EMPLOYMENT TRIBUNALS

Claimant: Mrs M Blatherwick

Respondent: Network Rail Infrastructure Limited

HELD AT: Leeds **ON:** 7 and 8 May 2019

BEFORE: Employment Judge Rogerson
Mr T Downes
Mr M Taj

REPRESENTATION:

Claimant: Mr S Martins (lay representative)
Respondent: Mr B Randle (counsel)

JUDGMENT

1. The complaint of discrimination arising from disability made pursuant to section 15 of the Equality Act 2010 fails and is dismissed.
2. The complaint of victimisation made pursuant to section 27 of the Equality Act 2010 fails and is dismissed.

REASONS

1. The issues that remained to be determined in this case had been agreed and identified at a preliminary hearing on 18 September 2018.
2. At that hearing, Employment Judge Wade had found that the claimant was a disabled person, from February 2016 by a mental impairment of a "generalised anxiety disorder". It was clear from the judgment that all other complaints were

either withdrawn and dismissed or dismissed because they were presented out of time.

3. For the 2 remaining complaints of discrimination arising from disability (section 15 Equality Act 2010) and Victimisation (section 27 Equality Act 2010), the list of issues (page 52 in the bundle) identifies the matters to be determined:

Discrimination Arising from Disability:

3.1 Was the respondent's alleged failure to engage, its grievance procedure from 23 October 2017, and its failure to address the claimant's grievances, unfavourable treatment?

3.2 Was that unfavourable treatment (if proven), because of the claimant's anxiety attacks, distress or sickness absence (said to be the "somethings" arising from the claimant's disability)?

3.3 If so, was the unfavourable treatment a proportionate means of achieving a legitimate aim. 2 legitimate aims were relied upon. Firstly, to ensure that the complaints, which included several alleged breaches of legislation, were dealt with properly and comprehensively. Secondly to ensure the respondent complied with its duty of care to other employees, in particular, to ensure relevant witnesses were given a proper opportunity to defend themselves against the allegations raised.

Victimisation

3.4 It is accepted that the claimant engaged in protected acts when she raised her three grievances because of her reference made to alleged breaches of the Equality Act 2010. Were the following matters detriments?

3.4.1. The failure to provide a grievance outcome from October 2017 to October 2018.

3.4.2 The claimant's transfer to Doncaster on 5 February 2018.

3.4.3 At Doncaster the absence of weekly meetings, being treated like a "pariah" and being idle.

3.4.4 Advertising her Knottingley post and then removing that advertisement when notified of it.

3.5 Were any detriments found above, because of or materially influenced by the claimant's bringing of three grievances?

4. It was clear the claimant alleged that the alleged unfavourable treatment was because of something arising in consequence of her disability and that she was subjected to 4 detriments (victimised) because of her grievances (protected acts). A key issue for the Tribunal to determine was the 'reason why' the treatment complained of had happened and to examine the decision makers reasons (conscious/ subconscious) for acting as alleged. For the unfavourable treatment complaint to succeed, a further issue was whether any proven unfavourable treatment was justified. The burden of proof rests with the claimant to prove facts from which the tribunal could conclude that there has been an unlawful act, which satisfies all the elements of the alleged contravention, before the burden shifts to the respondent.

5. It was accepted that the three grievances the claimant raised on 23 October 2017 (see pages 61.1 to 61.28), 8 November 2017 (see page 67) and

6 December 2017 (see page 75 to 77) were protected acts. It was not accepted the claimant was subjected to unfavourable treatment or to any detriment or that the 'reason why' related to her disability or was because of any of the grievances raised.

6. Our findings of fact are made based on the evidence we saw and heard from the claimant and for the respondent from:

   (1) Mrs Lindsay Graystone (welfare officer and HR officer).

   (2) Mr Matthew Fuller (grievance officer/senior management accountant).

   We also saw documents from an agreed bundle of documents. We have only made findings of fact that are relevant to the issues to be determined.

   Credibility

7. In relation to credibility the documents in this case were not in dispute and in the main form the basis of our findings of fact. The respondent's witnesses refer to and rely upon that contemporaneous documentary evidence, to support their account and their recollection of the relevant matters complained about. They set out in their statements their motivation for acting in the way they did in any of the matters complained about. The claimant in her witness evidence, has not set out why she alleges that the respondent's witnesses were motivated to act as alleged because of something arising from her disability or because of the protected acts. Mr Martins had to be reminded at the end of his cross-examination, to put the claimant's case and to challenge the respondent's witness evidence, on the reason they advanced for the treatment complained of, if that reason was disputed.

