



EMPLOYMENT TRIBUNALS

Claimant: Ms K Clements

Respondent: Eddie Stobart Limited

HELD AT: Liverpool

ON: 13 – 17 May 2019

BEFORE: Employment Judge Holbrook
Mrs J L Pennie
Mr R Cunningham

REPRESENTATION:

Claimant: Mr M Mensah, Counsel

Respondent: Mr J Boyd, Counsel

JUDGMENT having been sent to the parties on 29 May 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION AND ISSUES

1. The claimant in this case, Katherine Clements, is an HGV driver employed by the respondent, Eddie Stobart Limited (“ESL”). By an ET1 claim form presented to the Tribunal on 13 June 2018, Ms Clements seeks compensation from ESL for unlawful sex discrimination.
2. ESL provides logistics services to Formula 1 motor racing. It provides such services through its Special Operations Team (“SOT”), which is based at Appleton, near Warrington. That team is also involved in the provision of logistics services for other motorsport events, but these proceedings primarily concern ESL’s involvement with F1, and with Pirelli’s F1 activities in particular. Pirelli, of course, supplies tyres to the various F1 racing teams.
3. ESL’s contract with Pirelli essentially covers two separate activities: 1) the transportation of tyres from Pirelli’s facility in Didcot to the various European F1 events; and 2) the transportation from one event to another of Pirelli’s ‘motorhome’, together with assembly and general maintenance of the motorhome at the events themselves.

Separate sub-teams within SOT are dedicated to servicing each of the two limbs of ESL's contract with Pirelli: there is a 'Tyres Team' and a 'Motorhome Team'. These proceedings arise from Ms Clements' membership of the Motorhome Team.

4. It is claimed that:

- a. Whilst working as a member of the Motorhome Team in early 2018, Ms Clements was subjected to harassment related to the protected characteristic of sex. This claim relates to the alleged conduct of the then Motorhome Team Leader. That individual (who was not called as a witness in the proceedings before the Tribunal) is referred to in these reasons simply as "MTL".
- b. ESL directly discriminated against Ms Clements (because of her sex) by failing to provide her with 'tyre-training'; by removing her from SOT in March 2018, when she was working with the Motorhome Team in Barcelona; and by not re-assigning her to another role within SOT thereafter.
- c. Ms Clements' repatriation to the UK from Barcelona (and her re-assignment to general haulage duties) was a further act of harassment related to sex.
- d. Having submitted a grievance in respect of MTL's alleged harassment of her, Ms Clements was victimised by ESL, both by being removed from her assignment with the Motorhome Team in Barcelona, and also by the subsequent refusal to permit her to re-join SOT.

5. It was agreed at the outset of the final hearing that the claim concerning ESL's alleged failure to provide Ms Clements with training is confined to the question of 'tyre-training'. This is training for SOT members to enable them to fit tyres to the F1-car wheel rims at a race circuit before delivery of Pirelli's tyres to the race teams. It was also agreed that a separate claim for harassment in respect of deployment to a training contract (which had been discussed at an earlier case management hearing) would not be pursued at the final hearing.

6. ESL denies all the claims made by Ms Clements. In particular, whilst many of the factual allegations concerning MTL's conduct are unchallenged, ESL does not accept that his conduct (or the conduct of anyone else) amounted to harassment. Nor does ESL accept that Ms Clements was subjected to any detriment because she had complained about MTL, or that she was treated less favourably than others because she is a woman.

7. The Tribunal heard oral evidence and argument over four consecutive days. It was also provided with an agreed hearing bundle and written submissions on behalf of each party. Miss Clements gave evidence in support of her claim and there were four witnesses for ESL, all of whom are also employed by the company. They are: Qamar Zamir (Pirelli Event Manager within SOT); Marco Astolfi (General Manager of SOT); Kyle Gamble (HR Consultant); and Dawn Webster (HR Business Partner). Judgment was given, with oral reasons, on the morning of the fifth day of the hearing.

