



EMPLOYMENT TRIBUNALS

Claimant: Ms Tracey Robinson

Respondent: Amazon UK Services Ltd

Heard at: London South

On: 1-3 April 2019 and 4 April in chambers

Before: Employment Judge Martin

Representation

Claimant: In person

Respondent: Ms Ahmed - Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claim of sex discrimination is unfounded and is dismissed.

REASONS

1. By a claim form presented to the Tribunal on 8 August 2017 the Claimant made claims of unfair dismissal, sex discrimination and breach of contract against the Respondent (referred to as Amazon in this judgment) and PMP Recruitment. By the time of this hearing the claims against PMP Recruitment had been dismissed and the only claim was of sex discrimination (direct discrimination and harassment) against the Respondent. The Respondent defended the claims in its response.

The issues

2. The issues for the Tribunal to determine were agreed between the parties as being those issues set out by the Claimant in tabular form titled "*Table showing Sex Discrimination by Dean Downs – Supervisor and others*". This sets out the date of the incident, the details of the incident, the persons involved and who the comparator was. There were 21 Separate incidents relied on. This document makes reference to victimisation however this was not a claim before the Tribunal.

The hearing

3. The Tribunal heard evidence from the Claimant. For the Respondent, the Tribunal heard evidence from Mr Dean Downs (Supervisor), Mr Ryan Howard (Operations Manager at the relevant times) and Mr J Caldicott (Human Resources). There was an agreed bundle of documents numbered to 153.
4. The Claimant did not provide a written witness statement despite the order of EJ Sage dated 15 August 2018 (which the Claimant attended in person) making an order that witness statement should be exchanged no later than 4 March 2019. The Respondent had served witness statements for Mr Downs and Mr Howard in advance of the hearing on the Claimant. The Claimant said she did not receive the order until the Friday before the hearing (29 March 2019). In order to progress the case, the Tribunal asked the Claimant if she wanted the documents attached to her claim form to stand as her evidence in chief taken together with the issues in the table referred to above. The Claimant agreed to progress in this way. The Tribunal noted that these documents go further than the issues in the table and advised the parties that only those matters in the table would be considered as the issues to be determined.
5. In the bundle was a schedule of loss prepared by the Claimant. The Claimant said that this was prepared before she fully understood how injury to feelings are calculated and wanted to amend it. The Tribunal was to adjourn to read the witness statements and it was suggested that the Claimant could prepare a revised statement in this adjournment. There was a dispute about when the Claimant started new employment with the Respondent saying it was in May 2018 and the Claimant saying it was months later perhaps September or October. She was unable to give a precise date. The Tribunal noted that the Claimant had been ordered to disclose all documents relating to remedy by EJ Sage in her order of August 2018 and that the Claimant had not complied. The Claimant was asked by the Tribunal to bring the contract and payslips relating to her new employment on day 2 and to let the Respondent see it before the hearing commenced. The Claimant agreed to do this.
6. Before the hearing started on day 2, the Claimant provided the Tribunal with a small bundle of documents one of which was her amended schedule of loss. The Tribunal noted that these documents contained without prejudice communications which it should not see, so returned the papers to the Claimant. The Claimant was invited to remove the numerical schedule of loss and hand this in, but she refused. The Respondent said it had a conversation with the Claimant on day 1 explaining that she should not produce without prejudice correspondence during the hearing.
7. The Tribunal asked for the Claimant's contract of employment and payslips relating to her new employment as these were not included in the documents she provided. The Claimant's response was that she was not going to provide these documents having been advised that she did not need to. It was explained by the Tribunal that she had been ordered to provide them, but she still refused to do so. The Tribunal further explained that if she was successful she would not be able to prove loss of earnings without those documents. The Claimant said she understood this, but she still was not going to provide them. The Claimant was given the opportunity to reconsider her position at the

end of day 2 and bring in the documents on day 3. On day three she said that her position had not changed, and she refused to disclose the documents.

