EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Miss Ceciliah Chigwada **v** **G4s Secure Solutions (UK) Limited**

Heard at: Watford **On**: 26-28 September 2018
8-9 January 2019 (in Chambers)

Before: Employment Judge Bedeau
Mr S Bury
Mrs M Harris

Appearances

For the Claimant: In person
For the Respondent: Mr N Sheppard – In house solicitor

RESERVED JUDGMENT

1. The claims of public interest disclosure detriment are not well-founded and are dismissed.

2. The claim of public interest disclosure dismissal is not well-founded and is dismissed.

3. The claims of harassment related to race are not well-founded and are dismissed.

4. The claims of harassment related to sex are not well-founded and are dismissed.

5. The claims of direct discrimination because of sex are not well-founded and are dismissed.

6. The claims of direct discrimination because of race are not well-founded and are dismissed.

7. The claim of failure to provide a written statement of initial employment particulars is not well-founded and is dismissed.

8. The listing of this case for a provisional remedy hearing on 3 April 2019, is hereby vacated.

REASONS

1. By a claim form presented to the Tribunal on 23 June 2017, the claimant made claims of: public interest disclosure detriment; public interest disclosure dismissal; harassment related to race and/or sex; direct sex discrimination; direct race discrimination; and failure to provide the initial employment particulars. These claims arise out of her employment with the respondent from 14 November 2016 to 6 March 2017, as a site supervisor.

2. In the response presented on 31 July 2017, the discrimination and public interest disclosure claims are denied. The respondent averred that the claimant was dismissed on the grounds of capability within her 6 months' probationary period.

The Issues

3. On 29 January 2018, at the preliminary hearing before Employment Judge Heal, the claims and issues were clarified and are set out below as in the case management summary and orders.

4. *"Public interest disclosure claims*

   4.1 Did the claimant say or write the following? The claimant says that:

      4.1.1 In or about December 2016, she told Mr Abdullah and David Barclay at Vocalink that Mr Waheed did not have a security licence;

      4.1.2 in or around February 2017, she told Mr Barclay that Mr Ahmed was removing people's names from the roster without the claimant's knowledge and putting his name down instead because he wanted to work extra shifts;

      4.1.3 in or around January/February 2017 she raised with Mr Abdullah and Mr Barclay that she received a reference from payroll that did not contain her correct job title and salary;

      4.1.4 on 19 January 2017, she told Mr Abdullah that she felt that his suggestion that she write her own reference was immoral. She also told Mr Barclay about this;

      4.1.5 in or around January/February 2017, she raised concerns with Mr Abdullah and Mr Barclay that the information in her contract was not a true reflection of the terms of her employment;

4.1.6 in or around January 2017, she raised with Mr Abdullah and Mr Barclay that there were complaints about Asian staff sleeping on duty and disappearing from the Rickmansworth site for hours on the night shift and weekends leaving the claimant's staff stranded dealing with alarms on site;

4.1.7 in February 2017 the claimant told Mr Barclay that Mr Ahmed said he would not follow her instruction on how to keep premises secure after a security breach;

4.1.8 in March 2017, during the claimant's appeal meeting, she said that she did not have any 1:1's with Mr Abdullah and he was falsifying records to make it look as though she did; she also raised other key issues that she had previously raised. She had raised the issue of falsification of records with Mr Hall in February 2017.

4.2 In any or all of these, was information disclosed which in the claimant's reasonable belief tended to show one of the following?

4.2.1 A criminal offence had been committed;

4.2.2 A person had failed to comply with a legal obligation to which he was subject;

4.2.3 The health or safety of any individual had been put at risk;

4.2.4 Or that any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

4.3 If so, did the claimant reasonably believe that the disclosure was made in the public interest?

4.4 If so, was that disclosure made, to:

4.4.1 the employer?

<u>Detriment complaints</u>

4.5 If protected disclosures are proved, was the claimant, on the ground of any protected disclosure found, subject to detriment by the employer or another worker in that

4.5.1 In December 2016 the claimant was shouted at by Mr Abdullah;

4.5.2 in or around December 2016, the claimant was cut out of discussions about Mr Waheed although she was his supervisor;

4.5.3 in January 2017, she was given a reference that did not have her correct job title and salary on it;

4.5.4 in or around January 2017, Mr Abdullah refused/failed to give her a correct reference due to the claimant refusing to draft the details of what she required within the reference;

4.5.5 in December 2016 Mr Abdullah told her that she was subject to a probationary period although she had been told otherwise at the start of her employment;

4.5.6 on 9 February 2017, the claimant was required to attend a probationary meeting;

4.5.7 Mr Abdullah did not escalate the claimant's grievance which she submitted on 13 February 2017;

4.5.8 the respondent failed properly to investigate or appropriately deal with the claimant's appeal and/or failing to arrive at a reasonable outcome.

Unfair dismissal complaints

4.6 Was the making of any proven protected disclosure the principal reason for the dismissal?

4.6.1 Did the claimant have at least two year's continuous employment? No, the claimant says that she was employed between 13 November 2016 (the respondent says 14 November) and 6 March 2017.

4.6.2 If not, the burden is on the claimant to show jurisdiction and therefore to prove that the reason or if more than one the principal reason for the dismissal was the protected disclosure(s).

5 *Section 26: Harassment on grounds of race and/or sex.*

5.6 Did the respondent engage in unwanted conduct as follows:

5.6.1 in November 2016, Mr Healy told the claimant that she would never get respect from the Asians on site because they did not respect women;

5.6.2 in December 2016 after the claimant told staff that they had to work 4 days on and 4 days off, Mr Waheed and Mr Ahmed confronted the claimant, and were abusive and hostile towards her, shouting and calling her incompetent and inexperienced for the job;

5.6.3 at the end of February 2017, after the claimant had sent out a memo to her team instructing staff to adhere to site instructions and company regulations, Mr Ahmed told her that he was not going to listen to what she told him as he knew how to do his job.

5.7 Was the conduct related to the claimant's protected characteristic of her race and/or sex?

5.8 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.9 If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.10 In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6 *Section 13: Direct discrimination on grounds of sex*

6.1 *Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act 2010? The claimant says that:*

6.1.1 *She was not shown any respect from Mr Abdullah, Mr Waheed and/or Mr Ahmed;*

6.1.2 *When Mr Abdullah allowed Mr Waheed to work on site without a valid SIA licence, the claimant tried to get Mr Abdullah to sort out the issue: she called him about the incident and Mr Abdullah was nasty to the claimant and showed her no respect (paragraphs 17 to 19 of the particulars of claim);*

6.1.3 *Mr Waheed and Mr Mohammed shouted at the claimant in the office saying that she was incompetent and did not know anything about the job (paragraph 14);*

6.1.4 *Mr Abdullah transferred Mr Waheed to another site without consulting the claimant (paragraph 17);*

6.1.5 *Mr Ahmed would not take instructions from the claimant in the course of his duties; (paragraph 27).*

6.2 *Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on Douglas Healy and/or hypothetical comparators.*

6.3 *If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?*

6.4 *If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?*

7. *Section 13: Direct discrimination on grounds of race.*

7.1 *Has the respondent subjected the claimant to the following treatment falling within section 39 Equality Act, namely:*

7.1.1 *the claimant was not allowed to claim overtime although Douglas Healy, a white supervisor was allowed to claim overtime (paragraph 44);*

7.1.2 *Mr Waheed and Mr Ahmed shouted at the claimant in November 2016: Mr Waheed told the claimant that she was useless, did not know anything and was incompetent in her job. Sam said that she had come to cause problems and that everything she said was coming was not coming from the client but was just from the claimant;*

7.1.3 *The respondent allowed Mr Waheed and Mr Ahmed to shout at the claimant.*

7.1.4 *In December 2016 after a telephone call with Barbara on the Licensing Department about Mr Waheed not having a licence, and when the claimant spoke to Mr Abdullah about her salary, Mr Abdullah was angry and abusive to the claimant; he told her that he was in a bad mood because of the call with Barbara, told the claimant that she was still in her probationary period, and said that if she was not happy with her salary, she was free to leave (paragraphs 17 and 18).*

7.1.5 *Sam Ahmed would talk to the claimant with disrespect on occasions when she gave instructions or about issue of overtime; he removed people's names from the roster without the claimant's knowledge and put his own name down instead.*

7.1.6 *Mr Ahmed showed disrespect to the claimant in not wanting her to employ anyone else, and Mr Abdullah supported him in that (paragraph 15).*

7.2 *Has the respondent treated the claimant as alleged less favourably than it treated or would have treated the comparators? The claimant relies on Douglas Healey and/or hypothetical comparators.*

7.3 *If so, has the claimant proved primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the protected characteristic?*

7.4 *If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?*

8. *Is the claim in time?*

8.1 The claim form was presented on 23 June 2017. ACAS received notification on 11 May 2017 (day A) and an EC certificate was sent on 23 May 2017 (day B). Accordingly any act or omission which took place before 12 February 2017 is potentially out of time, so that the tribunal may not have jurisdiction.

