Case Number: 3304260/2018

EMPLOYMENT TRIBUNALS

Claimant			**Respondent**
Mrs T Vasquez	**v**	**(1)**	**Manpower UK Ltd**
		(2)	**VW Financial Services Ltd**

Heard at: Milton Keynes **On**: 19-22 August 2019

Before: Employment Judge Smail
Mrs A Brosnan
Mrs G Bhatt MBE

Appearances

For the Claimant: Mr D Vasquez, Husband

For the Respondents: (1) Mr A Sutherland, Solicitor
(2) Mr R Barker, Solicitor

RESERVED JUDGMENT

1. The claimant's claims of disability discrimination are dismissed.

REASONS

1. By a claim form presented on 24 February 2018 the claimant claims disability discrimination. She was employed by the first respondent ('Manpower'), a recruitment agency, between 6 March 2017 and 2 March 2018 following a resignation on 25 February 2018 when she gave one week's notice, claiming in effect a constructive dismissal. In the course of this employment she had been exclusively engaged at VW Financial Services Ltd ('VW') as a customer resolutions executive, a complaints-handling function. The first respondent supplies temporary workers to the second respondent. The workers may be recruited by the second respondent as permanent employees following a period of temporary working with the first respondent, but not necessarily so.

2. The claimant wanted to find permanent employment at the second respondent, in particular she had applied for a permanent position as a fleet customer resolutions executive in November 2017. The central feature of this case is that this application was blocked by the second respondent because of the claimant's number of absences leading up to November 2017. In a meeting on 29 November 2017 the second respondent set out its position by the claimant's line manager at VW, Lucy Elliott. It was confirmed that the claimant would not be allowed to apply for the fleet customer resolution position. Furthermore, the claimant was told that if she did not have more than three occasions of sickness in her next three months, not only would she not be considered for a permanent position available thereafter, but her temporary engagement would be terminated. In other words four occasions of sickness: if there were four occasions of sickness in the next three months that could lead to the termination of the engagement.

3. This was a position stated by VW. It is an issue in the case whether insofar as the future of the temporary engagement was concerned, they were acting within their powers when they did that, otherwise it seems common ground that management of absences was to be done by the employer, Manpower. The claimant claims that this was a discriminatory position because she claims her absences, or the majority of them, arose from her disability. Her disability is called Emetophobia, which is a phobia of being physically sick. This phobia is admitted to be a disability by the respondent.

THE ISSUES

4. On day 1 and the morning of day 2 the issues were finalised. The agreed list of issues reads as follows.

The claimant claims disability discrimination against both the respondents. The disability relied upon is Emetophobia. Both respondents accept that the claimant was disabled at the relevant time on grounds of her Emetophobia. The specific claims are as follows:

4.1 Failure to make reasonable adjustments as against VW, s.20 and s.21 of the Equality Act 2010.

4.1.1 The claimant asserts that the PCP is VW's requirement to have satisfactory levels of attendance.

4.1.2 Did the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled?

4.1.3 The claimant asserts that the following reasonable adjustments ought to have been made (i) disability related absences ought to have been disregarded; (ii) absence triggers ought to have been adjusted; (iii) occasions when the claimant left her shift early ought not to have been recorded as sickness absence; (iv) would such adjustments have been reasonable (including whether the adjustments would have ameliorated the disadvantage)?

4.2 Failure to make reasonable adjustments, a claim as against Manpower UK Ltd s.20 and s.21 of the Equality Act 2010.

4.2.1 The claimant asserts that the PCP is Manpower's practice of occupational health referrals.

4.2.2 Did the PCP put the claimant at a substantial disadvantage in comparison with persons who are not disabled?

4.2.3 The claimant asserts that the following reasonable adjustments ought to have been made: (i) an immediate referral to occupational health if the GP report has said an occupational health referral is required. The GP report did say this as received by the first respondent on 2 January 2018.

4.2.4 Would such an adjustment have been reasonable including whether the adjustment would have ameliorated the disadvantage?