FACTS

8. The principal facts which give rise to these proceedings may be summarised as follows. However, for ease of presentation, additional facts are referred to elsewhere in these reasons.

9. Ms Clements has been employed by ESL since 2015. Initially, she was employed as an HGV driver on general haulage duties. However, having made a couple of unsuccessful applications for roles involving SOT's F1-related activities, Ms Clements was finally successful in gaining a seconded position within the Motorhome Team in late 2017.

10. It is worth noting that Pirelli's F1 motorhome is a substantial structure. It provides Pirelli with an operational base at each of the F1 race venues, including office and hospitality facilities. The motorhome has to be partially dis-assembled in order to be transported between venues in three ESL trucks. Re-assembly of the motorhome takes about four days, and this is done by SOT's Motorhome Team staff. They also drive the trucks, of course. In addition, these members of staff remain on site at the race venues throughout the events to provide general maintenance services around the motorhome. However, the motorhome kitchen and hospitality areas are staffed separately by Pirelli's own chefs and hospitality staff.

11. Following her appointment to the Motorhome Team, Ms Clements attended an induction course at ESL's Appleton base in late January 2018, where she first met other members of the team, including MTL, who was to be her new team leader. For reasons which we shall consider in due course, Ms Clements had missed a separate, week-long, induction course for Motorhome Team staff which had been held at Pirelli's Didcot facility earlier in January. That course had covered, among other things, familiarisation with the F1 tyre-fitting equipment.

12. On 5 February 2018, Ms Clements embarked upon her first assignment as a member of the Motorhome Team. It was to take her, as driver of one of a convoy of three trucks, from Appleton to Didcot and then on to the Gnodì factory near Milan, where the motorhome had been stored during the winter. The team were then to transport the motorhome to the F1 race circuit in Barcelona, where pre-season race testing would be taking place.

13. The Motorhome Team arrived in Barcelona on 15 February 2018, by which time Ms Clements was already concerned about several aspects of MTL's conduct towards her. On 21 February, Ms Clements made an overnight return trip back to Milan, alone, to collect some missing equipment. Other than that, she continued working as part of the Motorhome Team in and around Pirelli's motorhome at the Barcelona race circuit, until she flew back to the UK on 8 March, at ESL's instruction.

14. It is apparent that Ms Clements had had a difficult working relationship with MTL even before their arrival in Barcelona, and that those difficulties continued during their time there. We will come to the detail of those difficulties in due course. However, on 5 and 6 March 2018, Ms Clements emailed ESL's HR department in the UK, and Marco Astolfi (SOT's General Manager), to say that she wished to make a formal grievance against MTL. She complained that MTL had inappropriately shared information with other staff about a pay query she had raised. But she also complained that:

“[MTL] is making my work life untenable to the point that I feel I have no option but to hand in my notice. He is making it impossible for me to work.”

15. At this stage, Ms Clements offered few specifics about her grievance, other than to recount certain comments allegedly made by MTL. However, she stated her view that she had been subjected to sex discrimination and she told Mr Astolfi that:

“[MTL] has been making my life hell because I’m a female”.

16. Mr Astolfi was in the UK when Ms Clements’ grievance was received. He telephoned her to discuss the matter on 7 March, in the company of Kyle Gamble, a member of ESL’s HR department. Ms Clements said that she did not feel comfortable discussing the matter on the telephone, and Mr Astolfi therefore decided that she should be instructed to fly back to the UK immediately and that she should then be assigned to other duties while the grievance was investigated.

17. Ms Clements returned to the UK on 8 March and, on 9 March, she commenced general haulage duties for ESL, driving for Tesco out of ESL’s depot in Widnes.

