



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs J Belin-Roux

v

B & Q Plc

Heard at: Norwich

On: 28, 30 & 31 May 2019 and 3 June 2019
25 & 26 June 2019 (In chambers – no parties in attendance)

Before: Employment Judge Postle

Members: Mr V Brazkiewicz and Mrs L Daniels

Appearances

For the Claimant: In person.

For the Respondent: Mr Piddington, Counsel

RESERVED JUDGMENT

1. The unanimous decision of the tribunal is that the claimant's claims brought under the Equality Act 2010 for the protected characteristics of race and sexual orientation are not well founded.

RESERVED REASONS

1. The claimant brings claims to the tribunal under the Equality Act 2010 for the protected characteristic of race (her nationality being French) and sexual orientation. Particularly claims of direct discrimination under s.13, harassment under s.26 and victimisation under s.27.
2. The detail of the issues to be determined by the tribunal were set out at the case management hearing on 30 November 2018 before Employment Judge Postle (35-40). There are also jurisdictional issues, namely claims before the 21 January 2018 are on the face of it out of time even allowing for the early conciliation period (the early conciliation notification was on 20 April 2018 and the certificate was issued on 3 June 2018). Unless the tribunal were to determine allegations before 21 January 2018 were part of

continuing acts. If they are not continuing acts then the tribunal would have to consider whether in all the circumstances it was just and equitable to extend time.

3. In this tribunal we have heard evidence from the claimant through a prepared witness statement who called no further evidence.
4. For the respondent we heard evidence from Mr T Barker who dealt with the grievance hearing and is a unit manager at Cambridge, a Mr A Piper who is not an employee of the respondent, Mr Cowley ex-manager of the Norwich home fit centre, Mr Carroll who dealt with the claimant's grievance appeal, a divisional operations manager, Mrs Reinbach an employee based at the Norwich home fit centre and Mr E Rayner who dealt with the first step investigation meeting – all of those witnesses giving their evidence through prepared witness statement. There was a further witness statement on behalf of the respondent from Miss Samantha Scrivens, team leader at the Norwich home fit centre who was due to give evidence on the Monday (last day) and for reasons unknown after counsel had made enquiries did not attend. Her evidence was contained in a prepared witness statement.
5. The tribunal had the benefit of two bundles of documents consisting of a total of 633 pages.

The facts

6. The claimant was employed by the respondent as a home fit co-ordinator based at the respondent's Norwich home fit centre from 17 July 2017 until her resignation on 26 June 2018. The claimant between the 31 July 2017 and 11 August 2017 was undergoing training at the respondent's Branston store.
7. Shortly after joining the claimant complained that her desk was facing the wall. This was due to the location of the data cabling and this was the same for some other desks. Previous users of this desk had faced the wall. As a result of this being raised by the claimant the data cables were altered to allow the desk to be moved to a different position.
8. The claimant's team leader Samantha Scrivens who managed nine other employees was keen for the claimant who was a French national to be integrated into the team. Particularly the claimant was invited to join the team's 'What's app group', the team celebrated the claimant's birthday by providing a birthday cake and the claimant was encouraged to join the respondent's Christmas party. Indeed, Samantha Scrivens provided the claimant with a second-hand fridge and other appliances following the claimant's bout of food poisoning.
9. Mr Piper who was not employed by the respondent is a self-employed electrician who had attended the respondent's premises in or around October 2017 to carry out electrical work. In a brief discussion with the

claimant at this time, the claimant informed Mr Piper that she was French and a lesbian. Further that the reason she had come to England was because she felt she was treated less favourably in France for having a wife. Mr Piper in the course of the conversation mentioned he had dealings with a French company which had become difficult and protracted. Eventually his issues were resolved and in doing so he had been told by the French liaison officer the reason for the delay was that the French could be arrogant sometimes. That was the sum total of their conversation.

