



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss A Starlington

and

Respondent

Oxford University Hospitals
NHS Foundation Trust

Heard at Reading on: 13, 14, 15, 16 March 2018
11 May 2018 (in chambers)

Appearances

For the Claimant: In person

For the Respondent: Mrs H Winstone, counsel

Employment Judge: Mr SG Vowles

Members: Ms AE Brown
Ms JE Rathbone

RESERVED UNANIMOUS JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Direct Disability Discrimination – section 13 Equality Act 2010

2. The Claimant was not subjected to direct disability discrimination. This complaint fails and is dismissed.

Discrimination Arising from Disability – section 15 Equality Act 2010

3. The Claimant was not subjected to discrimination arising from disability. This complaint fails and is dismissed.

Indirect Disability Discrimination – section 19 Equality Act 2010

4. The Claimant was not subjected to indirect disability discrimination. This complaint fails and is dismissed.

Failure to Make Reasonable Adjustments – section 20 Equality Act 2010

5. The Respondent was not in breach of the duty to make reasonable adjustments. This complaint fails and is dismissed.

Disability Harassment – section 26 Equality Act 2010

6. The Claimant was not subjected to harassment related to disability. This complaint fails and is dismissed.

Victimisation – section 27 Equality Act 2010

7. The Claimant was not subjected to detriments on the grounds that she had done a protected act. This complaint fails and is dismissed.

Reasons

8. This judgment was reserved and written reasons are attached.

REASONS

SUBMISSIONS

1. On 8 December 2016 the Claimant presented an ET1 claim form to the Tribunal with complaints of unfair dismissal and disability discrimination.
2. On 9 January 2017 the Respondent presented a response and denied all the claims.
3. At a Case Management Preliminary Hearing on 4 April 2017 the complaint of unfair dismissal was struck out because the Claimant did not have the necessary two years' qualifying employment. A case management order was made and the Claimant was ordered to provide further and better particulars of her disability discrimination complaints. The information was to be provided under each head of claim (Direct Disability Discrimination – section 13 Equality Act 2010; Discrimination Arising from Disability – section 15 Equality Act 2010; Indirect Disability Discrimination – section 19 Equality Act 2010; Failure to Make Reasonable Adjustments – section 20 Equality Act 2010; Disability Harassment – section 26 Equality Act 2010; Victimisation – section 27 Equality Act 2010). The case was listed for a further one day preliminary hearing on 3 August 2017 and for a 5 day full merits hearing on 12-16 March 2018.
4. On 17 May 2017 the Claimant provided further and better particulars of her claim, as ordered.
5. On 20 May 2017 the Respondent presented an amended grounds of resistance, as ordered. The Respondent also conceded that the Claimant was a disabled person at all material times within the meaning of section 6 Equality Act 2010 by reason of Auditory Processing Disorder. It maintained however its denial that the Claimant was subject to any form of discrimination.
6. On 3 August 2017 a further Case Management Preliminary Hearing was held. The Employment Judge made the following observations on the Claimant's further and better particulars:

2. *“Since the last case management discussion which took place on 4 April 2017, the Claimant has provided to the Respondent on 17 May 2017 a document in which she attempted to comply with Judge Vowles’ order requiring the Claimant to provide further information in relation to her specific complaints of disability discrimination. I have had an opportunity to consider that document and I am satisfied that the document complies with the order that was made by Judge Vowles.*
3. *Mr Millard who appeared on behalf of the Respondent agreed that this document, carefully read, sets out the Claimant’s complaints in respect of the various heads of claim and explains how the Claimant puts her case in such a way as to enable the Respondent to know the case that it has to meet.*
4. *On 30 May 2017, the Respondent filed an amended defence to the claim pursuant to the order made by Judge Vowles on 4 April. In the circumstances, I am satisfied that it is not necessary for me to make any further comment or orders in respect of the claims in this case as they have been sufficiently clarified.*
7. The Employment Judge also confirmed that the parties may provide supplementary statements in response to statements already exchanged. The Claimant was ordered to disclose to the Respondent any covert digital recordings she had made and, if the Claimant had transcripts of the digital recordings, copies of both the transcript and the digital recording should be provided to the Respondent. The Employment Judge did not order the Claimant to make transcripts of all digital recordings and that gave rise to some confusion during the course of the hearing when the Claimant announced that she wished to use audio recordings for which no transcript had been produced.
8. On 8 March 2018 the Tribunal file was reviewed by the Regional Employment Judge who concluded that due to lack of judicial resources, it was only possible to allocate a judge to this case for 4 days commencing Tuesday 13 March 2018. The parties were informed that in his view this would still provide sufficient time to hear the evidence in the case with an effective timetabling at the start of the hearing and to provide for submissions as well. Accordingly, the 5 day listing was reduced to 4 days.

HEARING TIMETABLE

9. The first day of the hearing was taken up with dealing with preliminary matters with the parties and reading witness statements and documents.
10. The second day of the hearing was taken up with the Claimant’s evidence, including cross-examination of her.
11. The third day of the hearing was taken up with dealing with the issue of the Claimant not having seen the Respondent’s supplementary witness

statements and then the evidence of the Respondent's witnesses including cross-examination of them.

12. The fourth day (half hour only) was taken up with the cross-examination of the last two Respondent's witnesses and the Tribunal closed at 10:30am. Written submissions were received from both the Claimant and the Respondent. The Tribunal then reserved its decision to be given in writing at a later date.
13. Thereafter, on 16 March 2018 and 11 May 2018 the Tribunal sat in chambers without the parties to consider the evidence it had heard and read during the course of the hearing.

MATTERS CONCERNED WITH THE CONDUCT OF THE HEARING

14. At the end of the case for the Claimant at 03:15pm on Wednesday 14 March 2018 she was asked how long she would be in cross-examining the 9 witnesses for the Respondent over the course of the next 2 days which was the balance of the hearing. The Claimant said that she wished to rely upon the content of covert recordings which she made, but had not made transcripts of, as part of her cross-examination of the Respondent's witnesses. She said that she wanted to rely upon both the content of the recordings and also the manner in which people spoke in the recordings.
15. The Tribunal took the view that, at this stage in the proceedings, it would be unfair to allow the Claimant to rely upon the content of audio recordings which the Respondent's witnesses have not heard in advance. She said that to create a transcript of those recordings now might take up to a week to do so and that would self-evidently mean that this Tribunal would have to be adjourned and go part heard to a later date. The Tribunal was concerned to ensure that the Claimant should be allowed to present her case and to question the Respondent's witnesses in the way in which she wished to do so but that must take account of fairness on both sides.
16. The Tribunal decided to allow the Claimant to play parts of her covert audio recordings of conversations and meetings with the Respondent's witnesses in order for the Tribunal to assess the manner in which persons spoke to each other and only for that purpose. The Tribunal would not allow the Claimant to play recordings to rely upon the content, that is, what people said during those recordings. The case management order of 3 August 2017 did not order the Claimant to make transcripts of any recordings she might seek to rely upon but that order did make clear the importance of transcripts of any digital recordings. The Claimant has had the opportunity to put in her witness statement any conflicts of evidence in the witness statements of the Respondent's witnesses compared to her recordings and she confirmed that she had done that.
17. Also, the Claimant had made an additional supplementary witness statement dealing in detail with each of the Respondent's witness statements and setting out where she disagreed with them. She therefore has had the opportunity already of comparing her recordings with what the

Respondent's witnesses have said in their witness statements. She can put those matters from her supplementary witness statement and her main witness statement to the Respondent's witnesses.