   Grievance Complaints

8. The grievance process ran from October 2017 to 12 October 2018 when an outcome was provided to the 3 grievances raised by the claimant.

9. The claimant's first grievance was dated 23 October 2017 and is a lengthy detailed document accurately described by Mr Randle in his closing submissions as a "*complex document, alleging breaches of various legislation including the Equality Act 2010. Thirty cases are cited. There is a law section cited and code of practices cited. The document is far in excess of anything that might be cited in a typical Employment Tribunal or in a civil case and significantly more than any employee/employer internal grievance would be expected to cite"*. It is accepted this grievance is a protected act by the claimant because of the references she makes to alleged breaches of the Equality Act 2010, which falls under 27(2)(d) "making an allegation that another person has contravened this Act".

10. The claimant explained she had legal advice at this stage (not from Mr Martins) and the grievance was prepared by that legal adviser based on her instructions.

11. In that grievance, the claimant sets out the desired outcomes that she wants and provides a chronology covering matters from May 2016 to September 2017 as an appendix, to her formal letter of grievance.

12. In summary the grievance is about the actions of an individual who was the claimant's line manager, Jimmy Carson (JC) and is about the alleged inaction of others, when the claimant complained about JC. The claimant wanted the employer to take 'action' against JC and she wanted an occupational health referral to be made, in order that reasonable adjustments could be made for the

claimant on her return to work. These were just two of the many outcomes that the claimant wanted from the grievance process.

13. The respondent's grievance policy is at pages 53 to 61 in the bundle. As a first step it suggests informal resolution of the grievance, then a formal stage for a hearing to be conducted between the employee and her manager or a more senior manager, if the grievance concerns the behaviour or actions of the employee's line manager. If a formal grievance is made, after a grievance hearing, it is envisaged that an outcome will be provided, if possible within eight calendar days. If it is not possible, the policy provides that the employee and their representative will be advised as to the "reasons for the delay" (see paragraph 4.1.7 of the procedure). There is also an appeal process. The policy provides that the relevant manager, will conduct an investigation, to establish the facts of the situation. This includes obtaining statements from available witnesses. It links the grievance policy to the disciplinary procedure, because it provides that if a grievance investigation finds evidence of misconduct, that evidence can be considered in any disciplinary process.

14. The tribunal found there was a 'duty of care' aim in the grievance policy which was to resolve grievances in a way that considered the complainant's interests and was also fair to any other individuals involved/named in the grievance. The policy provides that an outcome of the grievance process could be a disciplinary process, which could result in a sanction imposed on an employee named in a grievance. It was a legitimate aim for the respondent to consider that impact and ensure the grievance process was applied fairly to all including a complainant.

15. In relation to the '8' day period for providing an outcome (where possible), in this case the original grievance was made on 23 October 2017 and an outcome was not provided to all 3 grievances until 12 October 2018. The respondent needed to explain what happened and what information had been given to the claimant in that period.

16. In considering that period we will deal with 2 separate periods of time in our findings of fact. The first period, 23 October 2017 to 4 January 2018 when Mr Martin Self was appointed as the grievance officer and the second period 4 January 2018 to 12 October 2018, when Mr Matthew Fuller was the grievance officer.

Grievance Process: 23 October 2017 to 4 January 2018

17. The claimant had been absent from work since 10 June 2017. She returned to work briefly in September 2017 before reporting sick again and returning to work in February 2018. The claimant raised a second grievance on 8 November 2017 (page 64) complaining about the respondent's decision on 27 October to pay her half pay. The reason why the claimant was paid half pay, is that her contract of employment only entitled her to six months full pay and six months half pay. She was informed on 27 October 2017, that she would be paid half pay in accordance with her contract of employment.

18. By this time Linda Graystone had been appointed as the claimant's welfare officer. She emailed the claimant to try to resolve this matter informally by explaining the contractual sick pay entitlement. The claimant refused to resolve the matter informally, insisting it was dealt with formally as part of her grievance. In that grievance she made a link between the first and second grievances at paragraphs 6 and 8 of the second grievance.

19. By this time Mr Self had contacted the claimant to arrange a hearing. He suggested either a face to face meeting outside of the workplace or a meeting conducted by telephone in 'bite' sized chunks over more than one day as a reasonable adjustment. The claimant refused and insisted the grievance was conducted in writing.

