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EMPLOYMENT TRIBUNALS

Claimant		***Respondents***
Mrs J Adams	**AND**	London Underground Limited

Heard at: London Central — Heard on 21st and 22nd November 2018
Chambers day 23 November 2018

Before: Employment Judge J S Burns
Members: Mrs M Nathoo
Mr J F Noblemunn

Representation
For the Claimant: Mr N Toms, of Counsel
For the Respondent: Ms I Ferber, of Counsel

JUDGMENT

The claims are dismissed.

REASONS

Introduction

1. These are claims of direct sex discrimination and harassment on the grounds of sex. The Claimant is still employed by the Respondent.

2. At the beginning we had to deal with a lack of clarity in the Claimant's particulars of claim in her ET1 in paragraph 15 bullet point 1 which had been adopted as a series of questions as issues for the trial. These set out the allegations of fact relied on and read as follows; "*Was the Claimant treated less favorably by the Respondent: (a) Failing to take the findings of her grievance seriously by taking appropriate action against Mr George after it was found that he made an inappropriate comment relating to her sex? (b) Failing to arrange for Mr George to undergo a course of equalities*

training? (c) Failing to keep her informed as to the outcome of the disciplinary process and allowing Mr. George to return to her work place? and (d) Allowing her to come in to contact with Mr George on 1 November 2017?"

3. There is no difficulty in understanding what paragraphs (b), (c) and (d) mean. The difficulty was in determining the proper ambit of paragraph (a). It is agreed that the grievance referred to in that paragraph is in fact a finding of an investigation notified by letter dated 21 July 2017 (179).

4. The Respondent, prior to receipt of the Claimant's witness statement about one week before the trial, had understood this sub-paragraph as not raising complaints about the internal procedures adopted or the decision of the subsequent Company Disciplinary Investigation (CDI) panel which on 27 September 2017 determined the matters identified by the investigator.

5. At the beginning of the trial, Mr Toms explained that the Claimant wished to rely on claimed procedural failures by the CDI in (i) *not considering the Claimant's points of view*, but (ii) *instead taking account of the views of various other managers who* (it was claimed) *had closed ranks with Mr George.* In effect this aspect of the claim would suggest that the CDI itself committed sex discrimination or harassment by adopting a flawed and unfair procedure and reaching a flawed outcome. The Claimant had expanded upon this in paragraph 42 of her witness statement.

6. However, this complaint was not included by the Claimant in an email to the Respondent on 11 January 2018, which she had written complaining expressly about specific '*failures of process'* (405) up to that date.

7. The Respondent's main witness Mr Darren Clare did refer briefly in his witness statement to the process at the CDI which he stated was in accordance with the procedure set out at pages 433-437 of the bundle. However, the panel members presiding at the CDI were a Mr Proffitt and Mr Sadikot who have not been called as witnesses. Both these persons have subsequently left the employment of the Respondent. Mr Clare stated that this was the reason that they have not been called as witnesses. Nevertheless, whether or not this is so, Ms Ferber having heard Mr Tom's proposed interpretation of paragraph (a), said that if the Respondent was to try to meet this wider claim, it would be necessary to make renewed efforts to try and get Mr Proffitt and/or Mr Sadikot as witnesses or to take some other steps to try to rebut this new limb of the claim, which in turn would require an adjournment of the trial before it even started.

8. It is clear that the Claimant must have known by no later than her receipt of the Respondent's ET3 (which was served in late June 2018) what the outcome of the CDI had been. She may have known much earlier. Certainly, she knew at the time that she had not been called as a witness

by the CDI and that Mr Rogers had been allowed to return to his original work area in October 2017.

9. We find that if the Claimant wished to allege sexist flaws on the part of the CDI, then the matter should have been spelt out clearly and unambiguously in the ET1 so the Respondent and indeed the Tribunal would have understood this, but this has has not happened.

10. The wording in the ET1, and in a case management agenda which adopted that wording, as quoted above, does with some particularity identify specific items of complaint so any normal reader would understand those specific matters to be the subject matter of the complaint and not some other complaints which could easily have been made equally specifically but which are not referred to or even suggested by the words used.

11. There was a Case Management Hearing on 12 July 2018 at which a formal application could have been made to add this element. Certainly, it is too late to notify this extra limb of the claim in the witness statement.

12. We have taken note of Mr Tom's argument that it was only on receipt of disclosure in mid-August this year that it was realised by the Claimant exactly how the CDI had set about its business, but even then, no application was made or even a letter written to the Respondent to explain that these criticisms were to be made.