8. As the Claimant was representing herself the Tribunal did what it could to assist her in accordance with the overriding objective. It gave her extra time on day one to prepare before giving her evidence (she asked for an extra hour which was given). The Tribunal also gave assistance in phrasing her questions so the Respondent witnesses could understand what they were being asked to answer. The Claimant thanked the Tribunal for its assistance.
9. During the Claimant's evidence it became clear that there were three matters which were in significant dispute which had not been anticipated prior to her evidence at the hearing. The Respondent suggested that Mr Caldicott who was observing the hearing could give evidence on the disputed matters. The disputes were: the origin of video footage which the Respondent produced as CCTV footage, but the Claimant maintained was a covert recording; the veracity of statistical evidence in the bundle and the contractual relationship between PMP Recruitment and Amazon. The Tribunal considered this during a break and decided that even though Mr Caldicott had not produced a witness statement (as the areas of dispute were not anticipated previously) it would be helpful to have his evidence which may assist the Tribunal in coming to its conclusions. The Tribunal asked the Claimant if she had objections and as she did not, the Tribunal heard from Mr Caldicott.
10. The Respondent had footage of an incident the Claimant relies on in her evidence concerning her leaving the Amazon warehouse and security checks done. The Respondent's position is that it was CCTV footage was part of its security on site. The Claimant said it was done from a hand held camera and was not CCTV footage as it did not have the time and date stamp which is usual on CCTV footage. The Claimant had been asked to view the CCTV footage while the Tribunal was reading its statements on day 1 but did not do so as the Respondent was unable to find the Claimant as she had sat in a different part of the building not telling the Respondent where she was. The Claimant was asked if she wanted to see the footage at the same time as the Tribunal did but did not want to do so.
11. The Tribunal decided to view the footage again once the Claimant raised her issues with its veracity. The footage is described in more detail below, but it was evident that this was a recording taken on a hand held device (the Respondent said it was a mobile phone) of a computer monitor that was playing the footage. The server where the footage is held is in Seattle and is wiped after a certain time. The Respondent wanted to capture the image before it was deleted and so recorded it on a mobile phone. The Tribunal could clearly see the computer monitor.
12. The Tribunal also noted that on the bottom left hand side there was the date and time. The Claimant was invited to view this and accepted that this was a genuine CCTV recording. She did not dispute it was her in the recording or that the recording was of the incident she relied on. Mr Caldicott was able to satisfactorily explain how the recording was made.
13. The Claimant was an employee of PMP Recruitment and was assigned to work at Amazon. PMP have staff who are on site to deal with their employees. As is common in this type of arrangement, all complaints, grievance, disciplinary

and other personnel matters for PMP staff are dealt with by them. PMP would investigate issues and if needed to would escalate matters to Amazon if there was an issue that Amazon had to deal with in relation to its staff. Mr Caldicott confirmed this, and the Tribunal accepts this is how these matters worked. If a PMP employee raised a complaint with Amazon, Amazon would pass this to PMP to deal with and do not directly become involved.

14. The Claimant's employment with PMP ended on 22 May 2018. The Respondent was not part of the decision to terminate the Claimant's employment with PMP. The Claimant was employed as an Associate and worked alongside Amazon employed Associates. She worked four days a week starting at 5 am in the 'Fresh' department. This dealt with fresh foods. The Claimant, along with the other Associates, was expected to undertake a wide range of duties which were assigned by the supervisor. There were two supervisors on the days the Claimant worked, Nora (who has since left and was not available to give evidence) for two of the Claimant's shifts and Mr Downs for the other two. They do not meet except for Wednesdays at a regular management meeting. The Claimant's main complaints are against Mr Downs. It was explained by Mr Downs and Mr Howard that what was assigned to the Associates was dependent on business needs at that time which could change from minute to minute depending on what orders were received.
15. The work in the 'Fresh' department was largely group work with several Associates working together to get orders ready, whereas other work in the warehouse was more insular with one person doing a particular thing. The gender split was about 60/40 male to female. This evidence was given by Mr Downs and although disputed by the Claimant was accepted by the Tribunal.
16. The warehouse is a busy and noisy environment. Music is played which is appreciated by all staff and put on by the supervisors. In the 'Fresh' department there is a different system as it has laptops used for orders which are connected by Bluetooth to speakers. If working using the laptops, staff can access the Internet and play music of their choice (eg from YouTube) in that area of work. This area does not have access to the music system elsewhere in the warehouse. The music forms part of the issues for the Tribunal to determine and is dealt with in more detail below.
17. The Tribunal must determine whether the Claimant was treated less favourably than a comparator because of her gender for the s13 Equality Act 2010 claim. The Claimant must show facts from which the Tribunal could conclude that there was discrimination and if she does then the Tribunal would look to the Respondent for an explanation that was not discriminatory. It is not enough for there to be treatment the Claimant considers bad or unfair and she is female, she must show a connection between the two.
18. The Tribunal started considering how the Claimant has put her case. The documents the Claimant has chosen to use as her witness statement comprise what she says were complaints made to Ms H Sanders, HR for Amazon during her employment. The Tribunal has read these carefully noting what was in the Claimant's table of issues to be determined. The Tribunal focussed on what the Claimant said in these complaints about the incidents and how she puts them in terms of them being acts of direct sex discrimination and harassment on the ground of sex. These documents (which the Tribunal notes Amazon says it did not receive) are detailed and set out lengthy narrative of various

incidents. They record several matters the Claimant is not happy with; however it does not relate these matters to unfavourable treatment on the grounds of sex either explicitly or implicitly. The Tribunal was not just looking for direct reference (eg I believe I was treated this way because I am a woman) but also for other information which would lead Amazon or anyone reading it to believe this is what she was saying.