10. A Christmas party for the respondent's employees took place on 9 December 2017, at which their partners were invited as were some self-employed contractors who had worked at various times for the respondent. One of which was Mr Piper. The claimant attended without her wife. During the course of the evening Mr Piper and the claimant struck up a conversation, about family and that the claimant had children. The conversation proceeded to talking about procreation and the immaculate conception when the claimant referred to the fact that when a man masturbated his semen does not procreate. Mr Piper was surprised by the comment and responded by asking the claimant if she had a rabbit (reference to a sex toy). Apparently at the time the claimant was not aware it was a reference to a sex toy and believed Mr Piper was calling the claimant a rabbit. Mr Piper was not aware the claimant at the time was upset, despite the claimant at some stage during the course of the evening leaving the table. It is clear there was a robust exchange of views between the claimant and Mr Piper on the subject of procreation, the immaculate conception and homosexuality. Thereafter, there was no further conversation between Mr Piper and the claimant about French people or other matters.
11. On 11 December 2017 the claimant spoke to Mr Cowley her manager about the Christmas party and informed him that Mr Piper had made inappropriate comments to her. Mr Cowley spoke to Mr Piper to get his view on the Christmas party. Thereafter he questioned the claimant whether she wanted the matter to be dealt with formally or informally. The claimant's preference was for the matter to be dealt with on an informal basis, whereupon Mr Piper had offered to apologise to the claimant in person if she was agreeable. A meeting was then arranged with Mr Cowley in attendance for the 16 December 2017 at which Mr Piper provided a letter of apology (98) and Mr Piper in addition gave the claimant a bunch of flowers. Apparently at this meeting they hugged and the claimant accepted the apology. The flowers were placed by the claimant at her desk. The claimant did not raise this matter verbally or in writing thereafter with Mr Cowley a man she in fact she respected or HR over the issue at the Christmas party. The matter appeared to be at an end and had been resolved to the claimant's satisfaction. It was only ever raised again following the claimant's suspension for misconduct.

12. The claimant was not backward in disclosing details of her family and private life, an example of this was informing her work colleagues about drawing her partner in a naked state.
13. Shortly after the claimant arrived at the Norwich office following her training at Branston she had requested of Miss Scrivens to be allowed to set her keyboard in French settings where the letters are in a different position to those of English. Although Miss Scrivens did not know how to alter the keyboard she nevertheless was agreeable to them being altered.
14. It was after the claimant's return in May from her suspension that Miss Scrivens was to assist her with some re-training to get her back into the work frame. As the keyboard was now in French Miss Scrivens asked the claimant to reset it to the English settings so she could properly do the training for the claimant. Apparently, the claimant did not wish to alter the keyboard. The claimant was not reproached either by Miss Scrivens or her manager over the alteration of her keyboard or the French settings.
15. On 13 January a discussion ensued between the claimant and Emma Fulcher in the presence of Leah Russell and Caroline Reinbach, it started with Emma Fulcher asking the claimant how her recent house move went. The claimant's response was that she would not be there long as she was looking for another job and was thinking of moving abroad. It appears the claimant was very negative about England and English people in discussions claiming that they were homophobic. Mrs Reinbach responded that the English were not homophobic as in England there are gay marriages and people are accepted for what they are. The claimant corrected Mrs Reinbach saying she did not feel welcome in England and had not been accepted due to her sexuality because she was from France. Mrs Reinbach again responded by stating that in her view English people were welcoming to everyone whatever colour, sexuality or religion. The claimant then shouted at Mrs Reinbach stating she did not know what it was like being French or a lesbian, and accused Mrs Reinbach of being homophobic.
16. Mrs Reinbach wanted to avoid further argument and decided to remove herself from the situation by going out for a cigarette. The claimant repeated on her way out that English were not welcoming as the country had voted to leave the European Union. Mrs Reinbach stated she had voted for 'Brexit' and was not a racist in doing so. Whereupon the claimant told Mrs Reinbach to "fuck off" which the claimant does not deny saying.
17. Mrs Reinbach having taken herself outside for a cigarette, the claimant at some point also left the office to go outside for fresh air and when the claimant was approached by Mrs Reinbach to check that she was okay the claimant again told Mrs Reinbach to "fuck off and leave her alone".
18. Following the above incident Mrs Reinbach emailed her supervisor Emma Fulcher (112) regarding the altercation with the claimant.