13. We therefore conclude that an adjournment would indeed be necessary if we allowed this amendment/expansion because otherwise the Respondent would be prejudiced unfairly in its defence. It was disproportionate and inappropriate to adjourn, which would delay the matter and waste three Tribunal days when the lists are very full and waiting times long. The overriding objective was best served by not allowing this additional limb to be introduced at this very late stage.

14. We ruled that the Claimant's allegations (that the procedure adopted by or the outcome of the CDI were flawed) were inadmissible in the claim before us.

15. We heard evidence from the Claimant, then from Mark Harding a Trade Union Official and Mick Crossley a Trade Union Representative, these being the Claimant's witnesses. We then heard evidence from Darren Clare an HR Manager and from Claire O'Neill a Senior HR Manager as Respondent's witnesses. There was an agreed joint bundle of 497 pages. We received written final submissions from the Respondent and oral submissions from both sides. Both sides produced chronologies and Mr Toms referred us to legal authorities. We have considered all this material whether or not we specifically refer to it.

Findings of Fact

16. The Claimant is a long-standing female employee of the Respondent having commenced her employment in 1994. She has been a representative of the RMT Union since 2002.

17. In 2016 the relationship between the Claimant and her then manager Mr George deteriorated. It is unnecessary for us to make findings about the underlying causes.

18. On 29 June 2016 the Claimant raised a grievance against her Manager, Mr Richard George, for making a sexist comment. She also subsequently raised a concern that he had issued her with "*suitable management advice"* without justification. Her complaint was initially investigated by Miss Lena Adesida. Miss Adesida did not up hold the complaint, and the Claimant was informed that her grievance was not up held on 26 August 2016.

19. That was not the end of the matter, as the case was assessed by Mr Joe Brown who felt that one of the allegations could constitute bullying and harassment.

20. Eventually the matter was referred to a manager accredited to investigate bullying and harassment (Miss Tracey Simms) who reviewed the case and decided to conduct a fresh investigation under the Respondent's bullying and harassment procedure.

21. Miss Simms carried out an investigation and compiled a report with various attachments, and she then issued a letter dated 21 July 2017 to the Claimant which reads inter alia as follows: - "*Re harassment complaint submitted against Mr George dated 29 June 2016 "I have now concluded my investigation and based on my evaluation of the evidence contained in my report my decision is to up hold your complaint of* ***harassment and bullying****….."*

22. On the same date she sent a letter to Mr George which reads inter alia as follows: - "*Dear Mr George, I have now concluded my investigation in to the allegation made against you on harassment and bullying by Miss Adams after fully considering all of the evidence I have upheld the complaint of harassment and bullying. The conclusion of the investigation is that there is a case to answer and as such you will be referred to a Company Disciplinary Interview. As I have referred this matter to a CDI and due to the seriousness of the allegations it is necessary for you to be moved from any employing manager roles until the conclusion of the disciplinary process. I would like to reassure you that being moved to another role within projects does not constitute formal disciplinary action nor is it a disciplinary sanction. I have made arrangements for you to be temporarily moved to Four Lines Modernisation (4LM) which is a project-based role where you will not be required to undertake any employing manager duties and you will not have staff reporting to you ….*"

23. In evidence the Claimant confirmed that shortly after she received this letter of 21 July she had a meeting with Miss Simms in which Miss Simms explained to the Claimant that Mr George was being referred to a Company Disciplinary Interview.

24. The CDI in relation to the matters referred to it by Miss Simms in relation to Mr George took place on 14 September 2017. The CDI was formed by a two-person panel Mr Proffitt and Mr Sadikot. They considered Miss Simms substantial report and interviewed Mr George and read various favourable references about him which he had caused other employees and managers to send to the CDI.

25. On 27 September 2017 Mr George was informed that the CDI had dismissed the allegations of bullying and harassment against him. There was only one minor finding against Mr George which related to one of the five charges referred to the CDI, namely that Mr George on 19 December 2016 had marked the Claimant as *"not met target*" inappropriately in an annual appraisal. The background to this was that during the investigation Mr George been removed from his previous role as the Claimant's line manager and should not have got involved in her appraisal but had done so, and the question for the CDI on this issue was why he had done so and whether it had constituted bullying.