19. The Claimant talks about problems in her relationship and communication with her colleagues (both male and female) and recites several incidents. The closest that the Claimant gets to mentioning sex discrimination is when she is discussing the music played in the 'Fresh' department. Here she describes the music as talking about female body parts and being offensive. However, the thrust of her complaint is about cultural appropriation. She says she does not find the music appropriate in a workplace (a sentiment the Tribunal agrees with) but does not say she is offended as a woman. Most of the complaint about music is in relation to the music referring to drugs and a colleague making fun of a Jamaican way of dancing.
20. Having read this the Tribunal considered that the Claimant was clearly not happy about several aspects of her employment but that these complaints do not say she feels the reason for what was happening was discriminatory based on her gender at the time they were written.
21. The Claimant provided a narrative to her schedule of loss to explain her claim for injury to feelings. In this narrative she says *"During my time at Amazon I was deliberately and continuously bullied, picked on humiliated and embarrassed by Dean Downs, for no other reason that that I could do my job better than he could. Not content to do this harassment on his own, he encouraged others, such as Bob and Frederick to participate in his harassment"*. (Tribunal emphasis).
22. It is against this background that the Tribunal went on to consider the evidence given in the Tribunal. In doing this the Tribunal considered each of the 21 issues as set out in the Claimant's table. The exact wording from the table is set out with the Tribunals findings of fact and conclusion following.

Allegation 1

Date	Incident	Person involved	Comparison
Nov 2016	Dean started working and clearly had a problem with the fact that I as a woman could do the job better than he could. On his 1 st day he had an argument with the driver so I had to take over, as I had been there the longest and knew what to do.	Dean Downs (Supervisor)	I started the job with a man named Daniel, we were trained to do exactly the same job, yet Dean NEVER treated him this way.

23. This issue does refer to the Claimant’s gender however the Tribunal notes that this was not what was in her ET1 as this table was produced later as additional information.

24. Mr Downs denies that he had an argument with a driver. The Claimant reiterated what is in this issue in her evidence. There was no other supporting evidence to substantiate this allegation. This does not show unfavourable treatment towards the Claimant. All she says is that she took over. If this was the case, on her evidence it was not because Mr Downs instructed her to do this and in any event, she did not say that having to take over was a problem; just that she was there and did this. This does not show discrimination. For clarity, the Tribunal prefer the evidence of Mr Downs and find on balance that this incident did not occur.

Allegation 2

Date	Incident	Person involved	Comparison
Nov 16	Harassment begins – He begins calling out my name, shouting it in front of people I had to work with for no reason, just to humiliate me.	Dean Downs	He NEVER did this to Daniel or anyone else.

25. There was no dispute about the warehouse being a noisy working environment which has aisles and shelves throughout. Music is played which the Tribunal could hear on the CCTV footage shown. That audio on the footage also revealed something about the noise levels with a trolley being moved in sight of the camera. The Claimant’s case is that Mr Downs would randomly shout her name out with the intention of humiliating her and she says this is harassment. Mr Downs denied shouting but did say he would call out her name if he wanted to speak to her and he could not find her. He said he did this to get the attention of other associates (both male and female) as needed. The Claimant has not provided any evidence to support this allegation despite her evidence that this was done in front of other staff. The Tribunal, having heard from Mr Downs and considering the warehouse layout and noise levels accepts his evidence. The Tribunal finds on balance that Mr Downs did not shout the Claimant’s name randomly.

Allegation 3

Date	Incident	Person involved	Comparison
Nov 2016	When I was leaving Dean followed closely behind me and as I exited the building he shouted “AND	Dean Downs	He NEVER did this to Daniel

	DON'T COME BACK!!"		
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26. The Tribunal has checked its notes of the evidence given and note that the Claimant did not cross examine Mr Downs on this point even when he denied it in his oral evidence. The Claimant has not provided any corroborating evidence and the Tribunal accepts Mr Downs' denial and finds that this did not happen.

Allegation 4

Date	Incident	Person involved	Comparison
[no date given]	He started trying to undermine me with my co-workers. Deliberately getting other people especially men to do the key jobs. Relegating me to the lesser jobs, like stacking boxes. He only wanted me to do the computer when no one else was there to do it.	Dean Downs	He NEVER did this to Daniel.

