWALADR UNIVERSITY HEALTH BOARD — APPELLANT

(1) MRS ALISON HUGHES
(2) MS HELEN HUGHES
(3) MS ALISON KEMP — RESPONDENTS

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MS RACHEL WEDDERSPOON (of Counsel) Instructed by: Hill Dickinson LLP 50 Fountain Street Manchester M2 2AS
For the First Respondent	MS LAURA PRINCE (of Counsel) Instructed by: Employment Rights Advice Lester House 21 Broad Street Bury BL9 0DA
For the Second and Third Respondents	DEBARRED

SUMMARY

DISABILITY DISCRIMINATION

A senior nurse contracted Parkinson's, and could no longer do clinical work. Her grade and pay was maintained by creating a non-clinical post for her, which initially was a meaningful job, but which by a series of events became menial. The Employment Tribunal considered that a number of matters, of which this was the principal one, constituted unwanted conduct which had the effect of violating her dignity and of creating a demeaning environment. Some of those matters taken individually did not justify that conclusion, in particular because it was not reasonable for them to have that effect – thus it was wrong to hold that a letter saying that as the recipients knew her health had deteriorated such that she could no longer do clinical work, and making references to an occupational health doctor, were acts of harassment. It was also unfair to find as part of the harassment that the Claimant had been told she would be "performance managed" when that had not been alleged as an act of harassment in her ET1, at a CMD, in further particulars of her claim or in her witness statement, and when (the matter having come to light during evidence) it was argued about in relation to other grounds (direct discrimination and victimisation) both of which were dismissed on their merits. However, the central thrust of the finding was clear, and the conclusion of the ET as to jurisdiction on time grounds was one it was entitled to reach. Appeal allowed in part.

THE HONOURABLE MR JUSTICE LANGSTAFF (PRESIDENT)

1. This is an appeal against a decision made by a Tribunal sitting in Rhyl (Employment Judge Howden-Evans, Mr Jones and Mr-Williams), which, for reasons delivered on 3 January 2013, dismissed all the Claimant's complaints save for two. As to one of them, unfair dismissal, it felt it premature to come to any conclusion since an internal appeal had not been concluded. As to the other, harassment by unwanted conduct related to disability, contrary to section 26 of the **Equality Act** and section 39, it found in favour of the Claimant. There is no appeal on behalf of the Claimant. The employer, the hospital at which she worked, appeals in respect of the findings of harassment.

The background

2. The Claimant was employed for some 31 years before her dismissal. The first 25 of those she worked as a Nurse, initially, and later a Sister, reaching grade 6, a senior post. During the last six the Parkinson's disease took its toll on her. From 2005 onward, she could no longer physically work as a Nursing Sister. But her employer found a role for her in which her salary would be preserved. That role, importantly, was a meaningful role as it originally began. She was to help to develop the nursing service, to support the Radiology department in other ways, taking over stock control, arranging resuscitation training for staff, and assisting with clinical protocols and risk assessments.

3. After some three years, just before Christmas 2008 (see paragraph 31 of the Tribunal Reasons) and until August 2010 when she fell off work sick, she became increasingly unhappy to an extent which intensified during the last nine months. She was signed off sick with stress in August 2010 and never returned to work thereafter. A decision was made on 21 September 2012 that she should be dismissed, which she was after due notice 12 weeks later.

4. The Tribunal set out the facts carefully in a claim which had originally been brought against not only the employer but two co-employees, who ultimately were acquitted of any wrongdoing toward the Claimant. The effect of what happened, viewed overall, as we understand it, was that bit by bit the meaningful aspects of the alternative role which she was employed to do were chipped away. This is set out at paragraph 28. It describes how her responsibility for training was taken over by another without any reference to her; that, although she wrote detailed policies taking some effort, they were not progressed any further, nor any clear explanation for that given to her; that, whereas she had been proactive in respect of stock control, she was now expected to order what other people asked her to; she was given to think that her system of recording stock was changed; and ultimately found that the role which it appears was almost the sole role she was expected to do was to manage the stocking of cardboard boxes and on one occasion to clear out a room and move furniture. She had gone, in effect, from what was a meaningful job to a menial one.