4.3 Discrimination arising from disability, the claim put against VW under s.15 of the Equality Act 2010.

4.3.1 The claimant asserts that she was treated unfavourably by VW when VW did not allow the claimant to apply for a permanent fleet role. Was she treated unfavourably? If so, can VW show that the treatment was a proportionate means of achieving a legitimate aim? VW asserts that requiring satisfactory attendances are proportionate means of achieving the legitimate aim of ensuring good customer service.

4.3.2 The claimant further asserts that she was treated unfavourably by VW when Lucy Elliott told the claimant that VW would have to reconsider her temporary role in the event of four further absences. Was she treated unfavourably? If so, can VW show that the treatment is a proportionate means of achieving a legitimate aim? VW asserts that considering the claimant's attendance record is a proportionate means of achieving the legitimate aim of securing agency workers with satisfactory attendance.

4.4 Harassment as against Manpower s.26 of the Equality Act 2010.

4.4.1 Did Manpower's employees engage in unwanted conduct related to disability when they met with the claimant on 16 November 2017, and did that conduct have the effect, though not the purpose, of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.5 Victimisation claimed against both Manpower and VW contrary to s.27 of the Equality Act 2010.

4.5.1 Was the raising of her grievance by the claimant a protected act, this is conceded by both respondents.

4.5.2 If so, did either or both VW or MP subject the claimant to a detriment, namely the claimant having to resign from her employment because the claimant did a protected act? On the facts

of this case this includes an allegation that when attending the second respondent's offices for the purposes of recovering copies of emails for the purpose of her grievance appeal the claimant was closely monitored by Lucy Elliott and Agnes Tye, persons against whom she had made complaints in the grievance. The claimant alleges before us that this amounted to victimisation.

THE LAW

5. The claim against the first respondent is on the basis of the usual direct liability of an employer under s.39 of the Equality Act 2010.

6. The claim against VW is brought under s.41 of the Equality Act 2010 relating to contract workers. The claimant was a contract worker and she was employed by another person and supplied by that person under a contract with VW to perform the work on its behalf. By s.41(1) the principal must not discriminate against a contract worker (a) as to the terms on which the principal allows the worker to do work; (b) by not allowing the worker to do or continue to do the work; (c) in the way the principal affords the worker access or by not affording the worker access to opportunities for receiving the benefit, facility or service; and (d) by subjecting the worker to any other detriment.

7. By s.41(2) a principal must not in relation to the contract work harass a contract worker.

8. By s.41(3) a principal must not victimise a contract worker… (c) in the way the principal affords the worker access or by not affording the worker access to opportunities for receiving the benefit, facility or service; and (d) by subjecting the worker to any other detriment.

9. By s.41(4) a duty to make reasonable adjustments applies to a principal as well as the employer of a contract worker.

10. S.20(3) relates to the duty to make reasonable adjustments: The first requirement is a requirement where a provision criterion or practice of A puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to avoid the disadvantage.

11. S.15 deals with discrimination arising from disability. The person A discriminates a disabled person B if: (a) A treats B unfavourably because of something arising in consequence of B's disability; and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim. By sub-section 2, sub-section 1 does not apply if A shows that A did not know and could not reasonably have been expected to know that B had the disability.

12. Harassment is provided for under s.26. (1) A person A harasses another B if A engages in unwanted conduct relating 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. By sub-section (4) 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.

13. Victimisation is provided for under s.27 of the Equality Act 2010 by: (1) a person A victimises another B if A subjects B to a detriment because A does a protected act… by sub-section (2) each of the following is a protected act… (d) making an allegation whether or not express that A or another person has contravened this act. It is accepted by both respondents that the claimant raised a grievance with the first respondent which amounted to a protected act.

14. Burden of proof is an important concept in disability cases. That is provided for by s.136 of the 2010 Act. By (2) if there are facts from which the court could decide, in the absence of any other explanation, that a person A contravened the provision concerned, the court must hold that the contravention occurred. By (3) sub-section (2) does not apply if A shows that A did not contravene the provision. What this means in practise is that the worker has to show a prima facie case of discrimination. If that is the case the burden transfers across to the employer, or the contract principal as the case may be, to show that discrimination played no role whatsoever: Igen v Wong (CA) [2005] IRLR 258.