18. When the Tribunal resumed at 10.00am on Thursday 15 March 2018 the Claimant announced that she was not going to play any of the recordings to the Tribunal in view of the ruling yesterday and because she was going to use them on appeal. The Tribunal reminded the parties of the ruling of yesterday regarding the playing of recordings. In fact, after the Tribunal's ruling on audio recordings, neither party requested to play any audio recordings during the course of the hearing.
19. The Respondent then proceeded to call its witnesses. Upon Ms Sharon Roberts-Gant attesting to her witness statement and supplementary witness statement, the Claimant announced that she had not seen any supplementary witness statements from the Respondent's witnesses. There was then some enquiry with the Claimant and the Respondent to establish whether the Respondent's supplementary witness statements had been sent to the Claimant and when. In the meantime, copies of the supplementary witness statements were provided to the Claimant who said that because of her disability, she would need 2 weeks to read and understand the witness statements as she reads very slowly.
20. The Respondent said the supplementary witness statements had been produced to assist the Claimant but since she said she had not had the opportunity to read them, the Respondent would agree to the Tribunal discounting the Respondent's supplementary witness statements but was content for the Tribunal to rely upon the Claimant's supplementary witness statement.
21. The Claimant was clearly upset about the prospect of having to question the Respondent's witnesses, especially since she had not seen their supplementary witness statements, even though the Respondent had said that it would not seek to rely on the supplementary statements.
22. The Tribunal informed the Claimant that there was no need for her to ask questions of the Respondent's witnesses if she did not wish to do so. That is not a compulsory requirement. She was clearly upset and from what the Tribunal had seen and heard, she would find considerable difficulty in doing so. If she did not ask questions of the Respondent's witnesses, the Tribunal would not consider that she had failed to challenge their evidence. It was apparent from her witness statement and from her supplementary witness statement that she was challenging much of the Respondent's witnesses' evidence, indeed, her supplementary witness statement was devoted solely to challenging what they had put in their witness statements. The Tribunal would take full account of her written statements.
23. It would cause no disadvantage to the Claimant if the Tribunal simply heard the Respondent's witnesses attest to the truth of their witness statements, discount their supplementary witness statements, and then proceed to closing statements. The Tribunal considered that this was a

reasonable adjustment necessary to avoid disadvantage in view of her disability and, at times, extreme upset.

24. The Tribunal also emphasised that closing statements were not a compulsory requirement. At the start of the hearing, the Tribunal had explained to the Claimant that it would decide the case on the evidence it had heard and read and not on closing statements.
25. This course, if agreed by the parties, would mean that the case could be concluded on 15 March 2018 and there would be no need for the hearing to go part heard. The Tribunal allowed the parties time to consider this proposal.
26. During the course of these matters being discussed, at various times, the Claimant became upset both in the Tribunal room and in the waiting room such that assistance was required from the Tribunal clerk.
27. After an adjournment of 1hr 40 mins the Claimant returned to the Tribunal and said that she would like to ask some questions of the Respondent's witnesses and then send in a written closing statement on the morning of 16 March 2018.
28. Thereafter, the Claimant did ask questions of the Respondent's witnesses which commenced at 12:25pm and concluded at 04:05pm with an hour's break for lunch.
29. On Friday 16 March 2018 the questioning continued from 10:05am until 10:30am.
30. At 10:30am the Tribunal announced that it would reserve its decision to be given in writing at a later date. The hearing was concluded and parties left the Tribunal.
31. The Claimant's written closing statement was received by email shortly thereafter. The Respondent had agreed that Mrs Winstone's written submissions presented on the first day of the Tribunal should stand as her closing statement as well.
32. The Tribunal thereupon commenced its deliberations in chambers in the absence of the parties which took place on 16 March and 11 May 2018.
33. On 7 May 2018 the Claimant presented a further submission regarding her "Working History". The Tribunal did not find it relevant to the issues it had to determine.

EVIDENCE

34. The Tribunal heard evidence on oath during the course of the hearing from the Claimant, Ms Amanda Starlington (Band 2 Biomedical Support Worker).

35. The Tribunal also heard evidence on oath on behalf of the Respondent from the following witnesses:

Ms Sharon Roberts-Gant (Cellular Pathology Manager);
Ms Elinor Burke (Senior Biomedical Scientist);
Ms Anne Goodall (Senior Biomedical Scientist and Department Training Officer);
Ms Karen Austin (Senior Biomedical Scientist and Quality Manager);
Ms Karamjit Johal (Associate Practitioner in the Histology Service);
Ms Annie Thompson (Biomedical Support Worker);
Ms Helene Euston-Mellor (Supervisor of the Cellular Pathology Laboratory Clerical Team);
Ms Jennifer Wright (Senior Human Resources Consultant)
Mr Darrin Siiankoski (Histology Operational Manager).

36. The Tribunal also read documents in a bundle provided by the parties.

37. From the evidence heard and read, the Tribunal made the following findings.

FINDINGS OF FACT

Background – October 2015 to January 2016

38. The Claimant lives in Sweden and had travelled from Sweden to the United Kingdom for the hearing.
39. In her disability impact statement the Claimant described at length the effects of her condition and said *“to separate it from the more common problems of reading and writing, they later found the term “auditory/verbal dyslexia” which has now changed its name to auditory processing disorder”*.
40. In October 2015 the Claimant applied for the position of Band 2 Biomedical Support Worker with the Respondent at the John Radcliffe Hospital, Oxford. On 29 October 2015, in advance of the job interview, she sent an email to Ms Roberts-Gant about the nature of her disability. It included the following:

“My disability has unfortunately no short explanation because it is neurological rather than physical. It turns the normal way of learning inside-out. Apart from that it is mostly how I am perceived by others.