5. The Tribunal concluded, in paragraph 104, that those circumstances amounted to harassment. It said so in these terms:

> **"The tribunal is satisfied that the claimant has received unwanted conduct and that this was related to her disability, during the period February 2006 to 11th July 2011. This unwanted conduct included..."**

We pause there to note it did not purport to be a full catalogue of everything which went into the conclusion.

> **"104.1 the letter to consultants referring to her health and deterioration in February 2006**
>
> **104.2 the diminution of her non-clinical duties such that she was left with manual work and very limited grade 6 sister appropriate tasks by August 2010**
>
> **104.3 being referred to occupational health at points when her condition was actually improving;**

104.4 this referral including inappropriate comments, such as whether her condition would affect the safety of others (when she was not undertaking clinical duties;

104.5 having her handwriting criticised by colleagues;

104.6 being given the 2nd respondent's Return to Work document at the final grievance meeting on 11th July 2011, which included the proposal that she would receive performance management going forward to include 'interaction with colleagues' and 'monitoring of performance against job description'. The Tribunal considers this to be unwanted conduct related to her disability, as the claimant's performance of tasks she had been given since 2005 was excellent. Her disability had not impacted on her ability to perform her 'non-clinical duties' role: there was no reason for her to be performance managed."

6. The Tribunal applied the statutory definition in section 26 of the **Equality Act** on harassment. That 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."

7. There is nothing between counsel as to the way in which that section should be approached, but aspects of it, and its interaction with the facts of the case, need to be re-emphasised.

8. First, subsection (4) of section 26 provides:

"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."

9. The question is, first, whether the conduct has the purpose or, alternatively, the effect of creating the proscribed consequences. Here, the Tribunal decided to acquit the employer of any

intent. It came to the conclusion, as we have set out above, that that was the effect of what happened. Whether it has that effect is a matter of fact, to be judged by a Tribunal. It is to be judged objectively. In determining that, the subjective perception of the Claimant is relevant, as are the other circumstances of the case. But, as was pointed out in **Richmond Pharmacology v Dhaliwal** [2009] ICR 724, it should be reasonable that the actual effect upon the Claimant has occurred.

10. Next, it was pointed out by Elias LJ in the case of **Grant v HM Land Registry** [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:

> **"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."**

11. Exactly the same point was made by Underhill P in **Richmond Pharmacology** at paragraph 22:

> **"..not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**

12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.

13. It was agreed, too, that context was very important in determining the question of environment and effect. Thus, as Elias LJ said in **Grant**, context is important. As this Tribunal said, in **Warby v Wunda Group plc**, UKEAT 0434/11, 27 January 2012:

> **"...we accept that the cases require a Tribunal to have regard to context. Words that are hostile may contain a reference to a particular characteristic of the person to whom and against whom they are spoken. Generally a Tribunal might conclude that in consequence the words themselves are that upon which there must be focus and that they are discriminatory, but a Tribunal, in our view, is not obliged to do so. The words are to be seen in context;"**

14. Mindful of that approach, the Tribunal took the circumstances shown by the facts it found as a whole. It did that which, in this Tribunal, in **Read and Bull Information Systems Ltd v Stedman** [1999] IRLR 299, Morison J indicated was appropriate. At paragraph 28 he noted:

> **"It is particularly important in cases of alleged sexual harassment that the fact-finding tribunal should not carve up the case into a series of specific incidents and try and measure the harm or detriment in relation to each. As it has been put in a USA federal appeal court decision (eighth circuit) [USA v Gail Knapp (1992) 955 Federal Reporter, 2nd series at page 564]:**
>
> > **'Under the totality of the circumstances analysis, the district court [the fact finding tribunal] should not carve the work environment into a series of incidents and then measure the harm occurring in each episode. Instead, the trier of fact must keep in mind that *"each successive episode has its predecessors, that the impact of the separate incidents may accumulate, and that the work environment created may exceed the sum of the individual episodes."'"***

15. The Tribunal had singled out at paragraph 104 a number of separate matters. Collectively, they led it to the conclusion which it expressed. The appeal before us largely seeks to invite us to view the decision as a series of separate acts, each one of which can be picked up, examined, seen not to meet the strictness of the statutory tests, and then put back into the mix of fact as being of no significance. Thus, taking this approach, it is effectively submitted that there is no proper basis for the Tribunal's finding of fact that here harassment occurred.