26. The relevant findings by the CDI in relation to this matter were as follows. *"We find, based on the evidence, that although you had been instructed not to play any part in the management of the complainant while an investigation was ongoing into her complaint against you and management responsibility had been passed to another Area Manager, Jason Persaud, you did make the decision and enter the complainant's mid-year review rating as 2 meaning not on target….This has led the panel to further consider whether this action amounted to bullying or could reasonably be perceived as such, …….We …. conclude that the rating of 2 for mid-year was a justified rating based on not completing managing essentials and consistent with other CSMs around the business who had not completed them…..However, this should have been a decision taken by Jason Persaud and not you. We also feel that you attempted to mislead the panel in the disciplinary interview when you us that this was not your decision, when the evidence suggests it had been….We have also considered why you took this decision when you had been instructed not to be involved. We accept that you are the only person with access to SAP to be able to make the entry and therefore we are not concerned by the entering of the rating only the decision making of what the rating should be. We are also aware that there was a deadline for mid-year ratings to be input into SAP and this was a target you wanted to achieve…We do not find the rating to be unjust and therefore do not find it to be offensive, intimidating, malicious or insulting behaviour. We do find though that you misused your position of authority and therefore must consider whether your intension for doing this was to undermine, humiliate*

or denigrate the complainant. After careful consideration we do not find this to be the case, we believe you simply wanted to meet a target and felt under pressure to achieve this…."

27. Thus, the CDI completely exonerated Mr George of bullying, harassment or sexism. However, in view of his disobedience of a management instruction, it decided to impose on him a sanction of a written warning valid for a period of 52 weeks from 19 December 2016.

28. At some stage after the CDI decision had been notified to Mr George and prior to the 15 October 2017, the responsible Area Managers, Lina Adesida and Miss Marcia Williams approached Mr Darren Clare as a HR Manager to ask for his advice as to whether or not Mr George could be returned from his temporary secondment to his ordinary duties in the Northern Edgware area of London Underground, (which is the area in which the Claimant also works). Mr Clare advised them that Mr George could be because the CDI had exonerated Mr George of any bullying and harassment and secondly because the Claimant by this time had been released from ordinary duties and was fully occupied as an employed trade union official and thus would have less scope for day-to-day encounters and overlap with Mr George.

29. The Area Managers passed this message onto Mr George, who then caused an email (397) to be sent to a number of people including the Claimant on 15 October 2017, reading as follows:- "*Dear All, following my recent development secondment with the 4LM project team, I can confirm that I will be returning to the Northern Line at Mornington Crescent from tomorrow, Monday 16 October 2017….."*

30. On receipt of this email the Claimant forwarded it on to Tracey Simms (the person who had carried out the investigation) as follows: - "*So, pissed off right now. Did nobody think to inform me that this was going to take place, Jen"*

31. Tracey Simms replied two days later "*Hi Jenny, sorry I did not know. I'm at hols at minute but will pick up on my return"*. However, Miss Simms did not do so subsequently.

32. The Claimant's TU work takes her from one station to another in the North Edgeware area. She had a base in a trade union room in the Mornington Crescent station and she typically spends one day a week there, and the remainder of her working time is spent travelling around to various stations meeting people and having meetings.

33. Mr George's ordinary base to which he returned in October 2017 was in Camden Town but in the same North Edgware area. From time to time during the ordinary course of events he would be at meetings in which the Claimant as trade union representative would also have to attend.

34. The Claimant did not complain to HR about the news that Mr George was returning.

35. On 1 November 2017 the Claimant was at Mornington Crescent Station when, on entering an office, she saw Mr George already in the room and so she herself left the room and departed. This was the only face-to-face contact she ever had with Mr George after his return to the North Edgware area.

36. However, on 2 November 2017 she sent an email to Mr Clare as follows: *"Darren, as you are aware Shohan has a case conference this coming Tuesday at Camden Town at 14:00 can you please confirm who the Area Manager will be?"*

37. The next day on 3 November Mr Clare replied "*Hi Jenny, I have it in my diary as I will be covering it in Phillip's absence. The AM will be Richard George. Kind regards"*

38. This provoked a response from the Claimant as follows: -"*As you are aware I submitted a grievance which then became a harassment and bullying complaint against my employing manager Richard George, as I am sure you can appreciate I now feel totally let down by London Underground and I am fearful and anxious that any contact with him may lead to further conflict. I am now seeking legal advice on the matter, but in the interim I am still health and safety rep for the Edgware group and I have regular contact with all the Area Managers. In light of this I am requesting that you take steps to ensure that I am not forced to speak or meet with AM George whilst still being able to discharge my trade union duties in full…."*

39. Mr Clare then tried to arrange a face to face meeting informally with the Claimant late on 3 November to speak to her about the matter but she became distressed and the meeting was ended by Mr Clare so as not to cause further distress.