Mrs Fulcher in turn forwarded this to the centre manager Mr Cowley. On the same day, 13 January the claimant emailed Mrs Reinbach, Mr Cowley and Mrs Winter, with a copy to Emma Fulcher to give her version of events that morning and her feelings. Mr Cowley having received the emails referred to above then spoke to those involved as part of preliminary investigation and took the view that the claimant should be suspended pending an investigation into the incident because the claimant had sworn directly at a colleague. As Mrs Reinbach was the person sworn at she was not suspended. The reason for the claimant's suspension was clear, the alleged misconduct (118) particularly the use of inappropriate language towards a colleague.

19. Mr Cowley subsequently interviewed Mrs Reinbach (119-124), Miss Emma Fulcher (125-127), Leah Russell (149-153) and Alan Shimmen (147-148).
20. Mr E Raynor deputy manager at the Norwich store was appointed to carry out the first steps investigation meeting into the alleged misconduct by the claimant. This was then postponed when the claimant raised a grievance. The grievance centred around what the claimant believed was unfair treatment in that Mrs Reinbach was not suspended (158-165). The grievance also included events which are said to have taken place at the Christmas party between the claimant and Mr Piper, problems with expenses, training and support, and alleged racial harassment. The grievance was conducted by Mr Barker from the Cambridge store, he interviewed on 16 February Mr Cowley (236-241), Samantha Scrivens (242-247), Miss Kitty Kent, Elaina Staples, Leah Russell, Mandy Kerr, Emma Fulcher, Abi Wallace, Samantha Hughes, Charlotte Denmark (248-275). The claimant was interviewed first on 10 February (216-229).
21. The grievance outcome was communicated to the claimant by letter of 28 February (276-277). In summary it was accepted that training was not as thorough as it could have been and Mr Raynor would be making recommendations. The desk positioning had resolved itself. Travel expenses – it was acknowledged there was an unacceptable delay and again Mr Barker would be making recommendations. As to the Christmas party incident it was acknowledged that the claimant had accepted an apology and it had been dealt with informally as she had previously requested. The matter of the claimant's suspension was being dealt with under the disciplinary procedure and questions relating to the claimant's sick pay, again it was acknowledged that it had been dealt with incorrectly and would now be resolved.
22. Finally, Mr Barker concluded that he could find no evidence of discrimination but rather a number of times where the claimant and colleagues had been engaged in heated debates and disagreed on a number of topics.

23. The claimant did not accept the outcome of the grievance and appealed by an undated letter in early March (278-279) and again sets out matters which had previously been raised.
24. The appeal was dealt with by Mr Carroll divisional operations manager. He met with the claimant on 22 March (286-306) at which an interpreter was provided for the claimant. At that meeting the claimant admitted the positioning of her desk had nothing to do with her nationality or sexuality. The fact the claimant did not feel integrated into the team despite Samantha Scrivens gift of a fridge. The Christmas party incident was discussed and the fact that Mr Piper had previously apologised was confirmed in a letter to the claimant together with a bunch of flowers which at the time the claimant had accepted and had agreed that the matter should be dealt with informally. The discussion led to the fact that the claimant felt her suspension was unfair, as Mrs Reinbach had not been suspended.
25. Mr Carroll then proceeded to interview; Samantha Scrivens (307-314), Darren Atkins (315-316), Emma Fulcher (317-320), Richard Cowley (321-329), Caroline Reinbach (330-332), Elaina Staples, Mandy Kerr and Umut Unal (333-338), Samantha Hughes (339-340), Kitty Kent (341-343), Charlotte Denmark (344-346), Abi Wallace (388-391), Mr Piper (392-394), Leah Russell (395-396), Andrea Dale (381-384) and Wayne Blusthurst (385-387).
26. The outcome of the grievance appeal was communicated to the claimant by letter of 6 April (401-403). The investigation into the claimant's grievances not only at the first stage but at the appeal stage was clearly thorough and extensive given the number of employees interviewed. In that letter Mr Carroll deals with the reimbursement of company sick pay, training support, the claimant's interaction with Samantha Scrivens, the Christmas party, previous alleged incident with Mr Piper in October 2017 and the incident on 13 January. What he cannot accept is that in interviewing a vast number of employees as he did he could find no evidence to support the claimant's claim that she had either been bullied, harassed or discriminated because of her race, nationality or sexuality. What he concluded was from his investigation he had established the claimant's personal circumstances and personal information was offered by the claimant during various conversations to fellow colleagues and the management team and could find no evidence that anybody had treated her differently or discriminated against her in any way.
27. Once the grievance appeal was concluded the investigation into the claimant's alleged misconduct could commence. Mr Raynor met the claimant on 22 January, the meeting lasting 3 hours (166-185) at which the claimant freely admitted to telling Mrs Reinbach to "fuck off". On 26 January he spoke to Mrs Reinbach (187-191), he also interviewed Emma Fulcher and Leah Russell on 26 January (192-195 and 196-199).