FINDINGS ON THE ISSUES

Knowledge of disability

15. The claimant accepts that she made a deliberate decision not to disclose the disability when she applied to Manpower and left blank the relevant section of the form, which she otherwise filled in on 10 February 2017. The claimant's reasoning was that if she disclosed it then, in accordance with her experience, her application would not progress further. We will return below to when the respondents understood the claimant had a disability. The claimant did have extensive absences.

16. Absences: we will do our best to identify the reasons for them.

    (a) There are two occasions of general absence which have no purported connection to any sickness. These were for two days on 8 and 9 May 2017; for one day on 29 June 2017.

    (b) Whilst a four-day absence between 13 and 16 June 2017 was at first claimed to relate to migraine, it was in fact a period, as the claimant accepts, when the claimant had to sort out a payment plan unusually for a cocaine dealer who supplied the claimant's husband who has admitted a cocaine addiction. That was not connected to the alleged disability.

(c) There was a two-day absence - 9 and 10 March 2017 in respect of a complication causing internal bleeding from the womb around the insertion of a coil. Whilst we understand that experience might make the claimant feel sick, the primary cause of the absence was not Emetophobia but the bleeding.

(d) There is a one-day plus 1.33 hours absence covering 6 and 7 April 2017 which was reported as a virus and throat infection. Again, that is an independent cause of absence even if it might make the claimant feel sick.

(e) There is a one-day absence on 2 June 2017 when it is recorded that the claimant went home sick. The second respondent seems to accept that this was related to the disability.

(f) There is a two-day absence, 14 and 15 July 2017. The claimant had left early on 13th which is not recorded as an absence and the reason for this period of absence is given that the claimant ate something spicy that made her feel sick. This is accepted by the second respondent as relating to the disability.

(g) There is a one-day absence on 31 July 2017 when the claimant left work having been sweating and feeling sick at her desk. Again, this is disability-related.

(h) There is a one-day absence, on the revised part-time hours, on 24 August 2017 recorded as migraine, which is likely to be disability related.

(i) There is an absence for one hour on 13 September and the whole part-time day on 14 September 2017 when a return to work form records this as being down to an upset stomach with cramps and a sickness phobia is mentioned. Doing the best we can, this was disability-related.

(j) On 6 October 2017 the claimant was off for one part-time day. We do not appear to have sufficient evidence to establish a reason. Accordingly, we treat this day as neutral.

(k) On 19 October 2017 she developed a rash caused by a hair product and had to leave early. The primary cause of absence was not the disability therefore.

17. Doing the best we can, we find five occasions amounting to seven days of disability-related absence and six occasions resulting in 12 days absence for non-disability related reasons over an 8 month period. That was the information before the respondents, certainly the second respondent, in November 2017. The document we have before us was prepared by the second respondent, and printed off by them on 31 October 2017, suggesting this was used to inform decision-making.

18. The above absences are relevant to the respondents' decision-making. The claimant was further signed off from 6 February 2018 to the date of her resignation with stress.

19. Certainly, by 2 November 2017 both respondents knew that the claimant was claiming a disability. The issues in our case, as we have already mentioned, centre around November 2017 and afterwards so it does not matter much whether there was knowledge significantly earlier.

20. It seems to us that the second respondent first learned of a claim to a disability in an email dated 9 June 2017 with further details being confirmed in an email dated 31 July 2017. It seems therefore that VW learned of it prior to Manpower.

21. There were return to work meetings with Manpower. An example was on 14 September, when sickness phobia was noted by Azar Ullah, the claimant's Manpower report, but that was also recorded as short-term with no trend. Lucy Elliott had more dealings with the claimant than had Manpower on a day-to-day basis. She assumed that Manpower knew of the disability but of course the claimant had not disclosed the disability on her application form.