I am generally perceived as being very pleasant with the capacity to handle anything, but when my disability hits, I can instead come across as inexperienced, lack of intelligence, ignorant, rude or even as a liar. Those undesirable interpretations stem from the different way that I function. I have been diagnosed with a special kind of dyslexia, where everything I hear or read has to be turned into images or feelings for me to understand. I generally find it easier to understand feelings because they come instantly, whereas images need to be processed in my head. The more

complex the image, the less I can focus on what is in front of me, which makes it hard to keep eye contact – which is why some people think I am lying.”

41. The Claimant was interviewed for the role of Biomedical Support Worker by Ms Roberts-Gant and Ms Burke on 30 October 2015. The interview panel had received a copy of the Claimant's email regarding her disability. She performed well at the interview and commenced full time work on 14 December 2015, subject to a six month probationary period.
42. The Claimant's line manager, Ms Austin, reported to Mr Siiankoski who in turn reported to Ms Roberts-Gant. Ms Burke was appointed as the Claimant's mentor at the start of her employment.
43. The Claimant undertook training which was recorded in an ongoing lengthy document headed "*Cellular Pathology BMSW Training Schedule*". As each activity and task was satisfactorily completed, it was recorded in the training schedule. The Claimant's training went well and those training her complied with her request to provide verbal instructions and practical demonstration conducted separately in order that she could properly understand the task. This caused no difficulty to the trainers and resulted in the Claimant satisfactorily completing tasks recorded in her training schedule. There were different trainers involved and all reported that the Claimant was doing well.

Ticket Incident – January 2016

44. In early January 2016 the Claimant complained to Ms Burke that one of her colleagues, Ms Johal, had thrown away some of her filing tickets. The Claimant also complained about it to Ms Austin. Filing tickets are small white slips of paper with numbers on that are inserted between specimen slides when they are filed so they can be identified and retrieved if needed.
45. Ms Burke spoke to Ms Johal who explained that she had not thrown the tickets away but had put them to one side in a plastic box. Ms Burke considered that this was a minor issue but the Claimant was clearly upset about it and so Ms Burke got the Claimant and Ms Johal together for a discussion. Ms Burke's account of the meeting, written retrospectively, included the following:

“Uncertain of day of meeting but possibly Tues or Wed as Karam was then on leave Thurs and Friday.

When we met, it was difficult to reach the root cause of the conflict regarding slide filing. From conversation it appeared to be ‘tone of voice’ and visual body language that was the cause of this conflict and this was felt by both members of staff.

During the meeting Amanda stated, on Thursday morning when Amanda was changing the machines in the embedding room, Karam was laughing ‘too loud’ and that she was laughing at Amanda. I questioned whether

Karam was laughing naturally as part of the conversation she was involved in and Amanda felt strongly this was not the case and it was 'over-the-top'.

I was not aware of this situation before the meeting as Amanda had been off, however, I did meet with Amanda the morning of the meeting before the three of us were due to meet to ensure she was happy to still meet as she had been off work and she did not mention anything about this occurrence on Thursday morning.

At the end of the meeting both agreed to try and work together and to inform senior staff member if there continued to be issues."

46. Following the meeting, Ms Burke said that the Claimant's attitude towards her changed markedly because she had not taken the Claimant's side against Ms Johal. Ms Burke continued as the Claimant's mentor and continued to take part in her training but the point came when she spoke to the Claimant about their relationship and agreed that it had broken down. The Claimant asked that someone else should be her mentor and asked to be mentored by Ms Goodall. Ms Burke however continued to be involved in her training.
47. On 7 March 2016 the Claimant met with Ms Goodall for a 3 month review meeting. Ms Goodall found that everything was fine and the Claimant was confident with all of the tasks that had been assigned to her. She regarded this as a positive meeting and concluded that the Claimant had achieved everything required of her. It was about this time that Ms Goodall agreed to take on the role of mentor for the Claimant.

Problems with Chemicals – March 2016

48. The Claimant was then absent on sick leave due to a chest infection and a bad cold. On 15 March 2016 she informed Ms Goodall that the formalin chemical used in the laboratory was affecting her throat and had made her unwell. Ms Goodall met with the Claimant along with Mr Siiankoski on 16 March 2016 to discuss the Claimant's problems with reactions to formaldehyde and other chemicals. The Claimant said that she was sensitive to strong smells and she had been advised by occupational health that she may have an allergic reaction. As an immediate step she was issued with enclosed goggles and a new filtered mask but she was not comfortable wearing this equipment. As a consequence she was removed from laboratory duties and redeployed to office duties while the issues were looked into. Although office duties were part of the Claimant's role, it was a small part and her technical training came to a halt.
49. On 22 April 2016 an occupational health report included the following:

*"Diagnosis:
Respiratory symptoms ? cause*

I have seen this biomedical support worker who has advised us that she has experienced three incidences of respiratory symptoms following

pouring or using chemicals at work. She has been left feeling a little tight in the chest and with a croaky voice since these incidences. She explained that she has been moved into an office environment and things are settling. She is concerned about returning to undertaking certain activities until the exact cause of her symptoms is established. Some of the chemicals she works with namely xylene, formaldehyde, and formalin could cause some of the symptoms that she experiences and it would be helpful for me to visit the department to ascertain how these are being used and the control measures in place to reduce exposures to these so that I can understand the levels of exposures present in the workplace. I am happy for her to work in any area where she feels herself that the level of chemical fumes will not frustrate her respiratory system. I am pleased to note that she has had a lung function test done here at the service and at the Centre for Occupational Health and Wellbeing and this was normal. I would be most grateful if I could visit at 8:30 on 10th May and meet with your safety advisor to discuss the work being undertaken and the control measures.”

Outgoing Post Incident – April 2016

50. On 26 April 2016 an incident occurred when the Claimant was assisting Ms Thompson with the outgoing post. The Claimant was having some difficulty with this task and they had a conversation about the Claimant’s disability. Ms Thompson’s daughter also has a disability involving a mental impairment. The Claimant later complained that Ms Thompson had referred to the Claimant’s disability and told her that she should “*get over her disability*”.
51. Ms Austin held informal discussions with the Claimant and Ms Thompson over this matter and it was then referred to Mr Siiankoski. He conducted a meeting with the Claimant and Ms Thompson on 3 May 2016. At the meeting Ms Thompson denied telling the Claimant to “*get over her disability*” but told her that the only way to learn the task was to get on with it and keep doing it until she was able to complete it. The Claimant had taken the view that Ms Thompson should apologise for what she had said. Ms Thompson said that she was sorry that things were as they were but gave no apology as she did not think she had done anything wrong. Both the Claimant and Ms Thompson provided written statements but their remained a dispute between them as to what Ms Thompson had said.