40. He then emailed the Claimant on 6 November at mid-day as follows: -"*Hi Jenny, first I would just like to apologise if my attempt to talk to you about this Friday caused you distress, that certainly was not my intention. I am trying to arrange for alternative Area Manager to manage Shohan's case conference tomorrow and I am just waiting to hear back around the AM's availability. In the event I don't manager to get cover I will look to reschedule to facilitate another manager dealing with it but will keep you posted".*

41. In the event another Area Manager was not available and so the meeting was postponed.

42. As Mr Clare himself acknowledged he did not handle these matters well. He lacked sensitivity and foresight, firstly by not ensuring that the Claimant was independently and promptly informed in advance that Mr

George would be returning. His email of 3 November was also thoughtless. When he received the Claimant's email of 2 November he should have realised, without it having to be spelt out any further, that Richard George being the Area Manager in charge of the case conference the following Tuesday would be likely to cause problems for the Claimant. It should not have been necessary for the Claimant to have to come back to him with a second email on 3 November to explain what should have been obvious to him already.

43. However, when he belatedly realised that he had been acting insensitively over this matter, he made sincere attempts to engage with the Claimant late on 3 November and in the subsequent week to placate the Claimant and deal with her more sensitively and sympathetically.

44. Mr George remained in the Claimant's work area and she took active steps to avoid coming in to contact with him. She was also off sick for two weeks.

45. Mr George was not moved to another work area until January 2018 and when that move took place it was due to a reorganisation unrelated to the Claimant's case or concerns.

46. The Claimant eventually presented a formal complaint to the Respondent about the process by which Mr George had been returned to her work area. She complained "*I wish to submit a grievance against London Underground……. Specifically, I was not advised of the outcome where I was placed in a vulnerable position at my place of work where I had met the Respondent who had returned to his normal role as my employing manager without any prior warning"*

47. This complaint was inaccurate because at that stage Mr George was not the Claimant's employing manager and had nothing to do with her management.

48. Claire O'Neill a Senior HR Manager attempted to engage with the Claimant in relation to this fresh grievance and suggested on 22 January 2018 that she would like to do so informally although this would not take away the formal option should the Claimant wish to pursue it. But following Miss Claire O'Neil's email to the Claimant of 22 January 2018 the Claimant failed to respond further in relation to this fresh grievance and instead approached ACAS and launched her Employment Tribunal claim.

49. Nobody formally informed the Claimant about the outcome of the CDI. The first clear information about what the outcome had been was provided by the Respondent in its ET3 at the end of June 2018. No one apart from Mr George had told the Claimant that Mr George would be returning to the Claimant's work area or the reasons why the decision had been made.

50. In evidence Mr Clare clarified that it is not usual practice for complainants to be informed of the outcome of CDI's or of the fact that that the process has been completed. The Claimant did not challenge this before us.

51. However, Mr Clare freely accepted that the Claimant should have been informed promptly before Mr George came back in to her work area. He said in his witness statement and in his oral evidence before us that he had not done so because he did not realise that it was his responsibility and that he thought that Miss Simms would do so, either because Miss Simms had found out about this from the CDI or from discussions with him. However, in fact no such discussions about this had taken place between Miss Simms and the CDI and/or with Mr Clare regarding Mr George's return. He apologised in his witness statement and in his oral evidence saying that he had been very busy at the time and that he had failed to take responsibility for the matter and had neglected to make sure that the information had been provided to the Claimant promptly.

52. We were taken to two procedures in the bundle. The first is the Respondent's harassment and bullying procedure (in which Miss Simms had been involved), this starts at page 413 of the bundle. The second is the Respondent's discipline at work procedure which starts at page 433.