18. ESL investigated Ms Clements’ grievance, interviewing a number of relevant witnesses, including MTL and Ms Clements herself. Mr Astolfi notified Ms Clements of the outcome of the investigation in a letter dated 6 April 2018. He said that concerns about MTL’s leadership style had been raised with him and that corrective actions had been agreed. However, he found Ms Clements’ complaint of sex discrimination to be unsubstantiated. Mr Astolfi therefore rejected the grievance. However, noting that there had been a breakdown in the working relationship between Ms Clements and MTL he stated that, although Ms Clements would be returning immediately to her seconded role within SOT’s motorsport operation, she would be working on the ‘Tyco British Superbike’ contract.

19. Mr Astolfi emailed Ms Clements on 10 April 2018. He referred to his letter of 6 April and asked her to contact him to confirm her preference as to “one of the two options available to [her]”. It appears that Ms Clements had not, in fact, seen the letter and she replied to Mr Astolfi asking him to clarify the two options he had referred to. Mr Astolfi then explained that Ms Clements was being offered a choice between joining the Tyco British Superbike team and remaining in her current role on general haulage duties. He stated that there were other applicants who wished to join the Superbike team and asked Ms Clements to make her choice without delay.

20. Following a further exchange about the nature of the Superbike role, Ms Clements emailed Mr Astolfi on 12 April 2018 stating that she would accept it. However, she emailed him again just two hours later, stating “I’ll go on Pirelli tyres. I’ve just realised there’s a vacancy there.” Mr Astolfi replied later the same day, making it clear that a position within the Tyres Team was not on offer. Ms Clements’ choice was between Tyco British Superbikes and general haulage, and Mr Astolfi told her that he needed to inform the customer by midday on 13 April, so would assume that Ms Clements wished to remain in her current role unless she replied before that deadline. Ms Clements sent Mr Astolfi two further emails on the evening of 12 April. In the first she simply stated that she had “already replied accepting”. In the second, she enquired as to the reasons why she could not join the Tyres Team.

21. Mr Astolfi emailed Ms Clements again at 11:34 am on 13 April. He said that time was running out before the midday deadline and that he needed to know exactly what Ms Clements was accepting. He went on to say that Ms Clements' previous replies had been ambiguous and unclear and that he required her to tell him whether she wanted to join Tyco Superbike or to remain on general haulage duties.

22. Ms Clements replied by email on 14 April. She stated that she had accepted Mr Astolfi's offer to join the Superbike team. However, she made it clear that she would much prefer to join the Tyres Team and argued that she should be permitted to do so.

23. In the event, Ms Clements did not join either of these SOT teams, but remained on general haulage duties. The vacancy within the Superbike team was filled by another ESL employee.

24. Ms Clements invoked ESL's two-stage appeals process against the outcome of her initial grievance. We gather that she also submitted a number of separate grievances concerning aspects of her work for ESL. In the meantime, in May 2018, Ms Clements applied for an advertised vacancy for a role within SOT and followed this up with various emails. She received a reply from Mr Gamble on 1 June stating:

"Given the number of unresolved grievances you have in process regarding your previous secondment to Special Operations it would not be appropriate to consider another secondment to that part of the business at this time until these have been concluded."

25. Mr Gamble offered further clarification of ESL's position in an email sent on 4 June 2018. He noted that Ms Clements had raised numerous grievances, many of which were complex and detailed, and all of which would take time to investigate, and he went on to say:

"For clarity, whilst these investigations are ongoing and before a conclusion has been reached it would not be appropriate to consider an internal move into Special Operations. This is not because of your gender, as you suggest. ... We have a duty to our employees to investigate any issues raised and that is what is happening."

26. Mr Astolfi's decision to reject Ms Clements' original grievance was upheld by ESL at both the first and second stages of its grievance appeal process. The final stage of the process was presided over by Dawn Webster (HR Business Partner). She chaired an appeal hearing which Ms Clements attended on 2 July 2018 and, on 22 August 2018, Mrs Webster wrote to Ms Clements setting out in detail her reasons for upholding Mr Astolfi's original decision.

27. On 19 April 2018, Ms Clements contacted ACAS to begin the early conciliation process and, on 30 May, ACAS issued an early conciliation certificate, enabling Ms Clements to present her claim to the Tribunal.