28. There was a further meeting with the claimant on 31 January (206-211) and again following the outcome of the grievance appeal Mr Raynor met the claimant on 18 April (414-419). Having considered all the evidence he decided to deal with the matter informally and the claimant was told she should not use inappropriate language towards anyone at work or customers and that on this occasion it was not appropriate to take the matter forward to a formal disciplinary hearing, and this was confirmed to the claimant (420) in the informal action form.
29. In late April 2018 Mr Cowley met the claimant (a meeting lasting 2 hours) to catch up prior to her return to work. At that meeting the claimant still maintained that Mrs Reinbach should have been suspended despite the fact that the claimant was the only person who swore. At this meeting the claimant informed Mr Cowley that she had been to the police to report Mrs Reinbach and Mr Piper for having committed hate crimes against her. The claimant was to take a period of leave to go to France before her return to work.
30. On 30 April the claimant returned and on that morning, she met with Mr Cowley and Samantha Scrivens (421-422) and there were further review meetings on 4 and 8 May (429-433).
31. On 8 May the claimant complained she had heard colleagues using swear words at work (they were not actually swearing at each other) and that she was being mocked talking about the French language. The incidents were reported to employee relations (552). In particular, a colleague had asked anyone if they would like a 'pain au chocolat' and the claimant congratulated her saying it was said with the correct accent. Following that another colleague apparently used the word 'pain au chocolat' in a quiet tone. The claimant asserted this was some form of racial discrimination because of her nationality, because the colleagues were embarrassed to say it out aloud. Mr Cowley took the view there was no racist behaviour and that a full investigation was not considered necessary.
32. On 9 May Mr Cowley met the claimant (435-436) and informed her that having taken advice from the employee relations team there would be no investigation into alleged swearing as inappropriate language can happen in a working environment. Particularly people will swear at work which is entirely different to people swearing at another member of staff or a customer in an aggressive manner which is not acceptable behaviour being the difference.
33. On 16 May much to the surprise of employees at the centre, two police officers arrived to speak to Mrs Reinbach and Mr Piper (473-474) over allegations made by the claimant against these two individuals in relation to issues of racism. It was left that a police record would remain on files, but no further action would be taken.

34. On 17 May from statements taken by Mr Cowley later on seventeenth it is clear the claimant became argumentative towards Samantha Hughes following a discussion between the claimant and Kitty Kent. In particular the claimant saying, "You are all horrible people and all your colleagues are nasty people". Following that altercation Samantha Scrivens interviewed Samantha Hughes, Charlotte Denmark, Kitty Kent and the claimant and then makes a report to Mr Cowley who views the claimant's behaviour aggressive towards colleagues and intends to suspend the claimant. The claimant is summoned to Mr Cowley's office in a rage throwing her bag on the floor and threatens to resign. Mr Cowley asked her to calm down stating that there are two sides to every story. She indicated she had issues with the team. Mr Cowley then informed her of his decision to suspend her for aggressive behaviour towards a colleague. The claimant then informs Mr Cowley that the police would be after him and hoped he could sleep at night.

35. Later that day on 17 May at 16:31 Samantha Scrivens makes a further report to Mr Cowley (471-472) amongst other things she recalls:

"It has been evident that Julie (the claimant) has no intention to continue a career with B&Q for the right reasons. She made it clear to us in her return to work interviews that she is solely here to receive her wages and will continue to compile evidence to support her ACAS application. Not only does this create a difficult working relationship for both myself and Julie given that she has made me aware of her intentions but also creates an air of animosity within the team because she is not making an effort to integrate with the team.