Grievances – May 2016

52. On 5 May 2016 the Claimant raised a grievance which Ms Roberts-Gant was tasked to investigate. The grievance read as follows:

“The first issue was when I was innocently accused of replacing labels in the filing system. The accuser was Karam and it became a big deal. But instead of me trying to explain my innocence – I felt put on trial and forced to confess to that I had not done filing in the way I had been trained, and therefore Karam had the right to be angry with me – which was to me another accusation and not true. And in the end I had been even more

discriminated and harassed or psychologically abused during the confrontation involving me Karam and Elinor. Karam was defenced, and I was told to not talk in a certain way, even though Elinor knew I was dyslexic, and my sentences were cut off, and because of it I was being accused of saying things I had not said. Nothing from that event was solved, except for the fact that Karam said she had been mistaken. Although, there was proof that she actually knew that I was the one who had been working with the filing, but when I stated that proof out – she was again protected by the person who was supposed to be my mentor, Ellinor.

Second: Darrin was terrifying me on an occasion when I was left alone with him. He accused me of preposterous things, that he most likely knew already from the start and that it wasn't true. He just accused me for the sake of it. The way of his speaking was extremely frightening and crazy. He made no attempt to say he was sorry afterwards.

Three: I was discriminated by Cytology Annie. She made no attempt to solve it. When I did, she blew things up even worse. And when taking my statement down, I was confronted with my manager Darrin who threw me accusational questions, and not making much attempt to hear or understand what I was actually saying. When I the next day got his written summary of the meeting – it was all out of context and the main parts of the discrimination explained, gone. When I asked what to do, since I couldn't sign it the way it was, I asked if I could write down the story myself and he nodded. Later when he had received my story he approached me in my office, and I could see how he was trying to hold his fury back. But though he didn't explode, he still made aggressive questions "Are you saying that non of those things were discussed in the meeting yesterday?", pointing at the paper had had written.

Four: Today I am put to do filing, away from people in a very bad working environment. That is supposedly Darrins idea, but supported by Helene in the office. Last week, after the incident with Annie, I was also sent to that room to do filing for Jenny Richardson, as requested by Helene. Jennifer stated to me: "I will see what more I can get you to do for next week to keep you out of the office". Do I have to say that I feel that I am the one who is being punished for having been discriminated?

Five: Helene confirmed to me that all things related to work are supposed to be done on work time, which is why I chose to do this email now, since to me it is urgent and VERY important. But now Darrin comes in through the door just now, and again stating out accusational questions: "Are you saying that you are refusing to do work?" But I did NOT say any of a kind. Even though I instantly told him that I was writing a confidential message that he shouldn't see – he still stood there with his head facing the computer. I actually had to ask him to turn around.

Whenever I am being unfairly treated in this department, I get tons more of it from others.

I will tolerate this no more. I am hereby starting this formal complaint to be taken further.

And I need to know how I am supposed to handle this situation.”

53. From 12 to 26 May 2016 the Claimant was absent on sick leave by reason of mental health, anxiety and stress.
54. On 20 May 2016 the Claimant presented a further written grievance which repeated most of the complaints in the earlier grievance dated 5 May 2016.
55. On 26 May 2016 the Claimant attended a grievance meeting with Ms Roberts-Gant. The Claimant was accompanied by a colleague, Vyasa Rampersad. The meeting was recorded with the agreement of all present and a transcript was included in the bundle of documents before the Tribunal.
56. After the meeting Ms Roberts-Gant met with Mr Siiankoski to go through the issues which had previously been discussed with the Claimant. This meeting was also recorded with the agreement of all concerned.
57. On the same date, 26 May 2016, Ms Roberts-Gant received an email from Ms Euston-Mellor complaining that the Claimant had gone absent from the office and was doing little work.
58. The grievance outcome was produced on 8 September 2016, after the end of the Claimant's employment, and is referred to below.

Probationary Review Meeting – June 2016

59. On 3 June 2016 the Claimant met with Mr Siiankoski for the final formal review meeting of her probationary period. The meeting was also attended by Ms Wright. The meeting was recorded with the agreement of everyone. The issues discussed were the Claimant's occupational health investigation referral, her sickness absence rate, the absence from the office allegations, and inter-staff relationships.
60. Mr Siiankoski sent a letter to the Claimant on 13 June 2016 confirming the extension of the probationary period which included the following:

“Re Extension of Probationary Period

Following our formal review meeting held on 3rd June, 2016, I am writing to confirm that your probationary period has been extended for a period of two (2) months. Your probationary period is therefore due to end on 14th September, 2016.

The reasons for this extension are as follows:

- *The Occupational Health Investigation / Referral and how this will affect your ability to fulfil Terms & conditions of your Job Description*

- Attendance including sickness absence rate
- Attendance including being Absent Without Leave (AWOL)
- Inter-staff relationships & working within a team

At the formal review meeting we agreed a Performance Improvement Plan (PIP) as detailed in the enclosed 'Probationary Period Formal Review Meeting' record, which will hopefully help you to achieve the required levels of performance during this extension.

Also at the formal review meeting you agreed to pursue redeployment and that HR will provide a list of available posts for you to apply for.

I will arrange a further formal review meeting in one (1) week to review your progress against the PIP. Weekly reviews will then be scheduled to review your progress against the PIP. Please be aware it is only possible to extend a probationary period on one occasion, therefore should you fail to demonstrate the required level of performance it may not be possible to confirm you in the post at the end of your probationary period.

Should you have any questions please do not hesitate to contact me."

61. The Claimant's sickness absence and absence from the laboratory had impacted on her training and meant that she had not completed the technical training required. Mr Siiankoski decided that the Claimant's probationary period would therefore be extended for a further 3 months to 14 September 2016.
62. From 16 to 24 June 2016 the Claimant had a further period of sickness absence by reason of burns, poisoning, hypothermia and frostbite. It was not made clear in the evidence before the Tribunal how these injuries came about.

Events on 27 June 2016

63. The Claimant returned to work on 27 June 2016 and, accompanied by Ms Goodall, she attended a meeting with Mr Siiankoski. The meeting was again recorded by agreement. There was discussion about the problems with the Claimant's health and the requirement for the Claimant to let people know when she left the department at any time. He also spoke to her about the need to be civil and act professionally with her colleagues. In particular, they discussed the incident with Ms Thompson and also the Performance Improvement Plan which had been produced. They also discussed the need to get further advice on the Claimant's health and it was agreed that, as part of the process, the Claimant would meet weekly with Mr Siiankoski.
64. Later on 27 June 2016 there was an incident involving the Claimant and Mr Siiankoski which he reported in writing the following day as follows:

"Details of Event

I was in KW's office discussing the recent appointment of Band 5 positions with him, when Amanda Starlington (AS) appeared in the doorway and began shouting at me in a very aggressive manner. AS was shouting "Don't ever talk to me!" "Get out of my face!" "Never write to me again!" As to the context of what AS was referring to she never said.