28. Ms Clements is still employed by ESL as an HGV driver on general haulage duties.

LAW

29. Section 39(2) and (4) of the Equality Act 2010 provides that an employer must not discriminate against, or victimise, an employee as to the terms of her employment;

in the way it affords her access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service; by dismissing her; or by subjecting her to any other detriment.

30. Discrimination includes direct discrimination as defined by section 13 of the Equality Act: an employer directly discriminates against an employee if, because she is a woman, the employer treats her less favourably than it treats or would treat others.

31. Section 40 of the Equality Act makes it unlawful for an employer to harass a person who is its employee. The circumstances in which harassment occurs are defined in section 26. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic (including sex), and that conduct has the purpose or effect of violating B's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for B. In deciding whether conduct has such an effect, it is necessary to take into account the perception of B; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. For these purposes, anything done by a person in the course of their employment must be treated as also having been done by the employer.

32. The circumstances in which victimisation occurs are defined in section 27 of the Equality Act. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. Acts which are 'protected' for this purpose include making an allegation (whether or not express) that A or another person has contravened the Equality Act.

33. In any claim relating to a contravention of the Equality Act, the claimant must prove facts from which the Tribunal could decide, in the absence of any other explanation, that the respondent contravened the relevant provision of the Act. If the claimant proves such facts, the Tribunal must hold that the contravention occurred unless the respondent shows that it did not contravene the provision.

DISCUSSION AND CONCLUSIONS

Complaints concerning the conduct of MTL

34. Ms Clements claims that, whilst working as a member of the Motorhome Team, she was harassed by MTL because she is a woman. This claim concerns numerous allegations about MTL's conduct towards Ms Clements occurring between 5 February and 5 March 2018. Some of those allegations were raised specifically by Ms Clements in her grievance. However, others have only emerged in detail during the course of these proceedings.

35. The allegations against MTL may be summarised as follows:

(1) Hostile reception given to Ms Clements on 5 February 2018

Ms Clements says that MTL's attitude towards her was hostile from the outset. Upon her arrival at the Appleton depot early on the morning of 5 February, he was unwelcoming and unhelpful. He was critical of her lack of familiarity with the truck she would be driving and afforded her only grudging assistance in preparing for departure. On the first leg of the journey (which was driven in convoy), MTL was unaccommodating of Ms Clements' requests for rest and

refreshment stops. Upon arrival at Didcot, MTL initially ignored Ms Clements but then began to be overly critical of certain things she did, such as the way she washed her truck. Overall, MTL's demeanour towards his new team member was inappropriate.

(2) MTL's deliberately unhelpful driving behaviour

MTL drove the lead truck in the convoy. As the convoy made its way through France on the motorways, MTL deliberately made things difficult for Ms Clements by slowing down each time he pulled in to lane 1 after overtaking slower traffic – and thus making it hard for Ms Clements to pull back in herself.

(3) Aggressive and unpleasant behaviour whilst at the Gnodei factory

Once they reached the Gnodei factory near Milan, MTL was aggressive and unpleasant to Ms Clements when she declined to join in a team photograph or an evening social event with the customer.

(4) Booking an inappropriate hotel for Ms Clements' overnight return trip to Milan

As already mentioned, Ms Clements made a return trip to the Gnodei factory after the team had moved on to Barcelona. She needed a hotel for her overnight stay near Milan and expected that a good-quality hotel would have been arranged for her. However, Ms Clements alleges that MTL deliberately arranged for her to be booked in to a sub-standard 'hostel' instead.

(5) Excluding Ms Clements from a trip to Jerez

On 8 February, MTL told Ms Clements that she would be excluded from a trip to Jerez which the other three members of the Motorhome Team would be going on shortly.

(6) Unjustified criticism of Ms Clements' abilities

On 10 February, Ms Clements overheard MTL telling a third person that she "was no use to him" and that she did not know what she was doing.