16. Ground 1, exemplifying this general approach, was advanced by Ms Wedderspoon in commendably succinct and well-focussed submissions as being, first, that the Tribunal erred in law and was perverse in finding, at 104.1, that the letter to consultants could have had the effect proscribed by statute. The letter itself reads:

> **"...as you are aware the health of Alison Hughes our Radiology Sister has deteriorated over the past few months.**
>
> **Because of this Alison is no longer able to undertake direct patient care tasks. She will remain in the Imaging Department, putting her skills to good use in a supporting role.**
>
> **...**
>
> **Your cooperation with this issue is greatly appreciated..."**

17. It was addressed to radiologists and three named individuals. It came from the second Respondent. As the opening words "as you are aware" suggest, this was not breaking a confidence. Objectively, it represented the fact that the Claimant was no longer physically able to do what she had been doing.

18. In its findings, at paragraphs 23 and 24, the Tribunal regarded the letter as having been insensitive, though well-intentioned. It wished to avoid the Claimant the embarrassment of being approached to assist with procedures she could no longer undertake, but it observed:

> **"...the claimant was understandably upset by the reference to her health and the reference to her 'having deteriorated'."**

19. There was no separate assessment here of whether it was reasonable for the letter to have had the effect which the Tribunal, as a matter of fact, accepted. Nor was there any balance of these facts against the strictness of the statutory tests to which we have referred. Despite the submissions made by Ms Prince for the Claimant, we find ourselves unable to think that the Tribunal has properly approached this particular finding of fact, because it did not, as we see it, analyse it by asking the question posed by section 26(4)(b) and, if it came to that conclusion by

using the word "understandably", as being the importation of an objective standard rather than an expression of sympathy towards the Claimant, we regard it as misplaced. The purpose of this letter, as many of its sort, was obviously supportive. The facts objectively were correct. It is, as the lay members of this Tribunal would observe, an entirely unobjectionable letter in the context of employment relations. The mere fact that other matters came later, in which criticism could properly be raised against the Respondent, did not make this also part of the picture. It stood apart, in any event, from what followed by some two years. In isolation, we cannot see that the conduct here, even if were thought, objectively, to have had some effect, could justify the finding that it "violated dignity" or that it created a "degrading environment".

20. So far as ground 2 is concerned, we therefore think it has force. We accept Ms Wedderspoon's arguments on that.

21. As to ground 1, the Tribunal, it is said, was wrong to hold that the diminution of the Claimant's non-clinical duties, as described at 104.2, was unwanted conduct despite the fact that the "diminution of duties" was agreed with the Appellant in December 2005. This criticism is entirely unmerited. The Tribunal rightly referred to a diminution of non-clinical duties, as we have described. What the ground seeks to argue is that in some way this finding related to an agreement that the Claimant would have non-clinical duties which would diminish. She did not. She agreed that she would no longer perform clinical work, but that is a different matter.

22. The third ground related to the referral to occupational health (see paragraph 104.3). The finding of the Tribunal was that referrals to occupational health took place occasionally. Paragraph 28.8:

> **"...in their efforts to support the claimant, the respondent occasionally unwittingly referred her to occupational health at points when her condition was well managed and was actually improving."**

That covers a number of occasions. The paragraph goes on to refer to one such occasion in June 2009, but we infer from what is said that there were others. We know from what else the Tribunal says that some took place during the time that the Claimant was off work sick. We accept the criticism that a referral to occupational health cannot, in the circumstances described by the Tribunal, be regarded as meeting the tests set out in section 26. The question again is not one of the perception of the Claimant. From her point of view, we well understand why, in the circumstances in which she was, with her non-clinical role slowly and steadily being diminished, and other indications that her employer did not sufficiently take concern for her condition, she should feel as she did. But that is not the point. The question is whether the action was, in context, reasonable. And we think the Tribunal was perverse to conclude otherwise. This, again, is a matter which the lay members of this Tribunal would emphasise. Referrals to occupational health are universally seen in industry as supportive. It may be, on occasions, that sending an employee or asking an employee to go to a medical practitioner may intentionally be designed to cause them disturbance. We do not rule out that it is possible for such an action to be harassment. But here there was no question of there being any such intention. The question was purely one of effect.