8.2 Was it not reasonably practicable to present the claim in time and if not, was the claim presented in such time as the tribunal considers reasonable?

8.3 Does the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

8.4 Was any complaint presented within such other period as the employment Tribunal considers just and equitable?

9. *Failure to provide the claimant with a written statement of her terms of employment*

9.1 The claimant says that she was asked to sign a document online but she was not sent a written copy of that document.

9.2 When the respondent did purport to send her a copy of her contract, it did not state her role, working hours, salary, the scale or rate of remuneration or method of calculating remuneration or terms and conditions relating to hours of work. Holiday entitlement was not clearly included specifically for the claimant; it may not have included particulars of the pension or pension scheme, there was no brief description of the work for which claimant was employed, her place of work or where she was permitted to work.

9.3 When the proceedings began was the respondent in breach of its duty to her under section 1(1) of the Employment Act 1996? (Employment Act 2002, section 38).

10. *Correct respondent*

    10.1 Which of the two respondents employed the claimant?

11. *Remedies*

    11.1 If the claimant succeeds, either in whole or part, the Tribunal will be concerned with issues of remedy. The claimant seeks compensation.

    11.2 There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, and/or the award of interest."

The Evidence

12. The Tribunal heard evidence from the claimant who did not call any witnesses. On behalf of the respondent evidence was given by Mr Douglas Healy, site supervisor and by Mr Abu Abdullah, contract manager.

13. In addition to the oral evidence the parties adduced a joint bundle of documents comprising of 200 pages. The claimant produced a further bundle of documents. Additional documents were produced in evidence during the course of the hearing by both the claimant and the respondent. References will be made to the pages as numbered in the bundle.

Findings of Fact

14. It was agreed that the correct respondent is G4S Secure Solutions (UK) Ltd. It is a large employer with sites throughout the United Kingdom and employs between 21,000 to 22,000 people. It provides security services at a site occupied by a company called, Vocalink, in Dunstable. Vocalink is a client of the respondent.

15. In or around September 2016, the respondent was recruiting someone to fill its site supervisor vacancy at the Dunstable site. The claimant is an experienced security work with a Level 5 Diploma in Management and Leadership from Bedford University. She has extensive operational and management skills, including 10 years in the airline/airport industry and 8 years with the police. As an external candidate, she expressed an interest in applying for the position and was written to by Mr Abu Abdullah, contract manager – southern region, on 16 September 2016, enquiring whether she was still interested in the role. She responded the same day confirming her interest and asked about the starting salary. Mr Abdullah responded on 21 September 2016, stated the following:

    "Hi Ceciliah

    I am really sorry for the delayed reply.
    The pay rate is currently £9.34 per hour, working hours Monday to Friday 07:00-17:00. Bank holidays not required so can take as annual

leave. Standard 28 days holiday per year, including bank holidays. The pay is monthly – on the 15th of each month, for the previous month. i.e. for hours worked in the month of September, pay is on the 15 October etc.
I hope this is satisfactory."

16. On the 29 September 2016, the claimant was interviewed by Mr Abdullah in the company of Mr David Barclay, head of physical security, for Vocalink. She was successful and was offered the position to commence on 14 November 2016. On 11 November 2016, she electronically acknowledged acceptance of the respondent's statement of terms of employment. (page 93 of the joint bundle)

17. Paragraph 5.1 of her statement of terms and conditions stated that her contracted hours of work would be an average of 42 hours a week taken over a period over several weeks, equating to 182 hours per calendar month. It confirmed her commencement date being 14 November 2016 but her location would be dependent on her assignment by her line manager, but she may be required, from time to time, to work at different locations or on assignment in the operating area as directed by her manager.

18. We were satisfied, having heard the evidence given by Mr Abdullah and by the claimant and having considered the email referred to above on 21 September 2016, that the claimant's contracted hours were 50 per week working Monday to Friday 07:00am to 05:00pm and that her rate of pay was £9.34 per hour.

19. The respondent's human resources department is based in Stockton. Prior to commencing employment, the claimant went on leave. She said in evidence that Mr Abdullah had told her that during her leave and prior to the commencement of her employment, the respondent would be conducting a screening process, namely would be vetting her. When she returned from holiday the screening process had not been completed. The screening department contacted her stating that they had to start all over again. She spoke to Ms Paula Plimmer, recruitment officer, about the delay. She explained to Ms Plimmer that Mr Abdullah had said to her that upon her return from leave, the screening process would be completed. She alleged that Ms Plimmer then said to her "*You will not tell me how to do my job*".

20. We find that the problem was that the respondent was waiting for references to complete the screening process. The claimant spoke to Mr Abdullah regarding the delay and the alleged comment made by Ms Plimmer. Mr Abdullah, in turn, spoke to human resources and Ms Plimmer was withdrawn from the claimant's screening.

21. The alleged conduct by Ms Plimmer caused the claimant to reflect on whether to join the respondent and she expressed her feelings to Mr Abdullah. We were, however, satisfied that the two referees' contact details which she supplied to the respondent's screening officers, Ms Laura Morris and Ms Paula Plimmer, were incorrect and they were unsuccessful, initially, when they tried to contact them. One referee's number was out of service

and the other was an unrecognised number. The screening officers communicated their difficulties to the claimant on 2 November 2016.

22. On 2 November 2016, the claimant emailed both Ms Plimmer and Ms Morris challenging their behaviour towards her. She stated that she was unhappy with the emails they sent her regarding the contacts being inaccessible, asserting that that was not the case and that the screening process was getting complicated. She further stated that she had received a complaint from one of her referees about a discussion that person had with one of the screening officers.

23. Having read the email trail between Ms Morris, Ms Plimmer and the claimant and having regard to the allegation made in paragraph 9 of the claimant's claim form where she asserted that Ms Plimmer said to her "*you will not tell me how to do my job*", we find that that statement, if it was made, has to be taken in context. The claimant was anxious to start work. The problem was the referees' details she provided. This caused some delay in the screening process and tension between the claimant and the screening officers during which it was likely that words were exchanged, and it is probable that Ms Plimmer made the above comment. A full verbatim account of precisely what was said was not given to the tribunal. We were unsure whether those exact words were used making it difficult for this tribunal to make findings of fact.

24. The claimant did have some managerial responsibilities for the Rickmansworth site as it was part of her induction in November 2016.

25. In an email dated 11 November 2016 from Mr Abdullah he agreed to remove the 90% probationary pay rate. This meant that the claimant received her full salary. The email made no reference to her no longer being on probation. She commenced her employment with the respondent as site supervisor on 14 November 2016.

26. Mr Douglas Healy, prior to the claimant's employment as site supervisor, worked at the Dunstable site for 28 years as a supervisor before relinquishing that position due to stress. Thereafter he took on the lesser role in terms of seniority, of security officer.

27. When the claimant commenced employment, she said she had a discussion with Mr Healy in November 2016 who told her she would "*never get respect from the Asians including Mr Abdullah as Asians did not respect women in general*". In her claim form she further stated that Mr Healy had said to her that Mr Sagheer Ahmed, security officer based at Dunstable, had said that he would not take instructions from a woman.