My first reaction was shock & then surprise at what she was yelling at me. I did state that the way she was talking to me was inappropriate and unacceptable. AS then stormed off, yelling down the corridor and I believe she then left to go home. ...

I will be seeking further advice from HR in relation to this issue."

65. At 16:04 on 27 June 2016 the Claimant wrote to Ms Roberts-Gant as follows:

*"I am sorry Sharon, but I need to say this again.
PLEASE GET DARRIN OUT OF MY PRESENCE.
He is making up lies about me and puts them into reports now again. And I don't see how he can be protected and me being forced to be in touch with him? He is psychologically abusing me as well as physically, and I have a grievance towards him that should still be in progress.*

There has to be a law against this abuse and against forcing me to take cope with it? I would like to see the Trust rule that says that I am supposed to take it, please. This is ongoing abuse. And everytime I am being abused to breaking down, it becomes an absence that you use against me to terminate my contract.

I am supposed to have meetings with Darrin every Monday for the next 3 months. But I want Darrin to have nothing to do with me from now on. And I want all lies he has made up about me to be erased."

66. Later that same day the Claimant tendered her resignation in an email timed 19:28 as follows:

"Dear Sharon, Anne and Karen,

*I am hereby resigning from the position Biomedical Support Worker with the one month notice stated in the employment contract.
Since this is the 27th and the end of the working day, I assume that means that my last day of work will be the 27th July."*

67. On the same date, at 21:47, the Claimant again wrote to Ms Roberts-Gant as follows:

"Dear Sharon

When HR attended the probationary period meeting I had with Darrin, I remember she took an opportunity to spread salt in my wounds by interfering with the meeting for her own interest. That along with the fact

that she during many, many phone calls when I was trying to book a meeting with her earlier, she was acting ignorant and non-serious. Although, she has come with good information every now and then, I simply do not feel good in her presence. She does not seem to be on my side and I do not need more rubbish as it is. Please do not book for me to see her again.

*Regards
Amanda.”*

Events on 28 July 2016

68. At 07:14 on 28 June 2016 the Claimant wrote to Ms Roberts-Gant as follows:

“Hi Sharon

I am just letting you know that I fear that going into both the office and the laboratory today might be harmful to me. I am hereby therefore letting you know that I will sit in the coffee break room from 8.30am, hoping to be safer, until you come and tell me otherwise. I will bring my laptop and start working on writing down the abuse.”

69. Ms Roberts-Gant agreed to meet the Claimant in the coffee break room and took her to a private meeting room where she asked her whether, in view of her email of 27 June 2016, Darrin had physically touched her in any way. The Claimant said that he had not physically touched her. Ms Roberts-Gant considered that the rest of the matters could be dealt with as part of the ongoing grievance investigation and so the meeting was brief. Later that day, she exchanged emails with the Claimant around termination arrangements and accepted her resignation.

Notice Period

70. Immediately following the Claimant's resignation she was informed by Ms Roberts-Gant, confirmed by Ms Wright, that she was entitled to one week's notice. The Claimant complained that she was entitled to one month's notice according to her contract of employment and she was correct. Ms Roberts-Gant therefore wrote to her on 28 June 2016 to confirm that the notice period was one month and the Claimant was paid notice pay for that period up to her last day of employment on 27 July 2016.
71. There is no record of any further relevant incident between 29 June 2016 and the Claimant's termination of employment on 27 July 2016.
72. On 8 September 2016 Ms Roberts-Gant produced a written outcome to the Claimant's grievance. It was a lengthy document running to 20 pages and detailed the investigation conducted by Ms Roberts-Gant assisted by Ms Wright. The Claimant's grievances were not upheld.
73. On 8 December 2016 the Claimant presented her claim to the Employment Tribunal.

RELEVANT LAW

Discrimination Burden of Proof – section 136 Equality Act 2010

74. Equality Act 2010

Section 136

(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.

75. There is guidance from the Court of Appeal in Madarassy v Nomura International plc [2007] IRLR 246. The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination, they are not without more sufficient material from which a Tribunal could conclude that on the balance of probabilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination a difference in status, a difference in treatment and the reason for the differential treatment.

76. If the burden of proof does shift to the Respondent, in Igen v Wong [2005] IRLR 258 the Court of Appeal said that it is then for the Respondent to prove that he did not commit or is not to be treated as having committed the act of discrimination. 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 and to prove that the treatment was in no sense whatsoever on the prohibited ground.

77. In Ayodele v Citylink Ltd [2017] the Court of Appeal held that the burden of showing a prima facie case of discrimination under section 136 remains on the Claimant. There is no reason why a Respondent should have to discharge the burden of proof unless and until the Claimant has shown a prima facie case of discrimination that needs to be answered. Accordingly, there is nothing unfair about requiring a Claimant to bear the burden of proof at the first stage.

Direct Discrimination – section 13 Equality Act 2010

78. Equality Act 2010

Section 13

- (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.

Discrimination Arising from Disability – section 15 Equality Act 2010

79. Equality Act 2010

Section 15

- (1) A person (A) discriminates against a disabled person (B) if –
- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Indirect Disability Discrimination - section 19 Equality Act 2010

80. Equality Act 2010

Section 19

- (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 in relation to a 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 6

- (3) In relation to the protected characteristic of disability –
- (a) a reference to a person who has a particular protected characteristic is a reference to a person with a particular disability;
- (b) a reference to persons who share a protected characteristic is a reference to a persons who have the same disability.

Duty to make Adjustments - section 20 Equality Act 2010

81. Equality Act 2010

Section 20

- (1) The duty comprises the following three requirements.*
- (2) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

Schedule 8, paragraph 20

- (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know - ...*
- (b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.*

Harassment - section 26 Equality Act 2010

82. Equality Act 2010

Section 26

- (1) A person (A) harasses another (B) if -*
 - (a) A engages in unwanted conduct related to a related 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 –*
 - (c) the perception of B;*
 - (d) the other circumstances of the case;*
 - (e) whether it is reasonable for the conduct to have that effect.*

Victimisation – section 27 Equality Act 2010

83. Equality Act 2010

- (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.*

DECISION

84. The Claimant's ET1 claim was in narrative form over 4 pages.
85. In response to the case management order made on 4 April 2017 the Claimant provided further and better particulars which were more extensive, over 12 pages, and again in narrative form.
86. Notwithstanding the comments of the Employment Judge at the preliminary hearing on 3 August 2017 (referred to in paragraph 6 above), the Tribunal found some difficulty in assessing what events were being complained of under what head of claim under the relevant provisions of the Equality Act 2010.
87. So far as it could ascertain, however, the complaints were as follows (the relevant parts of the narrative are set out verbatim in italics).