27. The Tribunal first considered the oral evidence given by the Claimant and Mr Downs. Mr Downs denied the allegation in its entirety both in regard to him harassing her or him encouraging others to do this. The Claimant accepted that stacking boxes and other roles she considered lesser were part of her job and within her job description.

28. The Respondent provided statistical evidence. This evidence was challenged by the Claimant on the basis that the Respondent could have tampered with the figures to suit their defence. The Tribunal was provided with 7 pages of statistical evidence collated by Mr Caldicott. Mr Caldicott was called to give evidence of how he obtained the information. He told the Tribunal that he called up the records relating to the Claimant's hand-held device and that the data related to this information only and not when (on the Claimant's case) she did not have one at the start of her employment and used someone else's. This device records what work an employee is undertaking and gives instructions to the employee about what they should be doing.

29. Although the Tribunal accepts the data on the database is read only, the Tribunal considers that once the data is downloaded it is possible to change the figures in the Excel spreadsheet. However, even though this is possible, the Tribunal does not find that this happened and accepts Mr Caldicott's evidence that he did not manipulate the figures. In summary these spreadsheets show that the Claimant was not given a disproportionate amount of what she considers lesser jobs than Daniel or any other Associate.

30. Even if the Tribunal disregarded this statistical evidence, the Claimant has not provided any evidence to support her allegation. The Tribunal finds that the Claimant was allocated work she was employed to do, and which was within the ambit of her job description and she was allocated the work on the same basis as all other Associates. The Tribunal accepts the Respondent’s evidence that depending on training some Associates will not undertake certain work and as a result spend more time on other tasks.
31. In her evidence the Claimant alleged that it was directly discriminatory that Daniel was not given removal work to do. This is taking the rubbish out. Mr Downs said Daniel was not trained to do this so was not given this work. He said he had a matrix showing what individual Associates could or could not do but this was not before the Tribunal. The Claimant accepted that she did not know what training others had done but commented that you do not need to be trained to do removals. Overall and on the balance of probabilities, especially considering the statistical evidence the Tribunal does not find this allegation to be made out. The Claimant provided no evidence to support her arguments.

Allegation 5

Date	Incident	Person involved	Comparison
Dec 2016	He began to encourage others to join in his mistreatment of me. I found that both Nora and Dean were always giving me the “Removals to do, which meant that every shift I had to deal with the rubbish. I even heard him say to Bob and Nora that I liked doing it while they laughed.	Dean Downs (Supervisor), Nora Regenye (Manager) and Boubacar Keita aka Bob (Manager)	He NEVER did this to Danie#l.

32. The Claimant worked four days per week. Mr Downs was the supervisor on two days, and Ms Regenye was the supervisor for the other two days. Ms Regenye has now left the Respondent’s employment and was not available to give evidence. Mr Downs denied this allegation in its entirety. The Claimant did not provide any supporting evidence and taking into account the statistical evidence the Respondent provided the Tribunal does not find this allegation to be proved as this evidence does not show the Claimant did more of this type of work than other employees. The Tribunal accepts Mr Down’s evidence that he did not have any interaction with Ms Regenye as they worked different shifts save for a Wednesday when they both attended management meetings and notes that removals is part of the Claimant’s job description.

Allegation 6

Date	Incident	Person involved	Comparison
Dec 2016	Before Dean started working I never had a problem with Bob. I always found him to be friendly and easy going. Now Dean and Bob started harassing m together. They gave me a shopping trolley filled with rubbish, pushed it at me and told me to go empty it. This after I had just finished throwing away the expired stock. This they thought was very funny.	Dean Downs and Bob	He NEVER did this to Daniel

33. The Claimant's complaint about this changed during her evidence from being asked to deal with the rubbish to a complaint solely about the type of trolley they asked her to use. She accepted that part of her job was to deal with the rubbish. The Tribunal saw a trolley typically used in the warehouse on the CCTV footage. This was a trolley with shelves which was open at all sides. The trolley the Claimant complains about is a small shopping trolley like those at supermarkets. Mr Howard gave evidence that this trolley was obtained as part of an unsuccessful trial by another manager and that there was only one of these trolleys in the warehouse. After the trial ended the trolley was used by several Associates in the same way as their normal trolleys were used. His evidence was that it may have been in an area of the warehouse where the Claimant did not work so she may not have known about it.

34. There was no evidence to support the Claimant's argument that the trolley was not used by other staff. The Tribunal specifically asked the Claimant why she felt that the type of trolley she was asked to use was discriminatory and she seemed to suggest that it implied that as women use the trolleys in supermarkets it was given to her because she is female. The Tribunal does not find this to be what happened and accepts the Respondent's argument that the trolley was to hand and was simply a vessel to take the rubbish out.