20. Mr Self did not agree. As an experienced grievance officer, he preferred a hearing of some sort with the claimant, by some suitable method so that he could better understand her grievance before investigating it. He accepted there was a difference of opinion between what he wanted and what the claimant wanted and he therefore decided that the right course would be to obtain occupational health advice. He sets all this out clearly in an email to the claimant which she recites fully in support of her third grievance which is about Mr Self's request and his conduct of her grievance.

21. The claimant's approach to this grievance demonstrates her unjustified sense of grievance to what was a reasonable request made by the employer for some occupational health guidance. Mr Randall points to the contradiction in the claimant's position on the making of an occupational health referral. In her grievance of 23 October 2017, she insists the respondent does this to 'make the right reasonable adjustments', but when Mr Self seeks to do this to 'make the right reasonable adjustments' she objects and raises a grievance about him.

22. The consequences of the claimant's actions, were that Mr Self was replaced as the grievance officer, no occupational health advice was sought about any reasonable adjustments that could be made to the process and the grievance process was delayed.

Grievance Process: 4th January 2018 to 12 October 2018

23. On 4 January 2018, Mr Fuller was appointed to replace Mr Self as the grievance officer. He is experienced in conducting grievance hearings before and has had Equality and Diversity training. He sets out very clearly in an email to the claimant how he will conduct the grievance investigation. He identifies the parameters of that investigation by reference to the 3 grievances made. We refer to page 98 and the email he sent which states as follows:

"*I've been appointed the investigation manager for your grievance case encompassing three separate grievances. I read both your letter and chronology, and am happy to continue by correspondence. In short, I will be investigating:*

- *The behaviour of your line manager Jimmy Carson on the dates outlined in your chronology.*
- *The subsequent actions of his line manager Simon Gunnerson, another management Glen Reynolds, Debbie Ibbotson, Shaun Deredder on the dates outlined in your chronology.*
- *As Mark Jennings has retired from the business I will not be able to include him as part of my investigation.*
- *Your performance rating from December 2016.*
- *The actions of Martin Self who is appointed as the investigating manager between November and December 2017.*
- *The decision to put you on half pay from 14 December 2017.*

Please let me know if there is anything else for me to consider and if anyone else (not named in your letter) who can assist me with my investigations. I understand that you do not wish to meet face to face or to speak to the grievance investigation manager over the phone, however you had emailed Martin Self to advise that you are prepared to answer any questions over email, and respond promptly. If I have any questions I will send them to you, to this email address. I appreciate your offer to respond promptly. If at any point you do wish to talk anything through with me please just let me know. In the mean-time please feel free to contact me if you have any concerns or questions and I will keep you advised on my progress on a regular basis".

24. If the claimant was unhappy with the approach outlined by Mr Fuller she could have told him. If she wanted anything else considered or anyone else interviewed she could have told him. The written chronology the claimant relies upon is detailed and is about JC's behaviour. He was a key witness to any grievance investigation conducted by Mr Fuller. The claimant understood that was the case and expected JC to be interviewed.

25. Mr Fuller provides a detailed account of his investigation of the claimant's grievance in his witness statement, which was not challenged. He agreed to conduct the hearing in writing by email with the claimant. He agrees not to refer the claimant to occupational health, although he could have insisted upon this as a helpful measure to him. He agreed to interview all the witnesses the claimant had identified who were still employed, including JC.

26. He regularly updated the claimant as to the progress of his investigation and informed the claimant when interviews were conducted. In his witness statement he identifies the communications he sent the claimant on 2 February 2018, 16 February 2018, 19 February 2018, 26 February 2018, 5 March 2018, 12 April 2018 and 9 May 2018. In the period January to July 2018, JC was absent from the workplace due to sickness. Occupational Health advice was sought in relation to JC's absence and his fitness to be interviewed. As a result, the earliest date Mr Fuller could interview JC was on 10 July 2018.

27. Following that interview, on 26 July 2018, Mr Fuller sent the claimant a series of questions that arose and he updated her on his progress. On 2 August 2018, he sent a chaser email to the claimant, eventually receiving her replies on 20 August 2018. There was then a delay to 12 October of approximately seven weeks, before he provided a written outcome.

28. Mr Fuller accepts that in hindsight he should have provided an outcome quicker but did it as quickly as was possible with his other commitments. He did not deliberately delay the process. To his credit, his response is comprehensive, thorough and fair. He starts by apologising for the delay, reciting his contact with the claimant during the process and explaining the reasons for the delay. His outcome letter is 24 pages long. The content reflects the time and effort that he had spent to provide the claimant with a fully reasoned response to the 3 grievances. It summarises the interviews he conducted and provides the findings made. It sets out in a table form the 25 outcomes the claimant desired with his recommendation explaining the rationale foreach recommendation.