(7) Harassment concerning use of a scissor-lift

The task of assembling and cleaning the motorhome involved working at heights, and for this the team used a scissor-lift. Ms Clements had not completed her scissor-lift training and did not feel comfortable working with that piece of equipment. MTL was aware of this, but he nevertheless repeatedly put pressure on Ms Clements to use the scissor-lift.

(8) Making comments of a sexual nature

MTL made inappropriate sexual comments on two occasions. During the journey through France he asked Ms Clements how she went to the toilet whilst on the road, commenting that he was unable to use a normal bottle for this purpose due to the size of his penis. Upon arrival at the Barcelona race circuit, MTL commented on the fact that he had been given a police escort into the

circuit. He told Ms Clements that “it was the best thing ever and I had to go and have a wank!”.

(9) *Comments made on 5 March 2018 about Ms Clements’ suitability for her role*

It is apparent that matters between Ms Clements and MTL came to a head in Barcelona on 5 March. Even before leaving their hotel that morning to travel to the circuit, they appear to have argued about whether Ms Clements should be clearing away her breakfast crockery (she thought she should) or whether the task should be left to the hotel staff. This theme was continued when Ms Clements and MTL arrived at work. It seems that there was little for the Motorhome Team to do on this particular morning and so Ms Clements took it upon herself to stack some crates of bottled water at the rear of the motorhome. MTL told her to stop because it was not her job. When Ms Clements questioned this instruction, MTL told her that she should not be on the F1 team and that she was in the wrong team.

Following an emailed complaint about MTL (see paragraph 14 above), MTL’s line manager, Qamar Zamir, convened a team meeting at his hotel that evening in an attempt to address the tensions within the team. Ms Clements asked MTL at that meeting what he had meant by his earlier comment. It is not entirely clear what MTL said in response. He may have said:

“What I meant was you shouldn’t be on F1, you should be in the kitchen with the girls”

or he may have said that:

“... you would be more suited if you worked with the girls in the kitchen”.

36. The Tribunal must first make findings of fact as to whether MTL behaved in the manner alleged by Ms Clements. For the most part, we are satisfied that he did. Indeed, there are only two allegations (those numbered (4) and (5) in the above list) where we find MTL to be blameless. He did not deliberately book an unsuitable hotel for Ms Clements’ overnight stay near Milan: the evidence indicates that the booking was made by a member of Gnod’s own staff (and not by MTL), and that the hotel in question was of an adequate standard anyway – it was not a ‘hostel’. As far as the decision to exclude Ms Clements from the trip to Jerez is concerned, the evidence indicates that the selection of personnel for that trip was made by Mr Zamir, and not by MTL. There is no evidence – and indeed no suggestion by Ms Clements – that Mr Zamir discriminated against Ms Clements or harassed her.

37. As far as the remaining allegations are concerned, however, we are satisfied that the events in question probably did happen in the manner described by Ms Clements. ESL did not present any witness evidence to the contrary and Ms Clements’ version of events was not challenged in cross-examination. The question, then, is whether those incidents amount to harassment for the purposes of section 26 of the Equality Act. ESL argues that they do not – because Ms Clements is mistaken about why MTL behaved in the way he did, and/or because she has exaggerated the effect that MTL’s conduct had upon her.

38. Whatever the reasons for MTL's conduct toward Ms Clements, aspects of his behaviour can only be described as reprehensible. We are satisfied that the facts we have found are ones from which the Tribunal could decide, in the absence of any other explanation, that MTL's conduct amounted to unlawful harassment related to Ms Clements' sex. The significance of this finding is that the burden of proof therefore shifts to ESL to show that the conduct in question did not amount to harassment. In our judgment, ESL has failed to discharge this burden: it has not demonstrated that MTL's actions were not influenced to any significant extent by the fact that Ms Clements is a woman.