Allegations 7 and 8

Date	Incident	Person involved	Comparison
Dec 2016	Bob wanted me to empty a large container filled with stock, on my own. In order to count it and the place everything back inside. I said No. He then got 2 people to do the job he wanted me to do on my own. Complaint No 1. Bob again wanted me to do a stock count of a large container on my own, and Dean was constantly	Bob	He NEVER did this to Daniel

Dec 2016	shouting out my name for no reason, so I decided to make a complaint about the harassment to Anne-Marie. She said she would email Ryan Howard and report the matter to him. She also said that she would have a word with Dean.	Dean Downs, Bob, Anne-Marie (HR Assistant and Ryan Howard (Site Manager.	He NEVER did this to Daniel
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35. The Tribunal has taken these two allegations together as they relate to a similar situation of working alone. Anne-Marie is in fact Annamarie who works for PMP Recruitment at the Amazon site to deal with PMP employees working there. Mr Howard gave evidence that he was told that the Claimant had made a complaint by Annamarie but not what the complaint was about. He was told that Annamarie would deal with it. The complaint referred to here is the document which the Claimant has used as her witness statement described above.

36. From this allegation the Tribunal can see that the Claimant refused to do work that was allocated to her namely a blind count which she accepts is part of her job description. Her evidence was that she was asked to do this on her own and this did not happen to Daniel. Mr Howard gave evidence that this task was a normal job for an Associate to do and the number of people assigned would vary depending on how busy the department was at that particular time. If it was busy and staff were required in other areas, then one person would be assigned and if it was quiet then more people would be assigned. Clearly if only one person did the task it would take longer than if there more people undertaking it. Mr Howard's evidence which was not challenged, is that he on occasion had done this alone for a whole shift. In her submission document the Claimant says that Mr Howard's evidence was that in busy times more employees were deployed to do the count. The Tribunal has checked its notes of evidence and finds this not to be what Mr Howard said. He said in busy times, less employees are deployed.

37. The Tribunal accepts Mr Howard's evidence and does not find that the Claimant has shown any facts that show the allocation of work was unreasonable and discriminatory.

Allegation 9

Date	Incident	Person involved	Comparison
Dec 2016	I came back downstairs, and she followed me. She went over and upspoke to Dean, but it was obvious that they both found it amusing because she had a big smile on her face. She went back upstairs and Dean started shouting out my name even more loudly. I went back and complained to Anne-Marie. She told me that Ryan Howard, said he would	Dean Downs and Anne-Marie	[no comparator given]

	have a meeting with me first thing Monday morning.		
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38. The Tribunal has taken these two allegations together as they are similar in nature. The Claimant could not say what Mr Howard and Mr Downs were laughing about. She just saw them together. Mr Howard was asked about his personality with the Claimant saying he was a reserved person and not one to routinely crack jokes. Her case was that it was unusual to see him laughing and that is why she thought they were laughing at her. Mr Howard said is was midway between and extrovert and introvert and always sought to act in a professional manner at work. He denied joking about the Claimant or about any member of staff. In relation to allegation 9, the Tribunal does not find this to be made out. The Claimant has not provided any evidence that Mr Downs and Mr Howard were joking about her. She does not say for example, that she heard what they were saying, or that they were looking in her direction. She simply saw them together.

Allegation 10

Date	Incident	Person involved	Comparison
[no date given but day after allegation 9]	The next day when Ryan Howard came in he went and stood with Dean, laughing and joking. At about 9am a meeting was called for all the staff, where we were told by Bob that somebody had made a complaint about him and that he's been told by management that he's such a wonderful guy that clearly this complaint has no foundation in facts. Bob went on for about 15 minutes talking about how wonderful he is and that if anyone wants to make a complaint against him then they should go right ahead!!! Ryan Howard never said a word to me, regarding my complaint and he never has.	[no detail given]	He NEVER did this to Daniel

39. The Tribunal accepts the Respondent's evidence that as the Claimant was a PMP employee all personnel matters including complaints and grievances were dealt with by PMP and not by Amazon. Mr Howard gave evidence which was corroborated by Mr Caldicott, that he does not conduct investigations himself. His role was Operations Manager and it was the Area Manager who would be involved in investigations. The evidence which the Tribunal accepts is that it is only if PMP consider a complaint to be valid and that the complaint may need action to be taken against an Amazon employee that the matter is escalated to Amazon for it to deal with.