28. Mr Healy, in evidence, denied making that statement to the claimant. He said that he took exception to the allegation as he was brought up by a racist father in the 1960s. He has black and Jewish friends and there were no sexist comments made in his discussion with the claimant.

29. As we have already stated, Mr Healy was acting up before the claimant arrived as site supervisor but had earlier stepped down from that position because he found it very stressful. There were a number of work place issues. He, we find, did brief the claimant when she first arrived on site to take up her position as site supervisor. We find that he had a frank discussion with the claimant believing he was helping her and did say the words attributed to him.

30. Scheduling or the rostering of staff, we find, was not done by Mr Abdullah. He is responsible for around 150 employees and spends most of his time visiting the various sites under his supervision and speaking to the supervisors. The schedulers as well as the site supervisors are engaged in the rostering of staff. This is not the function of a contract manager, such as Mr Abdullah.

31. The claimant said that in December 2016, when she entered the respondent's computer system to schedule work for Mr Imran Waheed, security officer, the system would not accept her schedules for him. She drew this to Mr Abdullah's attention who, she claimed, allowed Mr Waheed to perform his duties as a fully-fledged Security Industry Association "SIA", security officer, when he did not have the necessary accreditation.

32. We were taken to the documents in the joint bundle which shows that Mr Waheed applied for an SIA licence and was granted a non-frontline licence on 3 October 2016 which expired on 2 October 2019. The licence did not enable him to engage in frontline duties which was required by the respondent at the Dunstable site (pages 98-100).

33. We find that the matter was first raised by the respondent's SSUK Licencing Shared Services on or around 8 November 2016 and on the 11 November 2016, Mr Abdullah wrote to Shared Services informing them that the Dunstable site was unable to schedule Mr Waheed because of his limited SIA licence (page 97).

34. Once it was realised that Mr Waheed could not work with the licence he had, the respondent exercised its powers, in that it had a specific dispensation within SIA to issue what is called a Licence Dispensation Notice while Mr Waheed's application was considered for the correct SIA licence. Mr Waheed was issued with the Licence Dispensation Notice on 21 December 2016 to enable him to engage in normal security duties while his licence application was being processed (page 103-104).

35. We further find that the issuing of the Licence Dispensation Notice is common within the security industry and that from 11 November to 21 December, when the Licence Dispensation Notice took effect, Mr Waheed was not scheduled to engage in normal frontline security work. We did not accept the claimant's evidence that she was the person who drew this problem to Mr Abdullah's attention.

36. The respondent has another site in Rickmansworth with the same client. The claimant had some managerial responsibilities for that site. She had had visited it as part of her induction.

37. A vacancy arose at the Rickmansworth site and Mr Waheed expressed an interest in being transferred there. The claimant alleged that she was not in discussions, as his supervisor, regarding Mr Waheed's transfer. We did not accept this contention by her. We were taken to an email from her to Mr Abdullah, regarding Mr Waheed's transfer in which she wrote:

> *"Hello Abu*
> *Thank you. Will advise before end of day to today when Imran can move over Rickmansworth*." (page 101)

38. The claimant alleged that on 23 November 2016, Mr Ahmed and Mr Waheed were abusive and rude towards her and said that she "*developed a sharp physical pain to my heart*". She stated that she had never had anyone speak to her like that and that they had been mean to her. The incident was in the presence of an engineer called Mikey who allegedly heard the exchange. She emailed Mr Abdullah about the incident in the afternoon on 23 November 2016, stating that she had drafted a report after calming down and forwarded it to him and to Mr David Barclay of Vocalink (page 94).

39. Mr Abdullah was unhappy about the claimant copying and sending her report to Mr Barclay, who was not an employee of the respondent but a third party managing the client site. Mr Abdullah was, however, waiting for a copy of the report from the claimant about the incident in order to take the necessary action, but it was not sent to him by her. He was, therefore, unable to progress matters any further (page 94).

40. We could not be satisfied as to precisely what occurred on the 23 November 2016 in the morning involving the claimant, Mr Waheed and Mr Ahmed and have been unable to make any relevant findings of fact. They were not called to given evidence before us nor was Mikey.

41. The claimant further alleged that Mr Ahmed, on occasions, talked to her in a disrespectful manner when she gave him instructions or when they discussed the issue of overtime. He allegedly removed other work colleagues' names from the roster without her knowledge, replacing their names with his own. In addition, he was disrespectful and did not want her to employ anyone else. She also stated that Mr Abdullah supported him.

42. She was not specific as to the dates when these alleged conversations took place with Mr Ahmed and the alleged statements he made about her. We were also not given specific dates when the rosters were allegedly altered by Mr Ahmed or when he was disrespectful to her and not wanting her to employ anyone else.

43. We find that arranging overtime and the roster were the responsibilities of the claimant and the schedulers, who were area operational controllers. It

was in Mr Abdullah's interest to ensure that the site was operating effectively and that could not be the case based on overtime alone. Should there be a vacancy it was important that that position be filled as soon as possible. Mr Abdullah is not related to Mr Ahmed. As contract manager, he did not have a close relationship with security officers as described by the claimant. He also did not have line responsibility for them.

44. Again, we were unable to make relevant findings of fact supportive of race and sex discrimination.

45. The claimant alleged that in December 2016 she had a telephone call with someone by the name of Barbara in the respondent's the licencing department about Mr Waheed not having correct licence. She then had a telephone conversation with Mr Abdullah about her salary during which he became angry and abusive to her and told her that he was in a bad mood because of the call with Barbara; that she was still in her probationary period, and that if she was not happy with her salary, she was free to leave her employment.

46. The claimant informed Mr Barclay at Vocalink about Mr Waheed "*illegally"* working resulting in her removing him from duty. She also told another Vocalink representative, Mr Ashley Watson, about how she had been treated and they, allegedly, stood up for her at a management meeting in or around December 2016.

47. She claimed that Mr Abdullah's conduct amounted to discrimination because of race.

48. We remind ourselves that it was Mr Abdullah, who is Asian, along with Mr Barclay from Vocalink, who interviewed the claimant and offered her the site supervisor position. It was also Mr Abdullah who said following the claimant's initial reluctance to work for the respondent as a result of the delay in the screening process, that the 90% pay she would have received during her period of 6 months' probation, would be waived and she would be paid her full salary.

49. It was for the tribunal difficult to accept that someone who clearly knew of the claimant's race at her interview and offered her the site supervisor position, on 100% salary, would within a short time thereafter, behave in a racially discriminatory way towards her without any apparent reason for doing so.

50. Even if the claimant is right about the account in December 2016 which Mr Abdullah denied, it was clear that she had disclosed internal matters to do with the SIA licence concerning Mr Waheed, to a third party, Vocalink. The Vocalink contract was and is an important contract to the respondent and by the claimant disclosing internal matters to its managers, put that contract at risk. If it was someone not of the claimant's race who had behaved in the same or similar way as the claimant, it is difficult to see how that person could be treated any differently. They would have been reminded that they were on probation and free to leave their employment. Mr Abdullah's

conduct, as alleged by the claimant, we have concluded, was unrelated to her race but with disclosure of confidential information to a client.

51. In January 2017, the claimant requested a reference from the respondent's payroll department in support of her mortgage application. On 19 January 2017, she informed payroll that the reference sent to her was incorrect, in that she was employed as a site security supervisor and her contracted hours was 50 hours a week, at the rate of £9.34 per hour, giving an annual figure of £24,284 gross. She asked that they amend and send the correct details which should be scanned and emailed to her personal email account in order that it could be forwarded to the vendor. She further stated that she was running out of time and was at risk of losing her home. From the evidence, viewing of the property was on the 19 January.

52. The claimant was informed by payroll that on the respondent's computer system, her contracted hours was 48 hours per week and not 50 and that the respondent had to use the information on its system. She was advised to contact her manager, Mr Abdullah, and to ask him to contact payroll to confirm whether her details on the system were correct.