Prior to her return we both advised the team that the past is the past and we need to move on from it to ensure that everyone is happy working to the best of their abilities and more importantly getting along so there is no hint of the situation prior to the suspension.

Julie and I have always had a difficult relationship, which she believes to be solely my responsibility as her manager to fix. I have stated this in previous statements. Since her return to work, whilst repeating her CRN training, I find it difficult to communicate with her as she does not appear interested in learning the system, let alone speaking to her colleagues. There are continual allegations that the team are ignoring her and specifically ignoring her which are completely unfounded. The team have welcomed Julie back, and whilst I admit it is still very tense they have made the effort. We have both advised Julie that this is a two-way street and she also needs to make an effort with the team by involving herself in conversations to which she has said that she doesn't want to, based on what people have said in their previous statements. Julie has been asked to sit down with both Alaina and Umut and has paid no attention to learning, she has been sat on her phone most of the time and not conversing with the team.

Today has really been unnecessary, the reaction to a simple comment (far from taking and reading the statements) is not out of character for Julie. This is the fourth occasion of aggression that I am aware of. Whilst I appreciate that as part of the management team I have to be seen to be supporting both Julie and the rest of the team there is only so many times I can investigate what Julie believes to be inappropriate. Everything is taken out of proportion and twisted so it affects her. I cannot continue to allow the team to walk on egg shells for fear of offending her

when they have done and continue to do the complete opposite. Julie has made derogatory comments about me specifically on numerous occasions and whilst I can rise above it there has to be a degree of respect from Julie to her fellow colleagues which has never been evidenced. To be accused of treating her differently when all I have done is support Julie in same way that I have done with every team member was not only hurtful but also wholly untrue.

We have lost a lot of time, resource and energy going round in circles with this situation and I am sure you can agree we need to resolve this matter once and for all. Samantha Scrivens”

36. Graham Mitchell deputy manager of the Ipswich store was appointed to deal with the first stage investigation meeting. The claimant was invited to a meeting for the 22 May to discuss alleged misconduct on 17 May in particular being verbally aggressive towards Samantha Hughes (484-490).
37. On 31 May Mr Mitchell interviewed Samantha Hughes (503-504) and Charlotte Denmark (505-506).
38. He concluded the investigation on 19 June and decided not to proceed to any formal action and the claimant was duly informed.
39. In the meantime, on 7 June it was announced the team at the centre was due to close. On 25 June team members were informed individual consultations were about to start, two hours later the claimant handed in her resignation.

The Law

S.13 direct discrimination

“(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.”

40. In simple terms the act requires that A must not discriminate against B. B has to establish some detrimental action relied upon.
41. Then the tribunal will have to consider whether A treated B less favourably than A treated or would treat others. B an actual or hypothetical comparator.
42. In relation to comparators there must be no material difference between the circumstances relating to each case.
43. In this case the claimant appears to have advanced comparators of Mrs Reinbach and hypothetical comparators.
44. The tribunal will therefore consider if there are facts from which the tribunal could decide in the absence of any other explanation that A contravened the provision, the tribunal must hold that the contravention occurred unless

A shows that A did not contravene the provision. That in effect is the burden of proof under the Equality Act 2010 contained under s.136.

S.27 victimisation

45. The tribunal has to consider whether or not the claimant has carried out a protected act. If there was a protected act, has the respondent carried out detrimental treatment because of that protected act? In simple terms victimised the claimant by subjecting her to some form of detrimental treatment following the protected act being made. The Claimant relies upon her grievance as the protected act.

S.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 an intimidating, hostile, degrading, humiliating or offensive environment for B.”

46. In deciding whether the conduct has the effect referred to in sub section 1(b) each of the following must be taken into account:-
- a. The perception of B;
 - b. The other circumstances of the case;
 - c. Whether it is reasonable for the conduct to have that effect.

Jurisdiction

47. As already touched upon in this decision, the claim was issued on 24 June 2018, the early conciliation period ran from 20 April 2018 until the certificate was issued on 3 June 2018, therefore any allegations occurring before 24 January are out of time. In order to bring them in time the claimant would have to show they form part of series of continuing acts and if she fails to do so, she would have to advance arguments that it would be just and equitable to extend time.