23. There was nothing to show, therefore, that the action taken by the employers was not the usual supportive one. Referrals to occupational health are, it is accepted, an important part of the way in which an employee can gain help and confidence and an employer can be properly informed and assured that its duty of care towards the employee is being fulfilled. We cannot see that this event, either on its or as part of a larger picture, could merit the conclusion the

Tribunal reached. We would add that it does not, in our view, violate dignity nor create a degrading environment. Nor could it.

24. As to the criticism in respect of handwriting, the smallness of handwriting, which is a well-known and accepted consequence of Parkinsonism ("micrographia"), was apparently not sufficiently understood by those who worked close to the Claimant. We are uneasy here at the finding being attributed to the employer. We do not think, however, that we need to come to any final conclusion upon it, given our conclusions overall, to which we shall shortly come.

25. Finally, it is said, in respect of 104.6, that the Tribunal here made a finding which it was not entitled, as a matter of justice, to make. The complaint which the Tribunal accepted was as set out at 104.6. The specific complaint, as being an incident of harassment, was not referred to in the ET1. There was a case management discussion on 7 November at Cardiff. It did not surface during the discussion. Employment Judge Williams ordered (paragraph 4) further particulars to be given of the complaints. They were. In respect of the return to work discussion of 11 July 2014, there was no specific complaint. There was a reference to a decision upon the Claimant's grievance of 14 July 2011. It is plain, therefore, that the events of July 2011 would have been in the Claimant's mind. Nor did the matter surface in the witness statement made by the Claimant. But we are told that, during the course of evidence, it came out that the Claimant was upset that there had been a suggestion that she would be performance managed, and that was at that meeting. Submissions were made upon it in reliance not in relation to the claim for harassment but one for direct discrimination and one for victimisation, both of which ultimately were dismissed.

26. Accordingly (a) the Tribunal was not invited to look at this matter as part and parcel of the harassment claim. (b) The facts in relation to it were in evidence. (c) They were open to

cross-examination, and there has been no suggestion before us that there was any difficulty in that. (d) If it had been thought that the raising of these facts caused any particular problem, it would have been open to the solicitors representing the Respondent to have applied for an adjournment. No such application appears to have been made. There is thus no suggestion that the parties were not fully able to deal with the substance of what was being said. Accordingly, any unfairness is difficult to see except for the somewhat technical unfairness that the Tribunal was invited to see these facts as relating, essentially, to other claims.

27. We think that in justice a Tribunal should not be entitled to come to a conclusion which will have an effect, in so far as it does, in relation to compensation where it has not specifically been invited by legal representatives to do so. Different considerations might apply where there are lay persons concerned, but much depends upon the particular facts. We do not think, however, that a Tribunal is obliged to discard from its mind the evidence which it has heard. It would be artificial to do so. It may have an impact on other decisions. Indeed, in this very case, it did just that.

28. To the extent we have indicated, we therefore accept ground 5.

29. Ground 6 challenges the overall conclusion which the Tribunal reached in respect of limitation. What it said was this:

> **"109. The tribunal finds that this harassment was conduct extending over a period of time. There was a continuing state of affairs that started with the 2005** [that should be 2006] **letter to consultants. This state of affairs continued until the decision in July 2011 to dismiss the claimant's grievance in its entirety and to give the claimant the return to work proposal, which included her performance management. The same member of staff was involved in both these decisions and this overly zealous concern about the claimant's condition united these and the other incidents referred to earlier. As this claim was issued within 3 months of 11th July 2011, the harassment claim has been issued in time.**
>
> **110. Further and in the alternative, given the claimant had commenced internal grievance proceedings considering all the incidents of harassment that have been cited in these proceedings, the Tribunal would have considered it just and equitable to extent the time limit to 3 months after she had received the outcome of these grievance proceedings. Whilst**