53. Later, on the 19 January, the claimant emailed Ms Plimmer stating what they had discussed on Monday 16 January and that she was still waiting for a copy of her contract of employment. She said that she needed a reference as soon as possible (page 109).

54. On 19 January 2017, Mr Abdullah sent her, as an attachment, a copy of her contract of employment. He wrote:

> *"In relation to the reference of employment, you can ask me for this. Send me a draft letter of what information is required and I can put it on company headed paper and email a .PDF copy to you."*

55. Shortly after receiving the email with the attached contract of employment, the claimant emailed Mr Abdullah on 19 January. She wrote:

> *"Just read my contract. It's a generic contract but does not state my pay rate and contracted hours or even my assignment."*

56. The claimant declined to provide the information to Mr Abdullah which he was prepared to put in a headed note paper in support of her mortgage application as she considered the request as being *"immoral"* and did not reply to Mr Abdullah's suggestion. We find that he was not inviting her to make any inaccurate or inappropriate statements in relation to her terms and conditions of employment but to set out what she required to help with her mortgage application.

57. Mr Abdullah emailed her shortly after receiving her email on 19 January 2017, stating:

> *"Ceciliah – this is the contract for all employees. Hours of work, pay rates etc depend on the assignment you are located at. I believe*

you have read the contract and signed your acceptance before you commenced your employment."

58. The claimant replied half an hour later:

> *"I am sure that it read right. All the same, if a mistake is discovered, the only noble thing to do is to correct the mistake. The contract for all employees cannot be the same, bearing in mind that we are at different assignments, with different roles and pay rates. Definitely there is anomaly there.*
> *Below as you state, I will quote "hours of work, pay rates etc depend on the assignment you are located at" – "Ceciliah – this is the contact for all employees" – surely this should be reflected on each contract – not all employees. The system with human resources states that I am officer on 42 hours a week. I want to buy a house. I cannot produce that contract to the building society. It does not reflect the correct information about me.*
> *Bryan – Sir, with all due respect, I employ your good office to look into the matter with a view to correct the anomaly."*

59. The email was copied to Bryan Hall, the respondent's regional manager.

60. On 1 February 2017, the matter of the amendment to her contract of employment not being resolved, the claimant wrote to Mr Hall and copied in Mr Abdullah, Ms Plimmer and Mr Barclay of Vocalink. She wrote:

> *"Good afternoon*
> *I trust you are well. This is a follow-up of the email below 19 January and have been waiting for a response since. I am concerned about the contract that was emailed to me by Abu. May I bring to your attention that I had initially requested for the contract from Paula in human resources. My contract was nowhere to be found. I am inclined to believe that HR did not have a copy of my contract and hence the incorrect details of my terms of employment payroll. I have pointed out to Abu that the information on my contract is not a true reflection of my terms of employment. I would be grateful if this matter is given urgent attention as it is affecting me and having a negative impact on my health and wellbeing and subsequently my work at Vocalink."* (page 106)

61. Mr Barclay sent an email on 2 February 2017 to Mr Hall and copied in the claimant. He wrote:

> *"Bryan,*
> *I am sorry this has had to reach you and I would have preferred it hadn't been highlighted to me either but we are where we are and the sooner it is resolved the better for us all.*
> *Ceciliah requires the right payroll information on a reference in order to successfully purchase her house. She would also like a copy of her contract. She spoke to me about these issues yesterday whilst I was at Dunstable and how long it has taken for her to get to this*

> *point. I appreciate this is an internal G4S matter but if I – as the client – am being asked to intervene then the matter has probably gone on too long. I also want to ensure that security at my site does not suffer as a result of what seems to be an avoidable stress.*
> *I do not want to lose anyone from the contract as a result of an administrative error because for the most part it runs smoothly, but if you could ask Abu and other relevant parties to bring this matter to a successful conclusion in as short a time as possible we will all feel more positive for it.*
> *Feel free to call if you need to."* (pages 105-106)

62. On 2 February 2017, Mr Abdullah wrote to the claimant stating:

> *"I have attached a letter confirming your employment, please review and let me know if anything requires amending. It is a regular occurrence for me to receive requests for confirmation of employment from my employees, however, in this instance I am disappointed that this simple matter has come to this and involved so many people.*
> *On Wednesday, I will be conducting a probationary review with you so that both you and I can discuss your first 3 months with G4S."*

63. Attached to the email was the information Mr Abdullah believed the claimant had requested. It was a letter addressed *"to whom it may concern".* It gave the claimant's full name with employee number, stating that she was a full-time employee working for the respondent; that her employment commenced on 14 November 2016; and her current gross salary was at the time £24,284 (pages 117-118).

64. The reference provided by Mr Abdullah correctly stated the claimant's annual gross salary based on 50 hours per week the claimant worked. She told us that she was unsuccessful in her initial mortgage application.

65. According to Mr Abdullah, a probationary review meeting is normally held every 3 months. In this case, there was a probationary review held on 9 February 2017, to review of the claimant's performance. This was three months into her employment.

66. One of the issues raised in the course of the hearing was whether or not the claimant was on probation. According to the claimant, the removal of the 90% salary during the 6 months probationary period, reflected the fact that Mr Abdullah decided, based on her experience, that it was not necessary for her to be on probation for 6 months and removed that restriction.

67. This account was denied by Mr Abdullah who stated that the 90% salary removal was an inducement to persuade the claimant to accept the position offered as she was experiencing problems with the screening process at the time and was an external candidate. The respondent's policy is for all external candidates to be put on probation for a period of 6 months. This was there to review the claimant's performance.

68. We have noted that in the claimant's email correspondence referred to above in relation to the generic contract as she saw it which she received in January 2017, she did not mention that one of her concerns was that the contract incorrectly made reference to her being on probation. When she was informed by Mr Abdullah that he would be conducting a probationary review meeting, we were not taken to any documents she had sent him stating that she was not on probation.

69. In her claim form, at paragraph 26, she wrote the following:

> *"The probationary meeting was held on the 9 February 2017. The claimant thought the meeting went well but they were not able to in any event resolve the issues she was having with her contract, reference and the fact that her details were incorrect on the respondents' system. Mr Abdullah told her to put her concerns in writing, which she did by email dated 13 February 2017 and asked that these issues be escalated. This was however never done by Mr Abdullah*." (page 20)

70. With the above matters in mind, we find that the claimant was on probation for 6 months and was aware of that fact.

71. We were not referred to any documents prepared for the probationary review meeting held on 9 February 2017. Mr Abdullah said what the matters discussed with the claimant were in his dismissal letter.

72. Although the claimant admitted that she had submitted a grievance on 13 February 2017, we were not referred to that document during the hearing. Precisely what the grievance contained is not clear.

73. She wrote on 19 February 2017, what she said was her grievance and in cross-examination stated that in her grievance she made no reference to having been discriminated against by Mr Abdullah or by anyone else. We were not taken to that document during the course of the hearing.

74. The claimant had some management responsibilities for the Rickmansworth site and said there were several complaints from that site, in particular, complaints involving Asian staff allegedly sleeping while on duty. She stated that Asian security guards would disappear from site for hours on night shifts and at weekends, leaving her staff stranded to deal with alarms having been activated. She asserted that Mr Abdullah covered the matter up and would not create reports or take action. He, at one point, spoke to one of her junior members of staff, allegedly behind her back, to bring Asian staff on site. The junior staff member refused and asked Mr Abdullah to speak to her. Mr Abdullah did not do so and as a result that staff member did not come on site on that occasion. According to the claimant, this showed that Mr Abdullah had total disregard for her as a female working in a senior position.

75. From the evidence we were satisfied that the respondent did not only employ Asian members of staff. At the Rickmansworth site, there was at

the time of the claimant's employment, a racially diverse group of employees. Staff did not work behind a desk and were not visible by the cameras. A system was introduced whereby if a security officer at the Rickmansworth site was going to be absent from his or her desk, he or she had to notify Dunstable. Much of what the claimant said in her witness statement, in paragraph 20, was not based on direct evidence but what on she said were complaints. We were not told if disciplinary action was taken against the alleged culprits who were allegedly sleeping or who had disappeared at the Rickmansworth site during the night shifts or at weekends. As we stated previously, this was not the responsibility of Mr Abdullah but the claimant to manage the staff at the site.