The Tribunal's conclusions

Direct discrimination claims

48. Following the issues identified at the case management hearing on 30 November 2018 the less favourable treatment relied upon by the claimant is:

No other colleagues of a different race and sexual orientation other than the claimant had to justify effectively her existence as a lesbian.

49. The tribunal have struggled on the evidence before them to find a single example of any occasion where the claimant has had to justify her existence as a lesbian or French national. There simply was no less favourable treatment on the grounds of the claimant's sexual orientation or nationality, therefore this part of the claim fails.

She was then questioned by Mr Piper, not an employee of the respondent whether she had a rabbit, which at the time the claimant was not aware it was a sex toy. This was said to have taken place at the Christmas party.

50. The first point the tribunal has to consider is the allegation in relation to the events between the claimant and Mr Piper at the Christmas party which occurred on 9 December 2017 are out of time. They clearly do not form part of a continuing act, it is a single act. The time limit for allowing early conciliation would be 24 January and any acts occurring before that are out of time. The tribunal have considered whether it would be just and equitable to extend time. The tribunal considered the fact that the claimant on her own admission in cross examination had researched the law and her rights in December 2017. Further, by April the claimant again on her own admission in cross examination was receiving advice from ACAS. Clearly if the claimant was seriously concerned about this issue she should and could have filed a claim either in December or at the latest April 2018. The claim was in fact issued on 24 June. Furthermore, the claimant was talking in April about taking the matter to an employment tribunal (547-548). In those circumstances the tribunal do not conclude it would be just and equitable to extend time to allow this claim in.
51. However, even if the tribunal were wrong and it did extend time, the tribunal notes firstly the incident took place outside the respondent's place of work though that in itself is not fatal. Furthermore, Mr Piper was not an employee of the respondent nor could he be considered an agent of the respondent. Again, if the tribunal were wrong in those conclusions the claimant at the time confirmed to Mr Cowley she wanted the matter dealt with informally. Mr Cowley despite Mr Piper not being in the employ of the respondent arranged for a meeting to take place between the claimant and Mr Piper with Mr Cowley in attendance, at which Mr Piper apologised to the claimant for any offence he may have caused in the discussions that took place between the claimant and Mr Piper at the Christmas party. That apology was both verbal and in writing, and at the same time

Mr Piper gave the claimant a bunch of flowers which the claimant accepted and placed at her desk. Insofar as the respondent was concerned, that was the end of the matter. The claimant never raised the issue again until after she was suspended in January.

52. The tribunal even on the facts of the conversation which was freely entered into between the claimant and Mr Piper at which there was some discussion about procreation, masturbation and reference to a rabbit which at the time the claimant was not even aware that it was a sex toy cannot be described as either direct discrimination on the grounds of the claimant's nationality or sexuality or indeed any form of harassment. This claim fails.

The claimant says at the same Christmas party she was having to defend herself for being French and humiliated by Mr Piper to such an extent that she had to leave the Christmas party.

53. That simply did not happen. The only conversation the Claimant and Mr Piper had had about specifically the French people occurred in any event in October, and that was a passing reference to the problems Mr Piper had encountered in his dealings with a French company.

54. The tribunal repeats its findings referred to above.

The claimant asserts that none of her colleagues of a different race were told off for talking about their country whereas the claimant asserts that she was because she was French.

55. Again, the tribunal have struggled on the evidence before them to find a single example of any occasion where the claimant has been reprimanded by any team leader, supervisor or manager for talking about her country or nationality. There simply is no evidence of any less favourable treatment on the grounds of the claimant's nationality. This claim fails.

The claimant asserts it became usual to criticise and mock the claimant for being French and a lesbian.

56. The tribunal again conclude there is an absence of any direct evidence from the claimant of being mocked. The nearest the tribunal can see in this claim which although not in the claimant's witness statement, the claimant questioned Mrs Reinbach over the use of the word "toodles". That was apparently used by Mrs Reinbach kind of colloquially as and when leaving the room, Mrs Reinbach was clear she simply did not recall ever asking the claimant to repeat the saying in a mocking tone.