Direct Disability Discrimination – section 13 Equality Act 2010

2016-04-27 – 2016-07-27

... The reason for believing it was less favourable treatment because of disability: I reported disability and it was a grievance that they "through in the bin".

88. The Tribunal proceeded on the basis of a hypothetical comparator.
89. The Tribunal did not find that the Claimant's grievances had not been dealt with properly. Mrs Roberts-Gant met with the Claimant on 26 May 2016 and discussed her grievance in detail. The Claimant was accompanied by Ms Rampersad, a colleague from her department. The meeting was recorded and a full transcript was included in the Tribunal bundle of documents. The transcript runs to 12 pages. Although produced after the Claimant's resignation, the outcome was an equally detailed document produced by Mrs Roberts-Gant on 8 September 2016. It ran to 21 pages and dealt with each part of the grievance in considerable depth. Interviews had been conducted with the Claimant, Mr Siiankoski, Ms Thompson and Ms Burke. As well as taking account of those interviews, the outcome

referred to various documents which related to them including emails and staff meeting records.

90. The Tribunal found as a fact that the grievance was investigated thoroughly and dealt with properly by the Respondent. It was unsurprising that the outcome was delayed until September in view of the depth of the investigation and careful consideration by Mrs Roberts-Gant. There was no evidence to support this allegation of less favourable treatment regarding the grievances due to disability.

26th May 2016

... The reason for believing it was less favourable treatment because of disability: They knew I was disabled. I said a meeting like that could be badly affected by my disability. Still they never bothered to find out any details about how it could affect my disability, they just made sure I came and then they interrogated me with no regards to my disability. During the meeting I was even forced to answer the way they wanted me to, for example when I had already written a story down, they forced me to say it without reading, even though I said I had big problems doing that and wanted to read instead if they had not read themselves. They therefore indirectly discriminated me by forcing me to answer and tell a story the same way as others.

91. Again, the Tribunal proceeded on the basis of a hypothetical comparator.
92. As stated above, the meeting of 26 May 2016 was recorded and a transcript produced. Although the Claimant said during the course of the hearing that she wished the Tribunal to listen to audio recordings, in fact neither party ultimately requested the Tribunal listen to any audio recordings. There was nothing in the transcript to indicate that Ms Roberts-Gant or Ms Wright interrogated the Claimant with no regard to her disability. She was asked questions about the complaints she had raised against various other members of staff. This was done in a matter of fact way. There was nothing the Tribunal could find which might amount to less favourable treatment by reason of disability. The Claimant had raised a grievance and it was perfectly reasonable, and indeed necessary, for the Respondent to conduct a meeting with her to ensure that the complaints had been understood and could be properly investigated.

27th June 2016

... I had a probationary period meeting with Darrin (manager) and Anne (team officer). Darrin discriminated me directly by making me seem stupid by, for example, not knowing the interpretation of the word "civil". He also then wrote a long report from the meeting that included a load of things that had not been mentioned during the meeting. Among the things listed were a load of things related directly to my disability. Things I can not change about myself, even though I would like to be just like everyone else. Darrin was totally aware of my disability.

... All I got at meetings with Darrin was hate in his eyes and in the way he responded and made me seem stupid for not understanding things he said, for example on the last day at the meeting when he got furious about me not understanding how a person is "civil", while I was just simply trying to make it clear if we had the same interpretation of the word so I knew what he actually meant. He hated that.

The reason for believing it was less favourable treatment because of disability: It should be obvious above.

93. Again, the Tribunal proceeded on the basis of a hypothetical comparator.
94. The transcript of the meeting of 27 June 2016 runs to 20 pages and there is nothing in the transcript to indicate any untoward treatment of the Claimant by Mr Siiankoski or Ms Goodall. He did tell her on more than one occasion that all staff are expected to act in a civil and professional manner. There was nothing that the Tribunal could find which could be interpreted as Mr Siiankoski making the Claimant seem stupid not knowing the interpretation of the word 'civil'. The Claimant does not state what it was that Mr Siiankoski said in the meeting or in his later report of the meeting which related directly to the Claimant's disability. Conduct and behaviour towards other members of staff was mentioned together with her conflicts with other members of staff. However, the Tribunal could find nothing which would amount to less favourable treatment because of the Claimant's disability. This was a perfectly proper face to face management meeting in respect of her conduct, performance at work and relationships with colleagues. The Claimant's perception may be different but the Tribunal could find no evidence to support this allegation of less favourable treatment.

Discrimination Arising from Disability – section 15 Equality Act 2010

27th of April

Annie discriminated me by not meeting me on my own terms as a dyslexic person to help me learn my job. Even though I stated out that I had problems understanding the task because of my dyslexia and how she explained it, she refused to help me any further. What I heard her say was "You have to get over it". She repeated those words several times, while I continued to say I was dyslexic. What should have been done was to try to understand what it was that I did not understand, instead of just suddenly be resentful and leave saying I "have to get over it" (as I heard it).

The reason for believing it was less favourable treatment because of something arising: She heard me say that I was disabled as a clarification to why I did not understand and asking her to continue explaining. She refused in a totally unacceptable manner.

95. Ms Thompson denied that she had told the Claimant that she needed to get over her disability.

96. It appears that the Claimant is saying that her inability to perform the tasks being required of her by Ms Thompson was something arising in consequence of her disability. The less favourable treatment appears to be being told “you have to get over it”.
97. In this allegation, there is a direct conflict between the Claimant’s account and Ms Thompson’s account. The Tribunal found it implausible that Ms Thompson, whose daughter also has a mental disorder, would respond to the Claimant simply by saying “you have to get over it”. Ms Thompson’s explanation was that she tried to reassure the Claimant that the task would get better and the more she did it, the more she would understand it, as it is one of those jobs that gets easier with practice and the best way to learn it was to persevere and keep on trying to do it. She said that if she kept plugging away at it, it would come and that she would help her. In the context of the circumstances of the interaction between them, the Tribunal thought it unlikely that Ms Thompson, who was in the process of teaching the Claimant how to carry out the task, would respond in such an abrupt and potentially hurtful way by telling her that she had to “get over” her disability.
98. The Tribunal found, on a balance of probabilities, that Ms Thompson did not say the words ascribed to her by the Claimant nor that what she said to her was meant to be a comment on her disability. The Tribunal found this allegation not proved.