76. In February 2017, the claimant said that there was serious security breach at the Dunstable site. All the external doors were unlocked on a particular Saturday. She sent a memorandum to her team and instructed them to ensure that they adhered to the site instructions company regulations. She said that following her memorandum, Mr Ahmed said to her that he was not going to listen to what she told him as he knew how to do his job. The claimant told Mr Ashley Watson, who worked for Vocalink, who in turn told Mr Barclay. She stated that Mr Barclay then contacted her to find out who had made the negative comment to her. She believed that Mr Barclay contacted Mr Abdullah and arranged to attend the premises on 7 March to work on the new system.

77. In the claimant's oral evidence, she said that Mr Ahmed left the site unlocked over a particular weekend and she spoke to Vocalink about it. Thereafter Mr Ahmed said to her that he was not going to follow her instructions. She stated that she gave Mr Barclay Mr Ahmed's name as the person who had been in breach of the security procedures and they agreed that the system would be changed on 7 March 2017.

78. Mr Abdullah said in evidence that he was not aware of the incident at the Dunstable site when the external doors were unlocked on a particular Saturday. He was further unaware that there was going to be a system change on 7 March 2017.

79. The claimant did not say that she had informed Mr Abdullah about what Mr Ahmed allegedly said to her, namely that he was not going to follow her instructions. If it was said then, as his line manager, it was open to her to discipline him and there is no record of her having done so. We were not satisfied as to precisely what happened, if anything, that involved Mr Ahmed.

80. In January 2017, two staff members gave notice that they were going to retire creating vacancies. The claimant stated that it was agreed at management meetings that Mr Abdullah would provide her the curriculum vitaes as part of the recruitment process. When she received the CVs from Mr Abdullah, they were all Asian applicants. The recruitment process required two members of staff, the claimant and Mr Healy. She stated that when she interviewed the applicants by telephone they all turned down the offer although some promised to attend the interviews, but they did not turn

up. Mr Abdullah, she said, gave her access to the respondents' career website where she retrieved the CVs, but they were mainly Asian applicants. On her perusal of them there were a lot of anomalies. Apparently, some wanted fixed shift patterns which were not conducive to the requirements of the site.

81. She stated that there was a black applicant whose CV she came across on the website and she interviewed him over the telephone as well as face-to-face. She and Mr Healy felt that he was a suitable candidate and she informed Mr Abdullah about him. She said that the first question Mr Abdullah asked her was "*Ceciliah do you mind telling me where you got his CV from*?" She said that she was shocked at being questioned about her recruitment choice and immediately thought it was down to the applicant's colour. She said she took offence and thought that the statement was discriminatory as Mr Abdullah never questioned Asian applicants. She stated that after the recruitment process she was withdrawn without explanation from further recruiting.

82. On 1 February 2017, the claimant emailed Mr Abdullah regarding the black applicant, BA. She stated that she would like him to be given the opportunity to join the respondent at Dunstable as he presented himself well and had been consistent in his responses but did not have security experience. The other applicants, during their interviews, had security experience but their responses were inconsistent and there was a lot of *"tale telling".* She preferred BA because he would be someone who could be trained according to the Dunstable' expectations and standards.

83. Mr Abdullah responded on 10 February 2017. He wrote:

> *"It was good to meet BA yesterday, thanks for arranging it. He came across very polite and I like that, however, I sensed a lack of confidence in him, in relation to his communication, with very brief answers to my questions.*
> *I would like for him to meet with David so that we can have a second opinion, and as such, please could you kindly ask him if he would be good enough to come in to Dunstable on Monday late morning/early afternoon to spend a brief moment with Dave.*
> *Dave would be happy to meet with him."* (page 127)

84. The claimant responded on 13 February stating:

> *"Been able to contact BA. He will be able to meet David this afternoon."*

85. The email was copied to Mr Barclay who wrote that there were other meetings arranged for that day and whether 2 o'clock would be convenient (page 126).

86. Some three hours after Mr Barclay's email, the claimant emailed Mr Abdullah and Mr Barclay stating that she had received a call from BA who said that having visited the Dunstable site on three occasions, felt that the

respondent should have decided whether to take him on. She stated that she explained to him the reason for his further visit to the site, but he replied that he had already spent money travelling backwards and forwards to Dunstable and wanted to know whether or not he was successful in his application. The claimant stated that she sensed from Mr Abdullah's email that he did not have full confidence in her choice of candidate but stood to be corrected.

87. Mr Abdullah replied:

> *"I can see that it is too much trouble for BA to attend to meet with Dave today, in which case he need no longer attend and we will stand down his application at this moment in time."*

88. The claimant's follow-up email to Mr Abdullah was very brief. She wrote:

> *"I guess that's what you wanted. I will let him know to stand down."* (page 125)

89. Mr Abdullah said in evidence that the respondent did not recruit any external candidate to the Dunstable site from February 2017 to March 2017. A security officer at the Milton Keynes site wanted to transfer to Dunstable and that was arranged. He said that the claimant had full access to the respondent's portal as part of the recruitment process. Applicants would regularly send in their CVs to the portal. He would download and pass them on to the claimant. BA's CV did not come from him, so he asked the claimant the question which was not meant to be racially discriminatory but was an innocent inquiry. The claimant was not withdrawn from the recruitment process as no-one was recruited between February and March 2017.

90. We find that the claimant was not withdrawn from the recruitment process. There was no recruitment exercise from February to March 2017. All that happened was a transfer from Milton Keynes to Dunstable. BA was reluctant to attend and meet with Mr Barclay, so he was stood down.

91. We find that the same question would have been asked of a white or male site manager if a CV had not been obtained in the normal way. In any event BA was interviewed and had not been rejected by Mr Abdullah. There was no evidence of Mr Abdullah was discriminating against AB or had belittled the claimant in her choice of candidate because of her race or gender.

92. On 6 March 2017, without prior notice in writing, the claimant was called to a meeting with Mr Abdullah who informed her that the respondent would not be confirming her in her role as she had failed her probationary period and her contract would be terminated on grounds of unsuitability. His decision was confirmed in writing on that day and handed to her by him. We find that the meeting, lasted about 10 minutes, and she was invited by Mr Abdullah to go away and read the dismissal letter.

93. In the letter Mr Abdullah referred to how the claimant dealt with situations and the manner in which she responded to events, such as her complaint about the screening process when she felt the screening officer was being disrespectful to her referee which was before she officially joined the respondent; the incident involving Bruce and Mr Healy in January 2017 and the complaint submitted by Bruce, Mr Abdullah discussed with the claimant the course of action she should take and agreed with her that she would sit down with both employees to resolve the issue amicably, but she insisted that Mr Healy should provide her with a statement and when he failed to submit it by the following morning, she went home during her shift without an explanation which demonstrated her inability to deal with situations which were not in keeping with the respondent's expectations of her as a security supervisor; that she was in breach of section 25 of her contract of employment, in that she failed to report to him an incident on 28 November 2016; further, there was cause for concern about her absences which were disproportionately high compared with the other members of her team.

94. In addition, Mr Abdullah wrote that in November 2016, following her conversations with Mr Waheed and Mr Ahmed regarding roster changes, she raised a complaint with him regarding their conduct towards her. Although she agreed to submit a report, no report was received by him. Instead the matter was reported to Vocalink. Such conduct, he stated, was not expected from someone in her position. She was expected to deal with difficult and challenging conversations with staff but had raised the matter with the client rather than following the respondents' protocol. As a consequence, her behaviour had the potential of being perceived negatively by Vocalink.

95. Mr Abdullah then referred to the claimant's communication with him and with payroll about her contract of employment and terms and conditions of employment. She was asked to submit to him, in writing, her concerns regarding her contract of employment but failed to do so and responded by stating that he should know as he had hired her.