53. The harassment and bullying procedure sets out various steps which the investigator should take culminating in paragraph 9.7 on page 418 which reads as follows: - *"If the outcome is that there is evidence of harassment or bullying then one of the following would normally apply: (a) referral to the disciplinary procedure for Gross Misconduct (for serious or persistent harassment or bullying) or Misconduct (for less serious instances; and/or (b) other formal (or informal) action to resolve/address the underlying concern (for example, training, support, mediation, behavioural change)… 9.8 If the outcome is that there is not evidence of harassment or bullying, the Manager (or Accredited Manager) will meet with the Complainant and separately with the Respondent, to explain their conclusion….*

The Law

Direct sex discrimination

54. s.13 of the Equalities Act 2010 provides that a person discriminates against another if the cause of a protected characteristic he treats another less favourably then he treats or would treat others. The requirement is on the Claimant to show less favourable treatment by comparison with an actual or hypothetical comparator whose relevant circumstances must be the same or not materially different.

Harassment

55. s.26 provides that a person harasses another where the harasser engages an unwanted conduct related to the relevant protected characteristic which has the purpose of effect of violating the others dignity

or creating an intimidating, hostile, degrading, humiliating or offensive environment for him…… In deciding whether conduct has this effect the following must be considered: the perception of the other, the other circumstances of the case and whether it is reasonable for conduct to have that effect.

56. Mr Toms in relation to the claim of harassment referred us to two authorities namely, **Contey v Parking Partners Limited 2011 ICR AT349** especially at paragraphs 26-32 inclusive and of **Unite the Union v Nailard 2018 EWCA1203** especially at paragraph 78.

Onus of proof

57. s.36 provides that if there are facts from which a Court could decide in the absence of any other explanation that a person has contravened a provision under the Equality Act the Court must hold that the contravention occurred unless the person shows that he did not contravene the provision.

Conclusions

58. The first question is whether "*the Respondent failed to take the findings of the Claimant's grievance seriously by taking appropriate action against Mr George after it was found that he made an inappropriate comment relating to her sex".*

59. We find that this is a complaint that the action taken against Mr George, in the wake of Miss Simm's findings, was inappropriate

60. The action which the Respondent took against Mr George in response to Miss Simms findings were (1) to move him away to a non-managerial role on a temporary secondment and (2) to refer him to a formal CDI on charges of gross misconduct, which steps we find were appropriate, sufficient and in accordance with the Respondent's established procedures.

61. During the course of the trial, Mr Toms submitted that the harassment and bullying procedure should be regarded as a free-standing procedure; and hence the findings of Miss Simms against Mr George should stand regardless of the outcome of the subsequent CDI, and, regardless of the fact that the matter had been referred to the CDI, and regardless of the CDI outcome, that Miss Simm's findings should have been a sufficient basis for the Respondent to require Mr George to undergo equalities training and/or to move him permanently to another work area. In his final submissions Mr Toms clarified his submissions in this regard, explaining that he no longer contended that action of this nature should have been taken against Mr George prior to the CDI but that, after the CDI, given the findings of Miss Simms, it would have been proper for the Respondent to have taken this action against Mr George.

62. In support of his submission Mr Toms referred to the fact that the terms of Miss Simm's letter to the Claimant dated 21 July 2017 quoted above.

This letter plainly states that the Claimant's complaints have been upheld and conveys to the reasonable reader the impression that a final determination has been made against Mr George. Furthermore, he submitted, the use of the words *and/or* in paragraph 9.7 of the bullying and harassment procedure showed that taking other types of remedial or preventive steps could be done in tandem with or in addition to the referral to the CDI.

63. We reject these submissions which are not in fact supported by the evidence of Mr. Mark Harding, the very experienced TU official who gave evidence for the Claimant. He told us that he would not expect action to be taken against alleged perpetrators whose cases were going to CDI, and independently of the CDI, save with the perpetrator's consent.

64. We find that in some cases, the allegations investigated under the bullying and harassment procedure do not proceed to a formal Disciplinary Hearing. For example, when faced with a prima-facie evidence or a case to answer, the alleged perpetrator may decide to resign or to negotiate to undergo training or accept a move as an alternative to proceeding to a Disciplinary Hearing. However, when these alternatives are not followed, it is not the practice of the Respondent to take unilateral remedial action or to impose sanctions simply as a consequence of the investigator's findings, and regardless of the CDI outcome.

65. Where the matter is proceeds to a CDI we do not accept that the findings of the investigator remain intact notwithstanding a conflicting CDI determination, or can be treated as a final determination against the alleged perpetrator upon which remedial action can be taken.

66. It is notable from paragraph 10 of the harassment and bullying procedure that the alleged perpetrator has no appeal against the findings of the investigator and it is only the complainant that has an appeal. To characterise the findings of the investigator under the harassment and bullying procedure as a final determination will be wholly contrary to the ACAS disciplinary code.