22. Manpower first learned of the disability from Lucy Elliott, emailing Agnes Tye on 2 November 2017. Agnes Tye was the on-site account manager on the Manpower side dealing with the relationship between VW and Manpower at an operational level. She did not have direct management responsibilities for the temporary workers. It probably does not matter to the issues in the case, but if we had to decide whether the second respondent knew about the disability prior to June 2017, we would find that they did not. Whilst the claimant contended she informed Lucy Elliott in the first week of her engagement that she had a disability, we reject that on the balance of probability. There is no corroboration for that position. Indeed, the email correspondence we see subsequently suggests otherwise.

23. It is a feature of the situation of the supply of temporary workers in this case that whilst in theory the worker was employed by Manpower, in practice the control of the work was done by VW; so it is not surprising that VW knew earlier than Manpower about the disability given that the claimant had not disclosed the disability.

24. VW had allowed the claimant to work reduced hours from 7 hours to 5 hours a day from 13 July 2017. This was put as an adjustment.

25. Manpower did seek to inform itself by way of a letter to the claimant's GP on 21 November 2017 about the details of her disability and asked pertinent questions. There was no reply until 2 January 2018 when the GP stated that matters would be more sensibly referred to occupational health. The letter of 21 November 2017 followed a meeting with the claimant on 20 November 2017 when Azar Ullah, Agnes Tye and a trainee met with the claimant to ask her questions about her condition and her work at VW. The claimant claims she was harassed at these meetings by those questions. We reject the claimant's case that it was reasonable to regard her as having been harassed

on this occasion: Manpower asked relevant questions with good intentions trying to establish the nature and extent of the disability and its implications for work. The claimant could not be reasonably regarded as having her integrity violated or an offensive environment being created for her during this process. Manpower was doing its job.

26. The claimant brought a grievance against Manpower on 29 November 2017 and in the grievance appeal published in May 2018 long after the claimant had resigned, Pamela Stokes expressed the view that it was inappropriate for a trainee to attend the meeting on 20 November 2017. Whether that is right or not, the fact that a trainee attended did not mean that the claimant was harassed when the managers asked her the relevant questions.

27. All that said then, both respondents knew of the disability from 2 November 2017.

VW's position communicated on 29 November 2017

28. Internal communications within Manpower particularly from Sophie Instone, an HR consultant, expressed sympathy with the claimant's position on the restrictions to her progression to a permanent role and the counting of disability related absence in general. On 28 November 2017 Agnes Tye emailed Lucy Elliott asking whether they could re-set the clock in terms of absences and whether they could pre-agree an increased absence allowance over the next three months.

29. Whilst VW did not re-set the clock, they came to an allowance of three absences in three months, adjusting their absences for probationary employees which were taken as a comparative source. Employees within a probationary period have a trigger of two absences within six months leading to an informal discussion with one further absence in the probationary period leading to dismissal. The adjustment that seems to have been made was a tolerance of three absences within three months, that is an increase of one absence within half the time span, which is more advantageous to the claimant because the longer the period of monitoring, the more likely the absence will hit the trigger of intolerance. The figure of three absences in three months was arbitrary but there was some adjustment made by VW. We return later as to whether it was appropriate for VW to make this adjustment at all.

30. VW's position was explained to the claimant by Lucy Elliott on 29 November 2017. If she did not manage the target of no more than 3 absences in 3 months, not only would she not be considered for a permanent position but her temporary position would be terminated. VW had stopped the claimant's application to another department because the absence record was such that she would not pass probation.

31. It is also right to record that VW did not terminate the claimant's engagement with them notwithstanding the level of absences. Indeed, it extended the engagements on two occasions, the first in September 2017 until the end of

the year and again on 20 December 2017 until the end of March 2017, by when of course the claimant had resigned.

32. VW's case before us is that insofar as they purported to manage the claimant's absences when Manpower might have, they were forced to do so because Manpower did not in fact do what they were supposed to do. The Tribunal has sympathy with that position.

The grievance

33. As briefly referred to above, on 29 November 2017 the claimant raised a grievance. She claimed in an email dated that day that she felt discriminated against on the basis of her disability. She noted that VW had blocked her application for another role. She claimed to have made a proposal of a reasonable adjustment which was that her disability related absence be ignored.