Indirect Disability Discrimination – section 19 Equality Act 2010

In this section I would include the notes that Darrin had written from the 27th June 2016 in the Probationary Period Formal Review Meeting:

“Amanda’s JD states –

- Demonstrates excellent personal communication and team working skills.*
- Maintains good work relations with all members of staff and to promote effective team working.*
- Treats everyone associated with the OUH NHS Trust with courtesy and respect.*

I print the above here because of the fact that he is turning it against people with my disability. I see that I have no problems working with other people. I see myself as someone who is always offering my help and is always interested in making sure people around me is in a good position with me. But he is turning it against me by meaning that if someone else is “choosing” to misinterpret me, then it is suddenly me who is in the wrong, making me the bad person. ...

99. The Tribunal could find nothing in this allegation which could amount to indirect discrimination as defined in section 19 of the Act.
100. A group disadvantage is difficult to prove in disability cases where a range of effects exists amongst person who share a disability. That would be the

case in respect of the Claimant's disability. It is not possible to discern any group disadvantage in the allegation.

101. This allegation simply has no foundation in fact or law as a claim for indirect disability discrimination.
102. The Tribunal found that the notes referred to above were part of proper management in the course of a Review Meeting and could find nothing untoward in the notes or the conduct of Mr Siiankoski.

Failure to Make Reasonable Adjustments – section 20 Equality Act 2010

27th of April

Annie discriminated me by not meeting me on my own terms as a dyslexic person to help me learn my job. Even though I stated out that I had problems understanding the task because of my dyslexia and how she explained it, she refused to help me any further. What I heard her says was “You have to get over it”. She repeated those words several times while I continued to say I was dyslexic. What she should have done was to try to understand what it was that I did not understand, instead of just suddenly be resentful and leave saying I “have to get over it” (as I heard it). If she for some reason could not explain then she should have shown sympathy or empathy, and tried to get someone else to help or ask me if I knew of any other way to have it explained or just something. Acting the way she did, refusing to help me if I knew of any other way to have it explained or just something. Acting the way she did, refusing to help me any further and saying what she did was not appropriate.

103. The Tribunal has found above, in respect of the claim under section 15 of the Act, that the comment alleged to have been made by Ms Thompson was not proved.

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They seem to have failed totally to make reasonable adjustments, since they in the end turned out to have so many complaints on my personality, which seem to have been from a load of different colleagues. The colleagues seem to have been complaining to the authorities, and left to believe I was a bad person, increasing the possibility of me being disliked. Maybe this is even the reason for me feeling extra lonely at that department. They should instead have made sure that anyone complaining would know that there was probably a good explanation to my behaviour. Then they should had spoken to me about it, allowing me to justify myself, and then gotten back to the one complaining and saying there really was a good explanation and that I was really sorry to have been misunderstood. Giving me a chance to talk it through with the complaining colleague so that they would understand if it would happen again in the future.

104. This allegation was wide-ranging and vague and covers a period of eight months. There were complaints about her conduct and attitude towards her colleagues, but not about her personality. The Respondent knew from the outset about her disability and its effects and how it could be perceived

by others because she made that clear at the outset in her statement for the interview.

105. Adjustments were made for her during the course of training when she had asked for explanations and demonstrations to be conducted separately as referred to above. She was provided with a mentor throughout her employment and that mentor was changed at her request when the relationship with Ms Burke broke down. A performance improvement plan was put in place to assist her. Weekly meetings with her line manager were arranged. Her probationary period was extended by two months in order that she would be able to overcome the setback of lost training opportunities due to absence on sick leave and her inability to work in the laboratory with chemicals. Also, steps were taken by Ms Roberts-Gant who responded positively to the Claimant's difficulties in being unable to work in the laboratory and undertake duties for which she had been employed. She raised with her the possibility of redeployment and specifically offered support to her with this if she wished.
106. The Tribunal could find no failure to make reasonable adjustments for the Claimant's disability. On the contrary, as much as could reasonably be expected to be done was carried out to enable the Claimant to return to her duties and, if that was not possible, to consider the possibility of other employment within the organisation.

Disability Harassment – section 26 Equality Act 2010

29th of April

... Annie seem to herself have gone to tell people that I had accused her, cause suddenly all of those who had been happy and even those who had been comforting me the day before, they suddenly seemed to keep their distance. I never really spoke to them again after this incident, I just got a disappointed look most of the time, and they barely greeted me in the corridor, and one female (who was Annie's best friend out of the office) she snapped at me when I was doing my best helping a colleague with a nose bleed. She was so rude that this colleague seem to have reacted and later came to tell me again how deeply grateful she was that I had been trying to help. Renuka was that colleague. The one she snapped (Ruth) at me gave me the evil look for some time but then one day she said she was sorry when she was in the office. She realised she had done wrong. Still caused me pain though, understanding that I was that disliked, that a person I barely know or even ever spoke to, would snap when all I am doing is being as kind as I can be, helping a colleague in trouble. ...

107. The Tribunal found that the allegation of being “snapped at” and being given “an evil look” were vague and unsubstantiated. Even if they could amount to the hostile environment required by section 26 of the Act, there is no evidence to suggest that such conduct was related to her disability.

29th April 2016

... Jenny takes me to the filing room (a very lonely room far away from people). She tells me how nice I am to do filing for her: "I know it is a boring job, but it has to be done. I am so grateful that you will help me". Then she continues: "I will see what more I can get you to do for next week to keep you out of the office". So I understood it was all related to the situation with Annie. Later Helene pass by, and she confirmed that she didn't like the feeling in the office anymore and said "we can't take Annie out of the office". ...

108. The Tribunal found that this did not amount to an act of harassment in that it did not create the necessary hostile working environment for the Claimant. Even if it did, there was no evidence to suggest that it was related to the Claimant's disability.

5th May 2016

Darrin came in to the coffee room with a ridiculous smile and interrupted me in a lively conversation I had with a colleague. He was telling me that he had put a trolley just outside the office room (where I worked) with slides for the filing room. He also said that he had put a note with my name on it. Then he left. To the story is relevant that Darrin was under the impression since earlier, that I did not like doing filing in the filing room. When I went back to the office the trolley was well placed in the lonely corridor with no possibility to miss, just outside the door. On it was a BIG note with BIG letters saying "AMANDA – FOR FILING ROOM". Why would he interrupt me on a break to tell me with that smile that I was going to do something he thought I did not like – when it was placed so obvious that I could not even missed it even if he never told me about it?

The reason for believing it was related to disability. It happened after I had reported Annie as being discriminating. As it appears Darrin hated my personality because of all things that stands for my disability. Hating someone all the way through that way is what causes someone to act thrilled when they make someone do what they assume they dislike doing.