40. The Tribunal accepts the Respondent’s submission that if the Claimant was dissatisfied with the investigation done by Annamarie for PMP, then this was a matter against them and not Amazon. From the evidence Annamarie did receive a compliant from the Claimant and she spoke to Mr Downs and Bob about it who gave their responses to her.

Allegation 11

Date	Incident	Person involved	Comparison
[no date given]	Dean continued to harass me. Constantly shouting out my name at random times around the warehouse, before I left he was going it in meetings, while we were all standing together he would just call out my name in a mocking tone, and I would have to stand there while everyone laughed.	[no details given]	He NEVER did this to Daniel.

41. The Tribunal has already made its findings about Mr Downs shouting the Claimant’s name in the warehouse. Mr Downs similarly denies calling out the Claimant’s name in meetings. Despite there being witnesses to what the Claimant says happened, there was no supporting evidence from the Claimant to show first that this happened or to suggest it was done because of her gender. For example, there is nothing in writing from the Claimant to PMP suggesting this.

Allegation 12

Date	Incident	Person involved	Comparison
12 May 2017	Complaint No 2. After getting the information from both Nora Regenye and Natalia Nuckowska, I made a formal complaint to Helen Sanders. This is my complaint titled “Working at Amazon”	Nora Regenye and Natalia Nuckowska	[no detail given]

42. The complaint referred to is part of the attachment to the claim form which the Claimant used as her witness statement. Ms Helen Sanders works in Amazon’s HR department. The Respondent does not accept the complaint was sent to Ms Sanders. In any event this is just a statement that a complaint was made and not an allegation of discrimination, so it has not been considered further.

Allegation 13

Date	Incident	Person involved	Comparison
12 May 2017	Given a warning – 32 Points for sickness absence	[no detail given]	[no detail given]

43. There was no evidence of this and if a warning had been given it would have been given by PMP as the Claimant's employer and not Amazon. This issue has not therefore been considered further.

Allegation 14

Date	Incident	Person involved	Comparison
16 May 2017	Received email saying this was a matter for my employer PMP to deal with. She did nothing.	Helen Sanders (HRBP) Prime Now UK)	[no detail given]

44. The Tribunal has found that as the Claimant was employed by PMP it was PMP who was responsible for all personnel matters including grievances and complaints. Therefore, Amazon was acting in accordance with the contractual position between them and PMP. This was not unfavourable treatment, and not treatment on the grounds of the Claimant's gender. It cannot constitute harassment on the ground of gender.

Allegation 15

Date	Incident	Person involved	Comparison
[no date given]	Because of the way Dean was treating me other people felt that this was acceptable. People like Frederick, Nedyelka, Andrew, Sam, Latifa and Samantha and others.		He NEVER did this to Daniel

45. The Tribunal has found that Mr Downs did not treat the Claimant in the way alleged and that he did not encourage others to treat her badly. This issue is lacking in detail as it does not set out any specific events and is general only. If, as the Claimant says, she was treated badly by others, the Tribunal find that this is not because of any action by Mr Downs or him encouraging others and was because of other matters. The Tribunal heard evidence for example that other staff felt intimidated by the Claimant and avoided her. Whilst no specific finding is made in this regard, this could be a reason for any treatment the Claimant complains of from others.

Allegation 16

Date	Incident	Person involved	Comparison
Jan 2017	Whilst stowing in the isle (sic), near the back of the warehouse, I heard Frederick laughing and talking to another person in the isle (sic) behind me. Just as I walked to the end of the isle (sic) to turn my trolley, he deliberately knocked the shelf causing a large bottle of drink to fall from a high self. If I had not moved the bottle would have definitely fallen on my head. He and the other person were laughing loudly and when he didn't hear any reaction from myself he came round to pick up the bottle with a big grin on his face.	Frederick and one other person`	[no detail given]

46. The Claimant accepts that she did not report this to Mr Downs or anyone else at Amazon or PMP. Mr Downs said the first he knew of it was in these proceedings. When asked what he would have done if he had been told, he said that the person concerned would be immediately suspended and could be potentially dismissed for gross misconduct as this would be a serious health and safety issue in the warehouse. The Tribunal is surprised, given the complaints the Claimant did make, that she did not make a complaint to Amazon or PMP about this incident. There is no contemporaneous evidence of this happening and on balance the Tribunal finds that it did not happen. The Tribunal is satisfied that had Mr Downs or other management known of it, appropriate action would have been taken.