39. ESL sought to establish that MTL acted in the way that he did, not because Ms Clements is a woman, but because MTL lacked appropriate management and leadership skills: in essence, ESL's case was that MTL treated members of the Motorhome Team who are men just as badly as he treated Ms Clements. We were not persuaded by this argument. Although Mr Astolfi's grievance investigation undoubtedly garnered evidence that MTL's treatment of some men was also open to criticism, we were not persuaded by evidence that MTL treated any of his male colleagues as badly as he treated Ms Clements. For example, a second new driver (who was a man) had joined MTL and Ms Clements at the start of their trip on 5 February 2018, but he did not endure the same treatment as Ms Clements. As far as MTL's comments of a sexual nature are concerned, it was not suggested that he would have made similar remarks to a man. When interviewed by Mr Astolfi, some male colleagues stated that they had not noticed Ms Clements being singled out for unfavourable treatment by MTL. However, one member of the team did express the view that MTL had tended to treat Ms Clements worse than members of the team who were men. Although this individual's subjective opinion should be treated with a measure of caution, it certainly does not assist ESL's case.

40. Turning to the comments which MTL made about Ms Clements on 5 March 2018 (see (9) in the above list), ESL has not persuaded us that, in making these comments, MTL was not influenced to any significant extent by the fact that Ms Clements is a woman. The point was made that MTL appeared to have genuine concerns about ensuring an appropriate demarcation of roles and responsibilities between the Motorhome Team and Pirelli's own catering and hospitality staff. Given that Ms Clements sometimes took it upon herself to perform tasks which, strictly speaking, fell outside her remit, it is possible that this is what motivated MTL to say what he did. However, the available evidence is insufficient to persuade us of this. Ms Clements was not the only member of the Motorhome Team to lend a hand occasionally to Pirelli's hospitality staff and, at the very least, MTL's comments to her had a sexist overtone about them. MTL did not make similar comments to any of the men on the Motorhome Team and the comments should be viewed against a background of the continuing hostility which MTL had already exhibited towards Ms Clements.

41. For these reasons we find that MTL's conduct towards Ms Clements did relate to her gender. The conduct was clearly unwanted (and ESL has not suggested otherwise), but ESL has sought to argue that it did not have the effect of violating Ms Clements' dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her: in ESL's submission, Ms Clements has "made a mountain out of a molehill". It argues that, had she really taken exception to MTL's conduct, Ms Clements would have been quicker to particularise her complaints in

greater detail at the initial grievance stage and as the grievance process unfolded prior to these proceedings. However, we disagree with the premise that the more detailed particularisation of Ms Clements' complaints during these proceedings indicates that she had initially viewed them as being minor or trivial. Ms Clements' evidence was that the conduct in question created a hostile, humiliating and offensive environment for her, and we accept that evidence. She clearly took exception to the comments made to her by MTL on 5 March, for example: they caused her to leave Mr Zamir's team meeting before it was over and to make a formal grievance about MTL. Ms Clements also gave evidence about the concern and offence she felt in relation to MTL's conduct described at (8) above. Such concern and offence was clearly reasonable in the circumstances. MTL's conduct towards Ms Clements therefore constitutes unlawful harassment.

Complaint concerning Pirelli tyre-training

42. Ms Clements claims that ESL directly discriminated against her by failing to provide her with Pirelli tyre-training. Did ESL treat her less favourably in this regard, because she is a woman, than it treated (or would have treated) a man in comparable circumstances?

43. The evidence showed there to be a distinction between the training requirements of those SOT staff working in the Tyre Team and those (including Ms Clements) working in the Motorhome Team. Only Tyre Team staff would be required to fit tyres regularly. However, Motorhome Team staff were required to have some familiarity with the tyre-fitting equipment in case they had to fill in for Tyre Team colleagues unexpectedly. In practice, they rarely, if ever, had to do that. But an introduction to the tyre-fitting equipment was given to them during their week-long Pirelli induction course in Didcot, which SOT and Pirelli ran in January of each year before the commencement of the F1 season. Motorhome Team staff who missed the induction course would not subsequently be given tyre-training.