29. Relevant to this case is Mr Fuller's explanation for the delay and his recommendation that there is a disciplinary investigation into JC's behaviour (see pages 137,155 and 160 of the bundle). When the claimant made her first grievance she had requested that it was dealt with, and acted upon within 28

days of submission. In the recommendation he states "*your grievances have required a huge amount of investigation and management time. It has therefore not been possible to do everything within the timescales you (or Network Rail) might have wished. This has been for a variety of reasons including delays at your end and at ours. My view is that the most important thing is that your grievances have been thoroughly investigated and reasoned outcomes reported back to you*".

30. In relation to JC, the claimant had wanted Network Rail to warn JC about his future conduct in writing. Specifically, that "*should JC continue to subject her to any further incidents she would name him in any civil proceedings*". Mr Fuller's recommendation is "*I'm recommending that further disciplinary investigation is taken into the behaviour of JC at the Knottingley site. I will pass my notes across as part of this process. You should be advised that you would not be informed as to the outcome of any investigation or disciplinary procedures. I will assume you are content that the points raised in your grievance are used as part of this investigation. Please advise me if not".*

31. The allegation that Mr Fuller did not engage/address the claimant's grievance is not made out. Mr Fuller and Mr Self did engage in the grievance process. Mr Self was replaced because of the claimant's grievance about him. Mr Fuller therefore addressed the claimant's grievance by investigating it and deciding it. He provided the claimant with a detailed outcome letter on 12 October 2018. The claimant was regularly updated about the progress of the grievance. She expected the grievance to include an investigation of JC's conduct and that he would be interviewed. She understood and accepted that JC was away from the business from January 2018 to July 2018 and his absence from work prevented him from being interviewed and that was a key factor in concluding her grievance. She knew that JC's absence from work was outside Mr Fullers control and had nothing whatsoever to do with her disability (her panic attacks, distress or her sickness absence). In her own evidence, she does not suggest that Mr Fuller delayed because she had raised Equality Act 2010 complaints in her grievance or that it had something to do with her disability. The only reason why Mr Fuller took the time he did in providing an outcome is because of the time it took to complete his investigations and to provide a fully reasoned outcome.

32. One outcome was a recommendation for a disciplinary investigation into JC's conduct at the Knottingley Site, and it was reasonable for Mr Fuller to wait until JC could be interviewed before reaching a decision. The claimant always knew that was the case and she accepted that JC's absence from work was unrelated to her disability or to any protected act.

33. When she accepted that in her evidence she suggested the unfavourable treatment was the delay prior to JC's absence in January 2018. If that delay is relied upon, the reason for that delay was the claimant's refusal to engage in the grievance process, in one of the ways suggested by Mr Self, her refusal to agree to him obtaining occupational health advice and her grievance about Mr him, which resulted in his removal and replacement. There was no unfavourable treatment of the claimant by Mr Self in his handling of her grievance.

Detriments

34. The first detriment is the transfer to Doncaster on 5 February 2018, which is an alleged detriment carried out by Lindsay Graystone because of the claimant's protected act. At the beginning of this hearing, after the Tribunal had read the witness statements and relevant documents, Mr Martins was referred to page 99 in the bundle to clarify the claimant's case. This is an email dated 11 January 2018 from Ms Graystone, which indicates that the claimant had two choices, she could either go to Doncaster or she could return to Knottingley. She chose Doncaster. Despite this evidence the claimant continued to advance the case that she was subjected to a detriment.

35. The email is headed "return to work proposals" and states.

"Hi Michelle, I spoke to my colleague Helen Dawson the senior HR BP who supported me with your return to work. She has responded on both of the options of Doncaster and Knottingley and around your questions about what the manager at Doncaster knows and what work you will be doing. ***I'll leave as is for you to read and share with your GP today as you see fit".***

Lindsay:

"*Thank you for your email. Steve Barnes knows that Michelle has submitted a grievance and that is being investigated. That Michelle is keen to return to work and that we are wanting Steve's help to facilitate that. Steve was very keen to get the support of Michelle and said that he would think about how she could return to work on a phased basis but be involved in work at a level but without any time specific deadlines. Steve is a competent caring IME and I have every confidence he can support her. If she would like me to be there on her first day and walk in with her to work then I will clear my diary to do that. I will go back to Steve to gain more detail on what he would like her to work and on and will come back to you.* ***(Doncaster option)***.