Allegation 17

Date	Incident	Person involved	Comparison
Sunday 30 April 2017 Monday 1 May 2017	Further instances of bullying occurred which cumulated into the following incident. Sunday morning Frederick, Latifa, Trevon and Andrew were playing "bashment" reggae music. The lyrics to the songs they were playing were very explicit, talking about female private parts., I did not find this music appropriate for the workplace but did not feel that it was my place to say anything as apart from Frederick, the others were Jamaican and know body (sic) else seemed to be offended by it. As they all seemed to think it was fun and	Frederick and one other person`	[no detail given]

	<p>entertaining which it wasn't, but I decided to put it down to one morning.</p> <p>The next morning (Monday), I came into work and was doing "Fresh" when Frederick put the same inappropriate Reggae music on, this time the singer was talking about drugs (marijuana).</p> <p>Don't get me wrong I am not saying that I have never listened to this music or that I minded that Frederick wanted to listen to Reggae music. What I disliked was the fact that he chose to put on "bashment" or "Dancehall" Reggae which has very explicit lyrics and can be seen as both offensive and misogynistic. That's why more Jamaicans would not play this outside of a private, social or club setting, as we know that it can be offensive to some. So you definitely would not play it at work.</p> <p>I complained and Dean told them to turn it off.</p>		
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47. The Tribunal has considered the wording of this issue. Here the Claimant says that music was played which had explicit lyrics and she considered this to be inappropriate in the workplace. The Tribunal endorses this view. However, the Claimant does not say she was offended by the music, indeed she says she has listened to it in different surroundings and contexts. The wording indicates that the Claimant's concern was that others may be offended. She does not say she was embarrassed, shocked, or that she felt that it affected her in the workplace. The key part of this issue is that when she told Mr Downs he immediately gave instructions that this music should not be played.
48. Mr Downs said he could not make out the words of the music being played so was unaware of any explicit material in it. He said the Claimant simply said she did not like it and he acted on that. The Claimant accepts that she did not raise this again with Mr Downs. Mr Downs said that if she had he would have stopped music in the 'Fresh' department begin play altogether. The Tribunal find that Mr Downs was supportive of the Claimant in dealing with this complaint.
49. The Claimant cites one time that music was played referring to female bodies, the other time she says it referred to drugs. The Claimant gave evidence that she meant that on both occasions female bodies were the subject of the lyrics. This does not assist her as she has not said she felt he dignity was violated and Mr Downs in any event acted swiftly to have the music turned off. Most of the issues relating to the music and the Claimant's evidence relating to this complained about drugs being the subject matter and on balance the Tribunal

find this was the main issue the Claimant had with that music. It is only when the music referencing drugs was played that the Claimant complained.

50. The Claimant also complained that Frederik was dancing in a style mocking skank dancing. She says she told him that as he was not Jamaican, he should put his own cultural music on. In her evidence she said that she was upset by the dancing and the fun being made of this style of dancing. The Tribunal have checked its notes of the Claimant's evidence. The judge's notes record She said "Yes, why put my music on an take the mick out of it" and "What upset me was way he dancing and taking the mick out of the music as well. Fact he did not know what playing, it was offensive". These are matters related to race not gender. The Claimant has not brought a race discrimination claim.

51. The Respondent submitted that what offended the Claimant was cultural appropriation rather than the words of the lyrics. Given the way the Claimant framed this issue in her table, the Tribunal accepts this submission. The Claimant does not say in the issues that she was offended by the sexual references in the lyrics. Her concern appears to be that others would be which is why that music is normally played in private. The Tribunal finds that the Claimant's evidence in cross examination made the focus of her issue with the music clear. Namely that she did not like someone who was not Jamaican making fun of Jamaican music and the references to drugs.

52. The fact that Mr Downs acted promptly and stopped the music being played shows that there was no discrimination or harassment by him.

Allegation 18

Date	Incident	Person involved	Comparison
Friday 5 May 2017	Complaint No. 4 The Following Friday I came in and Andrew, Monique, kaushika and Frederick, t on the same offensive music. This time I reported it to Nora, she came and told them that they needed to turn it off, to which Monique responded "so what should we listen to, Justin Bieber?" The continued to play the offensive music.	Frederick Monique, Andrew and Kaushika	[no detail given]

53. This time Nora Regenye was the supervisor on the Claimant's shift. Like Mr Downs she instructed that the music should not be played when the Claimant complained. Again, this was supportive of the Claimant. The Claimant accepted in cross examination that she had not repeated this complaint to Ms Regenye. The Tribunal repeats its conclusions above and finds this not to be less favourable treatment by Amazon and not harassment. Both supervisors acted appropriately and quickly.