96. In relation to her rate of pay, he wrote that it was confirmed at the outset of her employment, as £9.34 per hour. He had taken the decision to remove the probationary pay rate which was applicable to her thereby allowing her to receive her full pay from the beginning of her employment. However, within weeks of the commencement of her employment, she started to investigate her pay rates and the pay of her colleagues. She complained or expressed her dissatisfaction that she was not paid high enough for her role. In Mr Abdullah's view, it was not satisfactory that she had raised her dissatisfaction in the presence of Vocalink and was a further example of her unprofessional conduct.

97. In conclusion, he stated that it was with regret that the respondent would not be *"confirming"* her probationary period and that her employment would terminate on grounds of suitability. She was entitled to receive one week's pay and that her dismissal would take effect immediately. She was informed of her right to appeal and he provided details (pages 131-133).

98. On 7 March 2017, the claimant appealed against her dismissal to Ms Paula Plimmer (pages 136-137).

99. She also emailed Ms Kay Dave, recruitment team leader, on the same day stating that she had written to Mr Abdullah on 19 February requesting a meeting to discuss her grievance, but he was unable to assist her. The next thing that happened was that her employment was terminated. She stated that she was going to lodge her grievance as she had not heard from him. She requested a meeting to speak to someone from human resources before she submitted her appeal. She asserted that her grievance should have been dealt with first (page 136).

100. In evidence Mr Abdullah said that human resources dealt with grievances and had not received a grievance from the claimant.

101. The appeal was heard by Mr Nicholas Batchelor, account director, on 17 March 2017. The claimant attended and there was a note taker present (pages 140-154).

102. In Mr Batchelor's outcome letter, dated 10 April 2017, he went through the various points raised by the claimant and set out his reasons as well as his conclusions. They covered the same issues referred to in Mr Abdullah's dismissal letter. These were:

- Dispute with the screening officer;
- Dispute between Doug and Bruce;
- Accident reporting;
- Attendance;
- Disagreement with Sagheer Ahmed and Waheed; and
- Contract of employment.

103. Having considered the termination letter and the claimant's account during the appeal hearing, he agreed with Mr Abdullah's decision. He wrote, amongst other things, the following:

> *"During our meeting you showed me an email/memo signed by several of the site team written to the customer, in support of you as supervisor. The site confirmed that this was authored by one individual team member, who then pressed others to sign it.*
>
> *It is important for you to appreciate that the team you manage are not the arbiters of your suitability. Rather it is your seniors, and often then with reference to the client.*
>
> *In this case the client did not complain at all after your removal from site, and neither did he express any dissatisfaction with Abu's decision. He is a client who certainly has had no qualms in doing so historically had he felt that G4S had made erroneous decision. To date your role remains unfilled and the client understands that this will remain so until the right person is found to fill it.*

In his letter Abu Abdullah is stating that you are not fulfilling the compatibility needs with the G4S business and the role.

Once I "strip away" some of the auxiliary issues, I do see strong evidence of someone who has a tendency to be quickly antagonistic, and does not resolve what should be small issues with a clear head and consideration. Your own written communication is testimony to this, where you come across as provocative and demanding, rather than conciliatory or pragmatic.

These qualities are in conflict with what the G4S business requires of its Site Supervisors, and therefore I must confirm Abu Abdullah's decision to terminate your employment on the grounds of failed probation.

You have now exhausted the Company's' rights of appeal and therefore this decision is final."

104. Mr Batchelor did express his own independent view about the accident reporting, the claimant's attendance as well as the disagreement with Ahmed and Waheed. He concluded that the accident reporting could be disregarded for purposes of the claimant's probation. In relation to attendance, he was unable to ascertain any facts around Mr Abdullah's assertion and was, therefore, unable to come to a conclusion on that particular issue. As regards the disagreement with Sagheer and Waheed, Mr Batchelor was unable to determine whether it was the claimant or the engineer who went to Vocalink. In relation to entrusting the claimant to put in writing what Mr Abdullah was prepared to submit in support of her mortgage application, Mr Batchelor took the view that this was a breach of the respondent's policy, but Mr Abdullah had the best of intentions in wanting to assist the claimant. (pages 155-159)

105. Mr Healy covered the claimant's position following her termination, on a temporary basis. He was not on probation when doing so as he had carried out this role before.

106. Contrary to what the claimant asserted, from the documentary evidence, we were satisfied that Mr Abdullah did conduct care visits with the claimant. These involved basic things such as making sure staff are wearing the correct uniform, holidays requests and sick leave. Care visits would be entered onto the respondent's computer. In Mr Abdullah's case, he did not record precisely what was discussed. The claimant was able to refer to the care visits during the course of her appeal hearing. The care visits were in additional documents adduced at the hearing.

107. We were satisfied that Mr Abdullah regularly met with the claimant to discuss her performance and site operation. As he manages 25 sites with 150 staff under his management, the amount of time he would spend with his direct reports would depend on their particular circumstances.

108. The claimant said in evidence and we do find as fact, that at the Dunstable site in terms of the racial composition of the staff, she was the only black and female person working there. There were two Asians and three white members of staff who worked full-time with one Asian part-time employee. In pursuing her claims before the tribunal, she had legal advice and representation but her legal representatives came off the record in October 2018.

109. Mr Abdullah told us, and we do find as fact, that at the 25 sites he managed, there are three female supervisors. The claimant was the first black supervisor he had taken on.

110. The respondent has an equal opportunities policy and training is provided to all of its managers in line with equality and diversity. All employees have access to the employee portal to enable them to read the policies.

Submissions

111. The Tribunal heard submissions from the claimant and from Mr Sheppard, in-house solicitor on behalf of the respondent. We do not propose to repeat their submissions herein having regard to Rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended but we have taken their respective submissions into account and any authorities they referred us to.

The Law

109. Under section 13, Equality Act 2010, "EqA", direct discrimination is defined:

> "(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."

110. Section 23, provides for a comparison by reference to circumstances in a direct discrimination complaint:

> "There must be no material difference between the circumstances relating to each case."

111. Section 136 EqA is the burden of proof provision. It provides:

> "(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 provisions 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."

112. In the Supreme Court case of Hewage v Grampian Health Board [2012] ICR 1054, it was held that the tribunal is entitled, under the shifting burden of proof, to draw an inference of prima facie race and sex discrimination and then go on to uphold the claims on the basis that the employer had failed to

provide a non-discriminatory explanation. When considering whether a prima facie case of discrimination has been established, a tribunal must assume there is no adequate explanation for the treatment in question. While the statutory burden of proof provisions have an important role to play where there is room for doubt as to the facts, they do not apply where the tribunal is in a position to make positive findings on the evidence one way or the other.

113. In Madarassy v Nomura International plc [2007IRLR 246, CA, the Court of Appeal approved the dicta in Igen Ltd v Wong [2005] IRLR 258. In Madarassy, the claimant alleged sex discrimination, victimisation and unfair dismissal. She was employed as a senior banker. Two months after passing her probationary period she informed the respondent that she was pregnant. During the redundancy exercise in the following year, she did not score highly in the selection process and was dismissed. She made 33 separate allegations. The employment tribunal dismissed all except one on the failure to carry out a pregnancy risk assessment. The EAT allowed her appeal but only in relation to two grounds. The issue before the Court of Appeal was the burden of proof applied by the employment tribunal.

114. The Court held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status, for example, sex and a difference in treatment. Those bare facts only indicated 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.

115. The Court then went on to give a helpful guide, "Could conclude" [now "could decide"] must mean that any reasonable tribunal could properly conclude from all the evidence before it. This will include evidence adduced by the claimant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent in testing the complaint subject only to the statutory absence of an adequate explanation at this stage. The tribunal would need to consider all the evidence relevant to the discrimination complaint, such as evidence as to whether the acts complained of occurred at all; evidence as to the actual comparators relied on by the claimant to prove less favourable treatment; evidence as to whether the comparisons being made by the claimant is like with like, and available evidence of the reasons for the differential treatment.