I will also speak to Simon who will be happy to have Michelle back and would be able to provide detail on what she would be required to do. ***This one for me would be easier because she knows her role and she could take elements of work off the person who is covering it at the moment.*** *Having said that Michelle would need to be aware that people named in a grievance would be interviewed over the next few weeks and that it might be better for her to not be aware of when these are happening"*. **(Knottingley option)**. **(Highlighted text our emphasis)**

Regards Helen"

36. The circumstances around that email being sent by Lindsay Graystone are that as the claimant's welfare officer, her job was to support the claimant during her absence and try and assist her to return to work. The claimant's welfare was a key concern for Mrs Graystone. She was unfamiliar with the two roles and had sought advice from Helen Dawson, who could better inform the claimant of the options. She wanted the claimant to have this information before she spoke to her GP and family and made a choice. The advice Mrs Graystone received from Miss Dawson is replicated in full to the claimant in the email dated 11 January 2018. There was no attempt to sway the claimant, she wanted her to make an informed choice. The claimant had refused occupational health input so Ms Graystone wanted the claimant to seek guidance from her own GP, to assist her with any recommendations for the phased return to work wherever that was located. That is what happened because as a result of the GP's advice, the

phased return was extended from 4 weeks to 8 weeks. Ms Graystone was open and transparent and was only acting in the claimant's best interest.

37. It was clear from Ms Dawson's email that her preference was for the claimant to return to Knottingley. A move to Doncaster meant more work for the respondent because it was a different workplace a different location and required a different manager to facilitate this. The claimant could have been asked to return to Knottingley which was her normal place of work. The fact that she was given this choice demonstrates that the respondent was trying to be as supportive as possible to enable her to return to work.

38. It was clear from our findings that Ms Graystone, as the claimant's welfare officer, was acting in the claimant's best interests in relation to the transfer to Doncaster and was not subjecting the claimant to a detriment. Factually the allegation as pleaded is not made out.

39. The second detriment is the return to work at Doncaster itself and the actions of Steve Barnes. The claimant alleges he did not have weekly meetings with her, she was treated like a 'pariah' and was left 'idle' in Doncaster. For the alleged treatment 'like a pariah' there are no specific details of this allegation even in the further information provided. It is for the claimant to prove facts from which the Tribunal could find unlawful treatment by the detriment identified and the complaint is not made out on any primary facts.

40. In relation to being idle in Doncaster and having no weekly meetings we saw emails of the updates Mr Barnes was sending to Mrs Graystone during her phased return to work period. It was clear that Ms Graystone was proactively involved and Mr Barnes knew that was the case and he was required to provide progress reports. He was aware of the extended phased return from 4 to 8 weeks based on GP advice and that he was required to ease the claimant back to work.

41. Mr Barnes had a lengthy return to work meeting with the claimant on her first day back on 5 February 2019. He had follow up meetings with the claimant on 12 February and 19 February. On 23 February the claimant decided that she wanted to go back to Knottingley and the respondent agreed to that. She made the decision to leave Doncaster. Despite that decision, Mr Barnes had further follow up meetings until 19 March 2018, when the claimant transferred to Knottingley. It was clear the return to work plan was designed to ease the claimant back into work without time specific deadlines on the work allocated. She was not left 'idle' at Doncaster. She was working was as planned as part of a phased return to ease her back into work, accordance with her doctor's advice.

42. There was nothing in the notes we saw that indicates that Mr Barnes did not manage the claimant's return to work in a supportive manner. In fact, the claimant sent an email to Mr Barnes thanking him for his help (see page 126). This was another document where her oral evidence contradicted the contemporaneous evidence. That detriment allegation is not made out on its facts and fails.