> **commencing internal grievance proceedings does not automatically extend time limits, it is a factor that can be considered by the tribunal. Given there is no evidence that the respondent has...been adversely affected by the delay in commencing proceedings** [the word 'not' appears in the original in front of the words 'been adversely affected', but that is plainly an error]**, the tribunal would have found it just and equitable to extend the time limit in these circumstances."**

30. Ms Wedderspoon argues that this conclusion is in error because the Tribunal failed to consider that continuity was not preserved if there were a break in contact for several months and failed to consider the respective dates of the various acts of race discrimination, which she invited to see as separate acts. She supported the first point by reference to the case of **Aziz v FDA** [2010] EWCA Civ 304. At paragraph 46 Dyson LJ identified three periods of time within which the claimant had dealing with her trade union, against whom her claim lay. They were distinct periods. It is important, however, to remember that this was a comment in respect of the facts. It does not set out a principle that a Tribunal will be in error of law if it does not have regard to the fact that events might be separated into separate periods of history. Secondly, **Aziz** was a case in which a Tribunal had decided not to extend time and had declined to find that there was any continuing act. In the words of section 123 of the **Equality Act** which apply, "conduct extending over a period is to be treated as done at the end of the period". The question whether conduct extends over a period is, essentially, a question of fact. It is only, therefore, if it is perverse for a Tribunal to conclude as it does that it is likely that an appeal could succeed.

31. We do not accept that there is a principle of continuity or discontinuity. The facts have, of course, to be considered. It is possible that a Tribunal may reach a perverse conclusion as to facts. Normally one would expect that any act extending over a period will start at one point and end at another. And if there has been no event which shows that the conduct continues to extend until at least three months before the proceedings were instituted, then there will be a strong indication that a Tribunal is not entitled to find that the conduct was so extended. But all, we emphasise, depends upon the particular circumstances.

32. The forensic approach of inviting a Tribunal to have regard to specific incidents which span a period of time is apt to be misleading if what is truly in issue is a state of affairs which persists throughout it. There does not have to be a policy or practice, as Mummery LJ pointed out in his celebrated passage in the case of **Hendricks v Commissioner of Police for the Metropolis** [2002] EWCA Civ 1686, [2003] IRLR 96, paragraph 52. He spoke about an ongoing situation or a continuing state of affairs, as distinct from a succession of unconnected or isolated specific acts. The evaluation of whether circumstances fit one or other description is, as we have said, a matter of the Tribunal's assessment, which may be attacked only if perverse. We earlier indicated that the Tribunal should not in justice have attributed the complaint made about performance management in July 2011 to the finding of harassment. But that does not mean to say that it could not take it into account in asking whether there was a continuing state of affairs.

33. The Appeal Tribunal, in argument, put to Ms Wedderspoon this example. Suppose an employee complains in an ET1 of acts of race discrimination. Suppose that they may be seen to have ended some time before the three-month period preceding the issue of that application. But suppose that after the ET1 but before any Tribunal hearing a further act is credibly thought to have occurred in respect of the employer and employee. What then? She accepted that in general principle a Tribunal could consider that fact as relevant to the question of extension of time in respect of the earlier facts. She is plainly right to do so. If it were otherwise, the law here would become a matter of technicality as opposed to dealing with the substance. It is almost axiomatic that, in dealing with discrimination as with other employment situations, the facts relating to one incident generally have to be seen in context. A time in history is to be understood by what goes before and, it may be, by what comes after. The position is dynamic. There is a continuum. Here, therefore, we think that the Tribunal was fully entitled to take into

account the evidence it had in respect of the insult done to the Claimant in July 2011. It should not be downplayed, as a matter of seriousness. The Tribunal referred to it at paragraph 106 when it noted, in its overall conclusions that:

> **"...the conduct of the Claimant had the effect of violating her dignity and further it had the effect of creating a degrading environment for the Claimant."**

At 106.1 it said that:

> **"...any employee in her circumstances would equally have felt distressed by the treatment. She 'quite rightly' felt demeaned. She had been Sister Lynne's equal and had been in a position of authority over nursing staff. Now she was left with manual tasks and felt that colleagues were watching her, for signs of deterioration in her condition."**

106.2:

> **"Her feelings of harassment were compounded by the errors that occurred in the grievance proceedings (see below). When considering her return to work, she was now faced with a number of colleagues having read her very sensitive personal evidence, [then] feeling aggrieved by the claimant's comments and the prospects of being performance managed upon her return, by the 2nd respondent (the line manager she had brought a grievance against). At this point, she not only faced a degrading atmosphere, she also faced an intimidating and hostile atmosphere."**

34. Those last four words related to the effect of what happened on 11 July. The lay members emphasise that performance management is taken very seriously in the workplace. It involves a scrutiny of performance in the knowledge that the end result might well be dismissal. It is, in effect, the top of a slippery slope towards it. One can well understand, therefore, why the Tribunal took the view it did of this particular incident. Had it been ascribed, even in submissions, to harassment, it would fully have justified, in our view, on the Tribunal's findings of fact, a conclusion to that effect.

35. We return, then, overall to the thrust of the appeal. The thrust of the appeal is that the Tribunal had no right in law to come to the conclusion that there was here harassment extending over a period of time. As we have indicated, we reject that. But time rested not just upon that

decision but upon the alternative ground, in which the Tribunal purported to exercise its discretion as to whether it was just and equitable to grant an extension.

36. The exercise of a discretion is an unlikely subject of an appeal. No appeal will succeed unless it can be shown that the Tribunal has failed to take account something it legally should have done or has left out of account something it was required to take account, or has reached a conclusion which was wholly unreasonable. The Tribunal here set out some reasons for exercising the discretion as it did. Ms Wedderspoon's criticism of it is that it did not expressly identify what the Claimant's reasons were for not putting in her claim earlier. We accept Ms Prince's argument that implicitly the Tribunal did so. Implicitly it was because she was waiting until the conclusion of the grievance proceedings. Any other conclusion here would elevate technicality over substance. Accordingly, whichever view one takes, and as we have indicated, we take the view that the Tribunal was entitled to do what it did in paragraph 109, the appeal on the ground of time must be rejected.

37. That said, we come back very much to where we started. The grounds which we have upheld the appeal on are, in our view, of no real substance and significance when it comes to the overall conclusion which the Tribunal reached. The judgment taken as a whole describes the deterioration of the Claimant's position from one of significance and substance to one without either, from the meaningful to the menial. The loss of status involved in that would be of significance to anyone. The Tribunal, as a matter of fact, recognised that was so here. It applied, therefore, the test set out in section 26. In our view, it was fully entitled to conclude that the conduct, albeit unwitting, of the Respondent in permitting or causing the slide in the Claimant's role from what it had been to what it had become was one which, in the full force of the word, violated her dignity. One only has to think of a grade 6 Nursing Sister now being asked to look after cardboard boxes to understand how that is justified. That decision took into

account fully the perception of the Claimant, the other circumstances of the case including the good intentions of the employer, and the reasonableness of coming to a conclusion to that effect. There is no basis upon which those conclusions can properly be overturned.

38. As we have indicated, that taken overall, as such as case as this has to be, is what this case was actually about. We do not see that the particular aspects in which we have allowed the appeal affect the overall conclusion on its central thrust. They may chip at the margins of compensation and they may have an effect on the sum which we understand has been awarded during the currency of this appeal by the Tribunal. But we do not suppose that the effect will be great given what we see as the thrust of the case overall.

39. We therefore allow the appeals to the extent we have indicated. We substitute the decision insofar as those matters are concerned, though there is no finding in respect of those incidents. But that leaves standing the overall finding that the employer here unlawfully harassed the Claimant. It will be for the parties to resolve, if they can, whatever impact that may have on the issues of the compensation, as to which they will know far better than we.

40. We would like to echo once again our thanks to counsel for the well-focussed nature of their skeleton arguments and their submissions, which have made our task a lot easier, and which was a delight to see and hear.