Allegation 19

Date	Incident	Person involved	Comparison
Saturday 20 May 2017	Complaint No.5 Came in to do "Fresh", to find that they were playing offensive music, got to the point that I told Nora that I couldn't work with them anymore. She told me that it was fine and that I could go and do something else.	Frederick, Aatifa, Tevon and Andrew.	[no details given]

54. Again, this illustrates that Nora supported the Claimant allowing her to work elsewhere. The wording of this issue does not say that the Claimant complained about the music to Ms Regenye on this date and given in cross examination she said she only complained once, the Tribunal conclude that even if music was the problem, this was not put to Ms Regenye.

Allegation 20 and 21

Date	Incident	Person involved	Comparison
Sunday 21 May 2017	Came in and it was the same music being played. So I sat in the toilet until 6.30 am, when "Fresh" was complete and I wouldn't have to work with them.	Frederick, Latifa, Tevon and Andrew	
Monday 22 May 2017	Repeat of previous day. Meeting with Natalia, where I was sacked.		

55. The Claimant did not complain to the supervisor of these shifts. The evidence is that if she had they would have taken appropriate action. The Claimant starts work at 5 am and therefore she was in the toilet for 1.5 hours. Mr Downs said that on the Monday, he was the supervisor and that there was no music being played at 5 am. He said this was because he was late in collecting the laptop computers and taking them to the 'Fresh' department. It is only from these computers that the music can be played in 'Fresh' over the loudspeakers. He told the Tribunal that when he got to the 'Fresh' area, the Claimant was not there and that he was told that she had been in the toilets from when she arrived at work. He tried to speak to the Claimant by sending someone into the toilets and when she came out asked if she was okay. He did not discuss why she was there as this was a matter for PMP to deal with as the Claimant's employer. The Claimant disputed this, but on balance, the Tribunal prefer the evidence of Mr Downs.

Credibility

56. A substantial part of this case relies on one person's word against the other and there is very little contemporaneous evidence available. The Tribunal found both Mr Downs and Mr Howard to be credible witnesses and accept their evidence. They did not try to cast the Claimant as a terrible employee and

accepted readily that she was experienced, and her work was good. Their issues were about her attitude.

57. The Tribunal did not find the Claimant's evidence to be credible. The Claimant was quick to take offense and raise issues where there was nothing to raise an issue about or take offence about. For example, she maintained that the Respondent had covertly recorded the incident between her and the security guard. The CCTV was clear in that it was a recording of a video being played on a computer monitor, hence the wobbles. She said there was no date or time on the recording when there was. The Tribunal had asked the Claimant to view the CCTV footage before she gave her evidence so it was fresh in her mind but she did not make herself available even though the Respondent tried to find her and did not want to view it in the Tribunal when played to the panel.
58. The Claimant's refusal to comply with Tribunal orders and bring in evidence of her new job is relevant. The Tribunal politely asked several times for her to provide this information, but she simply said she would not do so.
59. The Claimant makes spurious allegations against ACAS, saying that they left her suspicious telephone messages when they did not.
60. The Claimant said that the security guard was tugging at her trouser leg and trying to pull up the back of her jumper. This is not what the CCTV footage showed. The footage showed the Claimant being treated in the same way as her colleague who was also captured on the CCTVG footage.
61. The Tribunal found the Respondent's evidence was to be preferred where there was a conflict of evidence which was not supported by any documentary evidence.

Submissions

62. The Respondent gave detailed oral submissions. The Claimant was given time to consider her response to those submissions in an adjournment. The Claimant provided some written submissions and a list of cases with comment. She did not wish to speak to her submissions but made a few comments on the Respondent's submissions. In coming to its conclusion the Tribunal considered all submissions very carefully including the case law the Claimant referred to.

Conclusion

63. Considering the findings above, the Claimant's claims of direct sex discrimination and harassment are dismissed.
64. The Respondent indicated it would make an application for costs if the Claimant was not successful in her claim. If an application is to be made it must be made no later than 28 days from the date this judgment is sent to the parties. The application must contain full grounds with a properly particularised schedule of the costs claimed signed by a partner of the law firm.
65. On receipt of the application the Tribunal will issue directions including provision for the Claimant to respond in writing to the Respondent's application and details of how the application will be dealt with (i.e. on paper or in a costs hearing).

66. The Claimant should note that in considering an application for costs the Tribunal can consider evidence of the Claimant's means. This means that the Claimant will be expected to provide documentary evidence of income, savings and expenditure. Without this information the Tribunal will not be able to take her means into account when considering first whether to make an order for costs and second the amount of any costs order. The Claimant is referred to rules 74 to 79 of the Employment Tribunal Rules of Procedure 2013 and the Presidential Guidance note 7 which can be found online at www.judiciary.uk.

Employment Judge Martin
04 April 2019