43. The final alleged detriment is that the claimant's post was advertised and when she raised this advert with the respondent it was removed. The claimant states she doesn't know who advertised the post or whether that person knew of any of her protected acts. This makes it difficult for the claimant to make a prima face case of victimisation. The evidence that we had from Ms Graystone was

that when the claimant raised this issue with her she investigated and acted immediately. She found out that a temporary secondment was advertised to provide cover for the claimant's substantive post whilst the claimant was on long-term sick as was the normal practice when cover is required. The respondent recruits all staff (permanent/temporary) via a centralised function based in Manchester. Recruitment is a lengthy internal process and the claimant's post was not in fact advertised before her return to work on 5 February. Ms Graystone explained the position in detail to the claimant in an email page 116 to 118. She was again honest and transparent in the explanation she provided. She states (page 117):

"*In order to ensure we are recruiting within our head count and not unnecessarily, any vacancies with a perm, fixed term or secondment are raised by line managers and sent to the team for approval. In November 2017 Simon Gunnerson sent off an approval for your role to be temporary filled for three months period 4 December until 4 March and to be reviewed in a month by month basis pending your fitness for work. This was approved by the executive team on 5 February 2018 when you had just returned to work on 5 February for a three-month FTC. My colleague and my local recruitment team were looking to why this is being advertised for six months as it should not be. As the role is handled by the central team in Manchester they would not have been aware that you were back in the business so advertised internally as a matter of course. As we discussed during our first chat in late December and ongoing after that, you were keen to come back to work and not Knottingley hence the agreed eight-week phase return to work being in Doncaster. I know we are still waiting on the outcome of your grievance but please be advised that if you wish to return to Knottingley at any point we can just chat about this".*

44. That email was sent to the claimant on 21 February 2018. The claimant responded the next day, to confirm that she wanted to return to her substantive role in Knottingley, which is exactly what she did. Interestingly, when the claimant comments on that email she does not challenge the explanation that was provided.

45. Ms Graystone's oral evidence at this hearing was also unchallenged. As early as January 2018, the claimant knew she had the option of Knottingley or Doncaster (see page 99) and could return to her substantive post in Knottingley at any time. On the facts we found the claimant was not subjected to a detriment. She cannot identify the alleged discriminator or knowledge of any protected act and the complaint fails.

Applicable Law

46. In relation to the applicable law it has been clearly set out by Mr Randle in his written closing submissions and is also identified in the list of issues. The claimant brings her claim of discrimination in work as an employee (section 39(2)) Equality Act 2010. Both the discrimination (discrimination arising from disability, section 15 complaint) and the victimisation claim (section 27) are subject to the provisions of section 136 of the Equality Act 2010, relating to the burden of proof. In brief, these provisions require that a tribunal must first decide whether a claimant has established a prima facie case of unlawful discrimination (or victimisation), if she has, the burden shifts to the respondent to prove a non-discriminatory explanation.

47. The relevant issues for each cause of action are also identified in the list of issues. Mr Randle has also provided some authorities on the meaning of 'detriment' and 'unfavourable' treatment and on the importance of establishing the 'reason why' question in determining discrimination complaints.

48. With respect to 'unfavourable' treatment he refers to the judgment of Langstaff P in Trustees of Swansea University Pension and Assurance Scheme v Williams [2015] IRLR 885 stating that "*to assess whether something is unfavourable there must be a measurement against an objective sense of that which is adverse compared to that which is beneficial*".

49. In relation to detriment he refers to Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 which helpfully sets out the test for detriment at paragraphs 34 and 35, the tribunal "*must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work"*. He also refers to the Chief Constable of Greater Manchester Police v Paul Bailey [2017] EWCA Civ 424 where in the context of direct discrimination and victimisation the use of the term 'because of' a protected characteristic was examined. Paragraph 12 of the judgment states:

    "Both sections use the term "because"/ "because of". This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UK HL 36 referred to as the "mental processes" of the putative discriminator. Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well-established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome"

50. Applying the law to the facts as we have found them. The complaint of unfavourable treatment by Mr Self and Mr Fuller, for not engaging /addressing her grievance from 23 October 2017 is not made out for the reasons set out at paragraphs 31 and 33 above. We did not find unfavourable treatment or that it was because of the claimant's anxiety attacks distress or absence. If we had found unfavourable treatment because of something arising from disability we would have accepted the legitimate aims relied upon and would have found the treatment was proportionate and justified.

51. For the complaint of victimisation, although there was a delay until October 2018 to provide an outcome to the grievance, the delay by Mr Fuller was explained and was not a detriment the claimant was subjected to. A reasonable worker would not take the view she had been disadvantaged in the circumstances in which she had thereafter to work, the claimant was updated as the investigation progressed and accepted JC would need to be interviewed before her grievance could be concluded. She accepted the delay was not because of any protected act (see paragraphs 23-33). The other 3 detriments were also not made for the reasons set out at paragraphs 34-45. All complaints of victimisation fail. The claimant has failed to establish any prima facie case on the facts of any discrimination or victimisation and therefore the claim fails is dismissed.

Employment Judge Rogerson

17 June 2019

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