67. Furthermore, there are two express references to the term '*evidence of harassment'* in paragraphs 9.7 and 9.8 of the bullying and harassment procedure and nowhere in the written text of the policy does it suggest that the investigator can or should reach a final binding determination.

68. The letters written by Miss Simms on 21 July were incorrectly worded. It was not her proper role to make conclusive findings or to determine the allegations against Mr George but simply to record whether or not she believed that there was evidence that he might be guilty of harassment and bullying.

69. As already recorded, the Claimant well aware of the true position, as she was told by Ms Simms that the matter would have to go to the CDI. In addition, as a trade union representative involved in the discipline of

others, she was well-aware how the Respondent's procedures operated, and realised that the investigatory stage was simply and properly directed to the question of whether there was evidence of bullying or harassment rather than dealing with the matter on a final basis.

70. The next allegation is that the Respondent failed to arrange for Mr George to undergo a course of equalities training. We find that it would not have been appropriate for Mr George to be required to go on a course of equalities training, either as a result of the findings of Miss Simms or as a result of the findings of the CDI. Miss Simm's findings against Mr George should have been simply that there was, in her opinion, evidence of harassment and bullying. Her findings, such as they were, were not upheld by the CDI and, in effect they were reversed or superseded.

71. The CDI's findings do not include any findings against Mr George to suggest that he needs equality training more than anyone else does.

72. The investigator Ms Simms had found there was a case to answer but on further investigation the CDI found that the charges were not proven.

73. The Claimant complains that the Respondent *'fail(ed) to keep the Claimant informed as to the outcome of the disciplinary process, allow(ed) Mr George to return to the work place and allow(ed) the Claimant to come in to contact with Mr George on 1 November 2017*."

74. The failure to notify the Claimant of the outcome of the CDI was in accordance with the Respondent's standard practice.

75. Insofar as not notifying the Claimant about Mr George's return is concerned, Mr Clare could have handled the matter better, but it simply resulted from Mr Clare's incompetence, oversight or overload with other work. He hastened to rectify matters by apologising and trying to placate the Claimant as soon as he became aware of the situation.

76. We do not think it was reasonably incumbent on the Respondent, after the CDI, to take steps to exclude or minimise further contact between the Claimant and Mr Rogers. We do not regard the fact that Mr George was returned to his original work place where he could and would occasionally come in to contact with the Claimant as being unreasonable. Mr Rogers had been exonerated. He also had rights which had to be respected. He was in any event no longer managing the Claimant who had been released to full time TU activities. The matter was considered by two Area Managers in conjunction with Mr Clare of HR who advised them that because Mr George had been cleared and because the Claimant had been fully released to her trade union duties and would not be managed by Mr George it would be appropriately for him to be allowed to return.

77. We do not find that any of these matters were because of the Claimant's sex. No actual comparator is relied on, but we find that if a hypothetical male comparator in the same position as the Claimant had made allegations of bullying and harassment against a woman which allegations had not been upheld by the CDI, the subsequent treatment of that male comparator would have been the same. Hence the direct discrimination claim fails.

78. For purpose of the harassment claim we do not find that any of these matters were related to the Claimant's sex. The fact that the Claimant had complained about harassment and bullying on the ground of sex is insufficient to make the subsequent acts and omissions related to sex. We have to focus upon the conduct of the individual(s) concerned and ask whether their conduct is associated with the protected characteristic for example sex as in this case. We do not find that the Respondent's acts and omissions complained of were related to sex. Nor do we find that there was any "*action or a cold shoulder indictive of silently taking sides with the perpetrator*". Apart from anything else, after the CDI Mr George was not a sexist perpetrator properly-so-called. In any event what happened was for reasons unrelated to sex.

79. We accept that for her own subjective reasons the Claimant would have been upset to find that Mr George was coming back in to her work area but we do not think that any of the matters complained off had the purpose or effect of violating the Claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for her. In reaching this conclusion we have taken in to account the Claimant's perception but have concluded that in all the circumstances it is not reasonable to regard the Respondent's conduct as having that effect.

80. Hence the harassment claim also fails.

81. We did not find that the Claimant has adduced facts which passes the burden of proof to the Respondent under section 36. If we should have found that the burden shifted, we were in any event satisfied by the Respondents explanations and would have found that it had discharged the burden.

Employment Judge Burns
4 November 2018

Judgment and Reasons sent to the parties on
4 November 2018
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For the Tribunal Office