116. The Court went on to hold that although the burden of proof involved a two-stage analysis of the evidence, it does not expressly or impliedly prevent the tribunal at the first stage from the hearing, accepting or drawing inferences from evidence adduced by the respondent disputing and rebutting the claimant's evidence of discrimination. The respondent may adduce in evidence at the first stage to show that the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the claimant; or that the comparators chosen by the

claimant or the situations with which comparisons are made are not truly like the claimant or the situation of the claimant; or that, even if there has been less favourable treatment of the claimant, it was not because of a protected characteristic, such as, age, race, disability, sex, religion or belief, sexual orientation or pregnancy. Such evidence from the respondent could, if accepted by the tribunal, be relevant as showing that, contrary to the claimant's allegations of discrimination, there is nothing in the evidence from which the tribunal could properly infer a prima facie case of discrimination.

118. Once the claimant establishes a prima facie case of discrimination, the burden shifts to the respondent to show, on the balance of probabilities, that its treatment of the claimant was not because of the protected characteristic, for example, either race, sex, religion or belief, sexual orientation, pregnancy or gender reassignment.

119. The employer's reason for the treatment of the claimant does not need to be laudable or reasonable in order to be non-discriminatory. In the case of B-v-A [2007] IRLR 576, the EAT held that a solicitor who dismissed his assistant with whom he was having a relationship upon discovering her apparent infidelity, did not discriminate on the ground of sex. The tribunal's finding that the reason for dismissal was his jealous reaction to the claimant's apparent infidelity could not lead to the legal conclusion that the dismissal occurred because she was a woman.

120. The tribunal could pass the first stage of the burden of proof and go straight to the reason for the treatment. If, from the evidence, it is patently clear that the reason for the treatment is non-discriminatory, it may not be necessary to consider whether the claimant has established a prima facie case, particularly where he or she relies on a hypothetical comparator. This approach may apply in a case where the employer had repeatedly warned the claimant about drinking and dismissed him for doing so. It would be difficult for the claimant to assert that his dismissal was because of his protected characteristic, such as race, age or sex. This was approved by Lord Nicholls in Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, judgment of the House of Lords.

121. The claimant has to prove that the act occurred and, if so, did it amount to less favourable treatment because of the protected characteristic?, Ayodele v Citilink Ltd [2017] EWCA Civ 1913.

122. Unreasonable conduct does not amount to discrimination, Bahl v Law Society [2004] IRLR 799

123. Under section 123 EqA, a complaint must be presented within three months;

> "starting with the date of the act to which the complaint relates" (a), "or such other period as the employment tribunal thinks just and equitable," (b) and "conduct extending over a period is to be treated as done at the end of the period," (3)(a).

124. Whether the same or different individuals were involved in the alleged discriminatory treatment is a relevant factor but not a decisive one in

determining whether the conduct extended over a period, Jackson LJ, Aziz v FDA [2010] EWCA Civ 304.

127. In the case of Robertson v Bexley Community Centre 2003 IRLR 434, the Court of Appeal held that the exercise of the tribunal's just and equitable discretion is the exception rather than the rule. The tribunal can take into account section 33 Limitation Act 1980, such factors as: the length of and reason for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued has cooperated with any requests for information; the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; and the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action, Department of Constitutional Affairs v Jones [2008] IRLR 128, Court of Appeal.

128. We have also taken into account the following cases: Land Registry v Grant [2011] EWCA Civ 769, [2011] ICR 1390; and Cordell v Foreign and Commonwealth Office [2012] ICR 280

129. Harassment is defined in section 26 EqA as;

> "26 Harassment
>
> (1) A person (A) harasses another (B) if-
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of-
> (i) violating B's dignity, or
> (ii) creating and intimidating, hostile, degrading, humiliating or offensive environment for B"

130. In deciding whether the conduct has the particular effect, regard must be had to the perception of B; other circumstances of the case; and whether it is reasonable for the conduct to have that effect, section 26(4).

131. In this regard guidance has been given by Underhill P, as he then was, in case of Richmond Pharmacology v Dhaliwal [2009] ICR 724, set out the approach to adopt when considering a harassment claim although it was with reference to section 3A(1) Race Relations Act 1976. The EAT held that the claimant had to show that:

(1) the respondent had engaged in unwanted conduct;

(2) the conduct had the purpose or effect of violating his or her dignity or of creating an adverse environment;

(3) the conduct was on one of the prohibited grounds;

(4) a respondent might be liable on the basis that the effect of his conduct had produced the proscribed consequences even if that was

not his purpose, however, the respondent should not be held liable merely because his conduct had the effect of producing a proscribed consequence, unless it was also reasonable, adopting an objective test, for that consequence to have occurred; and

(5) it was for the tribunal to make a factual assessment, having regard to all the relevant circumstances, including the context of the conduct in question, as to whether it was reasonable for the claimant to have felt that their dignity had been violated, or an adverse environment created.

132. Whether the conduct relates to disability "will require consideration of the mental processes of the putative harasser", Underhill LJ, GMB v Henderson [2016] EWCA Civ 1049..

133. An unjustified sense of grievance cannot amount to detriment, Barclays Bank v Kapur and Others (No 2) [1995] IRLR 87, CA.

134. In relation to public interest disclosure, we have taken into account sections 103A and 47B Employment Rights Act 1996 on dismissal and detriment.

135. Section 47B(1), Employment Rights Act 1996 provides,

> "A worker has the right not to be subjected to any detriment by any, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

136. A protected disclosure means a qualifying disclosure as defined under section 43B made by a worker in accordance with sections 43C to 43H, ERA 1996, section 43A.

137. Section 43B defines what is a qualifying disclosure. It provides,

> "(1) In this Part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following --
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,
>
> (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
>
> (d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."

138. What is a detriment under section 47B is not defined in the legislation. In this regard the judgments of their Lordships in the case of Shamoon-v-Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285, will apply. It is whether or not the worker was put at a particular disadvantage having made a protected disclosure? The disadvantage could be either physical, such as being instructed to engage in degrading work; or denying them benefits such as a company car, medical cover or membership of a sports or social club; or being denied the opportunity of promotion. It may also be psychological, financial or not being offered employment, amongst other things.

139. The qualifying disclosure must be a disclosure of information, that is conveying facts, Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38, a judgment of the Employment Appeal tribunal.

140. A reasonable belief is assessed objectively taking into account the particular characteristics of the worker in determining whether it was reasonable for him/her to hold that belief, Korashi v Abertwe Bro Morgannwg University Local Health Board [2012] IRLR 4, EAT.

141. In the case of Fecitt and Others and Public Concern at Work-v-NHS Manchester [2011] EWCA Civ 1190, the Court of Appeal held that the causal link between the protected disclosure and suffering a detriment under section 47B, is whether the protected disclosure "materially influenced", in the sense of being more than a trivial influence, the employer's treatment of the whistleblower.

142. In a breach of a legal obligation case, the tribunal should identify the source of the legal obligation and how the employer failed to comply with it. Actions could be considered wrong because they were immoral, undesirable or in breach of guidance without being a breach of a legal obligation, Eiger Securities LLP v Korshunova [2017] IRLR 115, EAT.

143. Section 103A ERA provides that, "An employee who is dismissed shall be regarded for the purposes of the Part as unfairly dismissed if the reason or principal reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure." It is for the employer to prove the reason for the dismissal. Where the employee lacks the relevant qualifying period of service the burden will be on the employee to prove the reason for the dismissal was by reason of making a protected disclosure, Kuzel v Roche Products Ltd [2008] ICR 799.

143. A claim under section 47B must be presented within three months beginning with the date of the act of the failure to act, section 48(3).

144. This time is extended under section 207B where there has been conciliation before the presentation of the claim, section 48(4A).

145. Section 48(4) provides,

> "For the purposes of subsection 3 ---
>
> (a) where an act extends over a period, the "date of the act" means the last day of that period, and
>
> (b) a deliberate failure to act shall be treated as done when it was decided on."