57. The second example if indeed it is an example of any mocking of the claimant is the reference to a 'pain au chocolat'. This occurs when the claimant congratulated a colleague on his pronunciation of the words 'pain au chocolat'. When another colleague made reference to 'pain au

chocolat' in a quiet tone the claimant concluded quite inexplicably this was mocking of her because of her nationality. Even if this could have been said to be some form of less favourable treatment, it could be that the colleague was embarrassed speaking in French. This claim therefore has no foundation and fails. Furthermore, the Tribunal on the evidence could find no evidence or any examples advanced by the Claimant where she was mocked for being a lesbian. This part of the claim fails.

The claimant further asserts that her manager reproached the claimant for modifying the parameters of her keyboard and system in French.

58. The reference to manager here is in fact Samantha Scrivens, who was in fact the team leader. What actually happened was Samantha Scrivens was asked by the claimant as to whether she could change her keyboard settings into French settings. There was no objection to this from Samantha Scrivens and this occurred shortly after the claimant joined the respondent. However, Samantha Scrivens did not know how to alter the settings on the keyboard and in fact the claimant Googled and made the necessary adjustments. There was no objection to this by Samantha Scrivens, Mr Cowley or any other colleague. The only time Samantha Scrivens requested that the keyboard revert to English settings was when the claimant returned to work in May in order for Miss Scrivens to undertake some re-training with the claimant on the keyboard, the claimant's response was that she did not wish to alter the keyboard. Miss Scrivens accepted that, there was no reproaching of the claimant by either Miss Scrivens or any manager. This claim fails as there was no less favourable treatment on the grounds of the claimant's nationality or sexual orientation.

The claimant asserts that she was suspended because of her sexual orientation and race but not Caroline Reinbach.

59. The simple and plain facts here are the claimant was suspended as a result of swearing twice at a colleague, particularly Mrs Reinbach. The claimant told Mrs Reinbach on two occasions to "fuck off". Mrs Reinbach did not swear at the claimant at any stage. The claimant freely admitted she had told Mrs Reinbach to "fuck off". That was the sole and only reason for the claimant being suspended. Ultimately, informal action was taken against the claimant and no formal disciplinary action was taken. Had a hypothetical comparator, a heterosexual non-French who directly swore at a colleague, the same course of action would have been undertaken namely suspension. It had absolutely nothing to do with the claimant's race or sexual orientation and that claim clearly fails.

Victimisation

60. The claimant asserts the protected act was the raising of the grievance.

61. As a result of raising the grievance the claimant was suspended for a second time on 18 May. The claimant asserts she was completely ostracised from her work colleagues and starved of work.
62. The protected act was the claimant's grievance dated 14 January (142), the claimant asserts she was victimised when she was suspended on 17 May. The claimant's suspension on 17 May clearly had nothing to do with the claimant's grievance particularly as in part the respondent acknowledged there had been shortcomings in dealing with the claimant's sick pay, training and expenses which were part of the grievance. The suspension was entirely the result of the claimant's aggressive outburst towards a colleague. Mr Cowley and Miss Scrivens had clearly following her return to work in April made positive steps to re-integrate the claimant, including a phased return to work. The claimant had a number of review meetings with Mr Cowley in particular 3. There was no mention at these meetings that the claimant was starved of work or being ostracised. What is clear, there was some tension now between the claimant and work colleagues as evidenced by Miss Scrivens report to Mr Cowley on 17 May (471-472) particularly it was the claimant "not making an effort to integrate with the team" and "... there are continued allegations that the team are ignoring her and specifically ignoring her which are completely unfounded. The team have welcomed Julie back and whilst I admit it is still very tense they have made every effort. We have both advised Julie this is a two-way street and she also needs to make an effort with the team by involving herself in conversation to which she has said she doesn't want to, based on what people have said in their previous statements". Clearly these claims are not made out on the facts and thus fail.

Harassment

63. This is advanced as race and sexual orientation. The claimant asserts being suspended twice and being constantly reproached for being French.
64. There is no evidence based on the tribunal's conclusions above that the claimant has been subjected to any form of harassment for being either French or on the grounds of her sexual orientation. The tribunal repeat the findings as referred to above. This claim fails.

Employment Judge Postle

Date:31/7/2019

Sent to the parties on: 31/7/2019

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For the Tribunal Office