109. The Tribunal found that this did not amount to an act of harassment. It did not create the necessary hostile working environment and it was not related to her disability.

27th June 2016:

I had just been talking to Anne (team officer). I had showed her the documents I had been given by Darrin from the meeting we had earlier that day. ...

When I got to Darrin I was both in shock and devastated, with tears running down my face in a total mess I told Darrin: "I don't want you to talk to me and never write to me and never give me anything again...". And what did Darrin do? Well, he seemed enjoyed by my appearance and just gave me an awful 'smile' back!

The reason for believing it was related to disability: It was notes that clearly specified that I needed to change my personality (as in: get rid of my disability). I

was holding the documents when I got to Darrin. He had given them to me not too long before so it was clear that I was referring to them. Responding with a smile when seeing how devastated I was, to me prove how much he hated me and how much he had been enjoying breaking me apart to the worst extent.

110. The Tribunal could find nothing in any notes that specified that the Claimant needed to change her personality or get rid of her disability. Her perception that Mr Siiankoski hated her and hated her disability had no evidential foundation. This allegation appears to be based upon Mr Siiankoski having given the Claimant some documents which were old notes from an earlier meeting and that when she became upset, he smiled at her. She said that he seemed to have enjoyed her upset appearance. That was her perception but if all he did was to hand her the wrong documents and then smiled at her, that could not amount to harassment within the meaning of section 26 of the Act. It was not reasonable to conclude that the conduct of Mr Siiankoski as described by the Claimant had the purpose or effect of creating the hostile working environment alleged.

Victimisation – section 27 Equality Act 2010

111. The claims of victimisation, as with the other parts of the claims, were in lengthy narrative format but had been adequately and accurately summarised in the Respondent's submissions which the Tribunal adopted as follows.

3rd May 2016: Darrin Siiankoski protected Annie Thompson at the grievance meeting, did not listen to her, cut her off mid-sentence. Accused the Claimant of saying that Annie had lied in her note relating the argument between them on the 27th April 2016. Later Darrin Siiankoski erased a large part of the note of the meeting and tried to force the Claimant to sign it. The Claimant wrote her own version instead, and then met him half way by agreeing some amendments.

9th May 2016 – Darrin Siiankoski and Helene Euston-Mellor put lies about the Claimant into the Employee report system, saying that she was absent without leave when in fact she had gone for a coffee break and to call Occupational Health. They also accused her of writing personal emails for 30 minutes when in fact they were work-related.

26th May 2016: Sharon Roberts-Gant and Jennifer Wright, in the formal grievance meeting, used a tone of voice that was intended to make the Claimant feel ashamed of what she had done and that she was to blame for what had happened on the 27th April between herself and Annie Thompson.

3rd June 2016: Probationary Review meeting with Darrin Siiankoski and Jennifer Wright (HR Consultant) during which time they accused the Claimant of not wanting to work in the laboratory but trying to force her to work there without seeing a doctor, saying that the doctor would not want

to see her. They enjoyed putting pressure on her and having power over her because they did not like her, because of her disability.

27th June 2016 – Probationary period review meeting – Darrin Siiankoski wrongly stating that the Claimant could not complete tasks without close supervision and had not learned all the tasks in the laboratory. He referred to several periods of sickness which were taken because of harassment and discrimination in the workplace, but which he inferred made her not a good staff member. Helene Euston-Mellor later confirmed that the Claimant had performed well in the office without close supervision. However she also stated that she stopped teaching the Claimant after the issue with Annie Thompson in the office on the 27th April 2016.

Last day of work – Sharon Roberts-Gant misled the Claimant about the length of notice that she would be paid for, saying it would be one week, and not one month and that she should work a further three weeks if she wanted to be paid, making the Claimant feel that she had been dismissed.

13th December 2016 – post dismissal, post lodging of ET1: Laura Harding responded to a note that the Claimant wrote on the Histology Department Facebook Group and the Claimant's comment was subsequently deleted, and the Claimant was deleted from the Group.

112. The Claimant raised formal written grievances on 5 and 20 May 2016 which raised the issue of discrimination and she also raised the issue of discrimination on a number of occasions in the workplace with her managers. The Tribunal found that, as conceded by the Respondent, these amounted to protected acts within the meaning of section 27 of the Act.
113. The Tribunal looked at the above alleged detriments collectively and individually. Whether or not these events occurred, some of them appear to be the product solely of the Claimant's perception (for example, that a tone of voice was intended to make the Claimant feel ashamed and that others enjoyed putting pressure on her and having power over her because they did not like her). There was nothing to connect these events with the fact of the Claimant having made grievances complaining about discrimination. There was simply no evidential foundation to provide even the suggestion of a causal link between any of the above events and the making of the protected acts.

SUMMARY

114. The Tribunal found that during the course of her employment the Claimant's relationship with many of her colleagues had broken down. She herself summarised this in her email of 28 June 2016, in particular the following section:

"I am feeling abused by the whole department because the evil towards me is being supported at all levels. It is inhuman to force me to work in this evil environment, while dragging out on the time of the grievance. ... I am

unable to take more of this abuse now. I therefore demand to have Darrin taken out of my presence instantly to prevent harming me further. I also demand to have anyone else who have abused me taken out of my presence instantly: Elinor, Karam, Annie and unfortunately also Helene."

- 115. Her perception of the conduct of others towards her may have been a symptom of her disability but the Tribunal was in no position to make any assessment or conclusion regarding this aspect of her disability and behaviour.
- 116. The Claimant was prone to using extreme descriptions of the conduct of others, describing Mr Siankoski as "*terrifying*", "*horrifying*" and likening the way that he spoke to her to the horror movie "*The Shining*". Also, as stated above, she referred to the department being "*evil*" and "*inhuman*".
- 117. Even against this backdrop, and in circumstances where the Claimant was physically incapable of carrying out the laboratory role she was employed to do, the Respondent continued with her employment, extended her probation and considered redeployment. There was no evidence of any animosity towards the Claimant's disability. On the contrary, numerous reasonable adjustments were made to avoid any difficulties which the Claimant faced, or perceived to be facing, in carrying out her duties. It was the Claimant's resignation which brought the employment to an end.
- 118. The Tribunal could find nothing of any substance in the conduct of the Respondent or the Claimant's colleagues which amounted to unfavourable, less favourable or untoward treatment based upon her disability such as to justify the claims which the Claimant pursued before the Tribunal. The Claimant's perceptions of such treatment were unsupported by any reliable evidence.

Employment Judge Vowles

Date: 19 June 2018

Sent to the parties on:

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For the Tribunal Office