146. In the case of Arthur v London Eastern Railway Ltd [2006] EWCA Civ 1358, the Court of Appeal held, Mummery LJ giving the leading judgment, that,

> "Section 48(3) is designed to cover a case which cannot be characterised as an act extending over a period by reference to a connecting rule, practice, scheme or policy, but where there is some link between the acts which makes it just and reasonable for them to be treated as in time and for the claimant to rely on them. In order for the acts in the three-month period and those outside to be connected, they must be part of a "series" and acts which are "similar" to one another."

147. If a detriment claim is well-founded the tribunal can make a declaration to that effect and award compensation, section 49(1) Employment Rights Act 1996. The claimant is under a duty to mitigate, section 49(4) and the tribunal can consider whether the claimant either caused or contributed to the act complained of, section 49(5). Compensation is assessed on the same basis as a discrimination claim and can include an injury to feelings award, Virgo Fidelis Senior School v Boyle [200] IRLR 268.

148. Section 1 ERA 1996 provides that an employer shall give to an employee not later than two months from commencement of employment, a written statement of particulars of employment.

Conclusions

149. In relation to public interest disclosure, the claimant said that she made a qualifying disclosure in December 2016 when she informed Mr Abdullah and Mr Barclay that Mr Waheed did not have a security licence. In fact, the matter was drawn by SS UK Licencing Shared Services prior to the commencement of her employment as the respondent was unable to schedule Mr Waheed who did not have a frontline SIA licence. The claimant could not have held a reasonable belief that either a criminal offence was being committed or there had been a failure to comply with a

legal obligation as it was something Mr Abdullah already knew about and had been dealt with by the respondent before the claimant commenced employment. Mr Waheed was issued with a Licence Dispensation Notice until he received his proper security accreditation.

150. The claimant further asserted that in or around February 2017, she told Mr Barclay that Mr Ahmed was removing names from the roster without her knowledge and putting his name down instead because he wanted to work extra shifts. It was not clear what was the qualifying disclosure. Even if this was a qualifying disclosure, Mr Barclay was not an employee of the respondent and the disclosure concerned an allegation about Mr Ahmed. It was not, we conclude, the disclosure of information to an employer that was in the public interest.

151. The claimant also stated that in January/February 2017, she raised with Mr Abdullah and Mr Barclay that she had received a reference from payroll that did not contain her correct job title and that Mr Abdullah's request for information to be included on the respondent's headed note paper also amounted to qualifying disclosures. In addition, she had raised concerns about her terms and conditions of employment to Mr Abdullah and Mr Barclay. It was difficult to see what the qualifying disclosures were. We were not satisfied that they fall within the purview of being qualifying disclosures. Even if they were, they were all relevant to the claimant's contract and were personal to the claimant and not of a wider public interest. Thus paragraphs 4.1.1 to 4.1.5 in the list of Issues, do not amount to qualifying disclosures.

152. In relation to the allegation in paragraph 4.1.6, that in or around January 2017, the claimant raised with Mr Abdullah and Mr Barclay that there were complaints about Asian staff sleeping and disappearing at the Rickmansworth site, the question here is whether the claimant entertained a reasonable belief that that was the case. She did not have direct knowledge and based her views on hearsay and did not carry out her own investigation or viewed any cctv footage.

153. With regard to paragraph 4.1.7, that in February 2017, she told Mr Barclay that Mr Ahmed said that he would not follow her instructions on how to keep the premises secure after a security breach. This may very well amount to a future breach of a legal obligation, but we again repeat that Mr Barclay is not an employee of the respondent. The claimant, therefore, did not make the protected disclosure to the respondent even if the statement was made by Mr Ahmed to her which we have found there was no evidence in support. In any event, it is difficult to determine whether such a statement made by Mr Ahmed amounted to a qualifying disclosure that was in the public interest. We also conclude that it was not in the public's interest as it only concerned Mr Ahmed's claimed intention for the future.

154. In paragraph 4.1.8, the claimant said that during the appeal meeting she asserted that Mr Abdullah had falsified one-to-one records. There was no basis for that assertion. We were taken to reports and the relevant information presented on the system by Mr Abdullah. Even if the claimant did make a protected disclosure by disclosing a breach of a legal obligation,

she did not suffer a detriment as Mr Batchelor did conduct an investigation by looking at the documents and into account her version of events. We did not find that Mr Abdullah had falsified one-to-one records. There was no reasonable belief held by the claimant that that was the case.

155. Even if the claimant did make protected disclosures, as alleged, she did not suffer the detriments referred to. Mr Abdullah did not shout at her in December 2016; she was not cut out of discussions about Mr Waheed as the contemporaneous documents stated otherwise; she was provided with a reference on 2 February 2017; and she already knew that she was on 6 months' probation. It follows therefore that at some point she would be required to attend a probationary meeting and she did on 9 February 2017. In relation to the grievance, there was no documentary evidence that the claimant had submitted a written grievance to human resources on 13 February 2017 which required an investigation.

156. Taking into account our findings and conclusions, the claimant's public interest disclosure detriment claims are not well-founded and are dismissed.

157. We have come to the conclusion that the claimant was not dismissed because of making any protected disclosure/s but for the reasons given by Mr Abdullah and supported by Mr Batchelor, namely she was not suitable for the role of site supervisor because of her conduct and the way in which she dealt with issues. Of concern, was her tendency to raise internal issues with the Vocalink management putting at risk the contract the respondent had with that company. Her automatic unfair dismissal claim under section 103A, is not well-founded and is dismissed.

158. In relation to her harassment claim, paragraph 5.6 of the issues, we found that Mr Healy had told the claimant that she would not get respect from the Asians on site because they did not respect women. This was said during a frank exchange with the claimant with the intention of helping her in her role as site supervisor. It was unwanted as it was not invited by the claimant. By itself, it did not have the effect of creating an intimidating and hostile environment for her as it was intended to help her to understand what Mr Healy believed were the attitudes of some of the staff members. The claimant was an experienced manager in security the industry and the comment made was part of the handing over phase.

159. In any event, even if it is harassment related to race, it is out of time. The discussion was in November 2016. The claimant did not present it within three months extended by ACAS conciliation and did not apply for an extension of time on just and equitable grounds. She is an intelligent person with considerable management experience and was legally represented until October 2018 though from when we were unsure. There was no good reason given as to why the claim was presented out of time on 23 June 2017, seven months after the alleged incident. The cogency of the evidence is unlikely to be affected as Mr Healy denied making the comment. There was, however, a delay in pursuing this claim. The other factors in section 33 Limitation Act 1980, are not relevant. We have come to the conclusion

that this claim is out of time and we do not extend time on just and equitable grounds.

160. In relation to the other complaints under harassment, we did not find on the evidence, that Mr Waheed and Mr Ahmed had behaved in the manner alleged by the claimant towards her. In addition, Mr Ahmed did not say to her, in February 2017, that he was not going to follow her instructions. These claims of racial harassment are not well-founded and are dismissed.

161. In relation to direct discrimination on the grounds of sex and/or race, paragraphs 6 and 7 of the issues, in our findings of fact, we have not made findings upon which we could decide that the claimant was treated less favourably because of either her race or her sex. Accordingly, these claims are not well-founded and are dismissed.

162. As regards paragraph 9 of the issues, the claim of failure to provide a written statement of employment particulars, before the claimant commenced employment she was told about her hours of work and rate of pay. In January 2017, she received her terms and conditions of employment as well as her job title. It was clear by reference to the email of 21 September 2016, that her hours of work and rate pay were 50 hours a week at £9.34 per hour. We have concluded, having considered Section 1 Employment Rights Act 1996, that the respondent complied with its duty to provide her with initial written employment particulars.

163. It follows from our conclusions that the claimant has not been successful in her claims against the respondent and the provisional remedy hearing listed for 3 April 2019, is hereby vacated.

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Employment Judge Bedeau

Date: 11 March 2019

Sent to the parties on: 13 March 2019

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For the Tribunal Office