44. Ms Clements missed the Pirelli induction course which took place in January 2018. However, we are satisfied that the sole reason for her non-attendance was that relevant managers within ESL reasonably believed that she was away on holiday at the time. It was not because she is a woman. Had a male member of the Motorhome Team been away on holiday, or had been believed to have been away on holiday, he would also have missed the course and would have been excluded from the tyre-training element of it. Ms Clements was not treated less favourably in this regard because she is a woman.

45. We have taken account of Ms Clements' assertion that Pirelli employees had told her in Barcelona that she was the only member of staff who was not tyre-trained and that ESL were refusing to provide her with tyre-training. We have also noted the email which Ms Clements sent to Pirelli in November 2018 seeking confirmation of this. That email appears to have gone unanswered and Ms Clements' evidence on this matter does not persuade us that her lack of tyre-training had anything to do with the fact that she is a woman. It is simply a consequence of her having missed the induction course. In any event, we note that Ms Clements' lack of tyre-training caused her no practical disadvantage because at no point during her time with the Motorhome Team was she required to fit tyres.

Complaints concerning repatriation to the UK from Barcelona

46. Ms Clements claims that ESL's actions in requiring her to return to the UK, and in re-assigning her to general haulage duties, amount to direct sex discrimination and to harassment. In our judgment, these complaints do not have any merit.

47. As at 7 March 2018, the position was that Ms Clements had made serious allegations of sex discrimination against MTL, an individual by whom her work was supervised and with whom she was required to work (and indeed live) in close proximity while the Motorhome Team was on assignment in Barcelona. She had told Mr Astolfi that MTL was making her life hell (see paragraphs 14 and 15 above). Faced with this complaint, Mr Astolfi had to decide what action to take. Initially, he had attempted to discuss the matter with Ms Clements by telephone. She was reluctant to do so. In evidence to the Tribunal, Ms Clements explained that her initial reticence to discuss her complaint arose from the fact that Mr Astolfi was joined on the call by Mr Gamble, a person she did not know. But neither Mr Astolfi nor Mr Gamble were aware of this explanation at the time, and it is not surprising that Mr Astolfi then decided that Ms Clements should be removed from the situation in Barcelona immediately, not only in order for the grievance to be investigated, but also to extricate Ms Clements from an environment which she had indicated to him that she found hostile and upsetting.

48. We are satisfied that these were indeed the reasons why Ms Clements was instructed to return to the UK on 8 March and that the decision was taken with her best interests in mind (albeit with some consideration also being given to the need to ensure continuity of service to Pirelli and to the protection of ESL's reputation). We are satisfied that the decision was not influenced by the fact that Ms Clements is a woman. Had a male colleague made serious allegations of discrimination against his supervisor, we are satisfied that ESL would have taken similar action to remove him from the environment from which the complaint arose.

49. The fact that Ms Clements was instructed to return to the UK but that MTL was permitted to remain in Barcelona does not alter this analysis. Ms Clements was the alleged victim of discrimination, not MTL. It was her welfare that was of concern to Mr Astolfi. In addition, MTL's continued presence in Barcelona was considered necessary for business reasons. Nevertheless, we note that MTL was interviewed as part of the grievance investigation soon after his return to the UK upon completion of the Barcelona assignment.

50. It follows that Ms Clements' repatriation to the UK was not an act of direct sex discrimination. Nor was it harassment related to her gender. Although the decision to temporarily remove Ms Clements from her secondment to SOT may well have been unwanted conduct in her eyes, that conduct did not relate to Ms Clements' gender; it related to ESL's genuine concern for her wellbeing, its recognition that it has a duty of care towards her and its desire to move forward with the process of investigating the grievance that she had made.

51. Finally in this regard, we turn to two separate, but related, incidents which Ms Clements claims amount to harassment in respect of her return to the UK. The first concerns the instruction given to Ms Clements by ESL that, when flying home, she should travel with the minimum of necessary baggage, rather than checking-in all the belongings she had with her in Barcelona. We are satisfied that this was an innocent and legitimate instruction, motivated by ESL's desire to avoid unnecessary baggage

charges for items that could conveniently be brought home by road in due course. The second incident occurred following Ms Clements' return to the UK, when she reported for work at the Widnes depot on 9 March 2018 and the depot manager appeared to have been informed that Ms Clements had been transferred to work there on a permanent basis. Ms Clements was understandably upset by this. However, having heard ESL's explanation for the incident, we are satisfied that it resulted from a simple case of mistaken identity on the part of the depot manager.

Complaints concerning lack of re-assignment to SOT

52. Ms Clements claims that ESL's refusal to re-assign her to a role within SOT following her return from Barcelona is a further act of direct sex discrimination. Again, however, we find that this claim lacks merit.

53. The facts which are relevant to this aspect of Ms Clements' claim are set out at paragraphs 18 to 25 above. It is apparent that, upon completion of his investigation of Ms Clements' grievance, Mr Astolfi did offer her the opportunity to resume her secondment to SOT (as an alternative to remaining on general haulage duties), albeit working in a role within the Tyco British Superbike team rather than in F1. Although Ms Clements said that she would accept the offer, she also argued that she should be assigned to the Tyre Team instead. In the event, Mr Astolfi decided to assign another member of staff to the Superbike team. His evidence to the Tribunal (which we accept) was that he decided to do so because the vacancy needed to be filled without further delay and, having attempted to clarify Ms Clements' stance on the matter, he remained unsure as to whether she was genuinely willing to accept the role: the fact that Ms Clements is a woman had no bearing on the decision to appoint someone else to the role.

54. Ms Clements' preference would certainly have been to return to a seconded role within SOT which involved working in F1 but, as noted at paragraph 24 above, her subsequent attempts to return to such a role were blocked by ESL. The question is whether this was because Ms Clements is a woman. The evidence (in particular, Mr Gamble's emails of 1 and 4 June 2018) clearly demonstrates that the reason why ESL would not countenance her return to SOT at that time is unrelated to the fact that Ms Clements is a woman: the actual reason is that there were several other unresolved grievances from Ms Clements which were still under investigation. In his oral evidence to the Tribunal, Mr Gamble explained that ESL had been concerned about the prospect of Ms Clements returning to work alongside colleagues in SOT who were the subject of these unresolved grievances.

Complaint of victimisation

55. The grievance which Ms Clements made against MTL in March 2018 undoubtedly constitutes a 'protected act' for the purposes of section 27 of the Equality Act. Ms Clements claims that she was victimised because of this act, both by being required to return to the UK from Barcelona, and by being denied re-assignment to a role within SOT thereafter. However, we do not find that Ms Clements was subjected to a detriment in either of these respects because of the protected act. Her complaint of victimisation must therefore fail.

56. As explained at paragraphs 47 to 50 above, we find that there were non-discriminatory reasons for ESL's decision to repatriate Ms Clements to the UK

following submission of the grievance. Whilst there was obviously a causal link between the making of the grievance and the decision to instruct Ms Clements to fly home, she was not repatriated because she had made the grievance, but because of those other, non-discriminatory, considerations. Similarly, Ms Clements was not subsequently denied re-assignment to a role within SOT because she had complained about MTL: rather, she was not assigned to the Superbike team in April 2018, or to another role within SOT thereafter, for the reasons stated above (at paragraphs 53 and 54 respectively).

DISPOSAL

57. For these reasons, we find that Ms Clements' claim for unlawful harassment related to the protected characteristic of sex succeeds (to the extent explained above). However, all other claims made in these proceedings fail.

58. The question of remedy will be dealt with at a hearing on 27 September 2019, and case management orders have been issued separately in this regard.

Employment Judge Holbrook

Date: 27 June 2019

REASONS SENT TO THE PARTIES ON

1 July 2019

FOR THE TRIBUNAL OFFICE

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