34. Dan Rodgers concluded the grievance on 13 February 2018. He stated that whilst Manpower could not accede to the claimant's request to ignore disability-related absence as absence, he indicated that any sickness relating to disability would be considered and additional flexibility be given. He clarified with VW that the claimant was not blocked from applying to them but noted that they do have their own recruitment policies and any concerns could be raised with them.

35. The claimant maintains that as at the conclusion of her grievance outcome, she still did not have clear confirmation that her disability-related absences would be ignored. The offer of Occupational Health in February 2018, states the claimant, was too late given also she wished to appeal Mr Rodgers conclusion.

36. There was a grievance appeal outcome determined by Pamela Stokes on 21 May 2018, long after the claimant had resigned of course, stating this in respect of VW's position on the permanent role and the continued engagement generally:

> "You felt that the ultimatum given to you by our client was ignored in the initial grievance. Specifically, you were told by Lucy Elliott in a documented conversation on 29 November that further absences in a three month period would result in the termination of your contract. I have reviewed the documented meeting you refer to and can see that this was said to you. As Dan stated in the original grievance outcome letter, our client should not have been having these conversations with you. I do not disagree with him and I do not believe this conversation between you and Lucy should have taken place. Dan has stated, and I reiterate, that matters will be dealt with accordingly so that our client no longer has conversations of this nature and does not get involved in managing sickness from Manpower employees. I have asked our client why this was said to you and they have stated that they needed to make you aware your absence levels were unsustainable and needed to improve. Unfortunately, neither myself nor Dan could have impacted what the claimant said to you in that meeting and believe Manpower should have had such conversations with you. With this in mind they probably would have been different conversations and I have put steps in place to

> ensure conversations of this nature with Manpower employees do not take place with our client. Based on what I have seen, I do not believe it was appropriate for our clients to have this conversation with you and therefore I uphold this element of your grievance. "

Visit to VWs offices on 23 February 2018

37. On the day of the claimant's resignation on 23 February 2018, she visited VW to print off emails relevant to her grievance appeal. Her use of the computer was directly monitored by Agnes Tye and Lucy Elliott so that everything she looked at and printed off was seen by the two of them standing over her shoulder. The Second Respondent informs us that there is a protocol when an employee wishes to print off materials in respect of a grievance when that employee is absent and has to come in that his/her use of the computer is closely monitored so as to ensure that commercially sensitive information is not abused.

38. This supervision, it seems to the tribunal, could have been undertaken by parties not involved in the dispute. Someone other than Lucy Elliott or Agnes Tye could have performed the supervisory role. As it happens, however, the claimant does not deal with this issue in her witness statement. Further, she did not object to the presence of the two ladies at the time. We accept the accuracy of Joanne Powell's notes of this meeting, which record that the claimant was fine with the presence of Mrs Tye and Mrs Elliott. The claimant does refer to the matter in her resignation email. However, the fact that this episode was not dealt with in her witness statement and the fact that she made no objection at the time suggests weakens her case on this.

39. The resignation email of 23 February 2018 read as follows:

> 'I am writing to give Manpower one week's notice to end my contract with you and VW. I have been forced into taking this difficult decision after the stress of the whole episode. … this morning I was allowed to return to VW to retrieve emails relevant to my complaint. I wasn't expecting the warmest of welcomes but what I experienced this morning was the last straw for me…I feel really sad and have lost all confidence in any future prospects. I feel pushed out and can see no alternative but to leave Manpower/VW.
>
> 'I will of course be seeing you on Monday for the Appeal meeting'.

CONCLUSIONS

40. It has not helped the claimant's case that there was substantial absence for non-disability reasons. It is also a feature of the case that the claimant deliberately did not disclose the disability upon recruitment. That further complicates her position.

The reasonable adjustments claim against VW

41. Manpower's position - that it was not for VW to manage the sickness absence of the Manpower temporary worker - appears right. It follows that it was not for VW to make reasonable adjustments in respect of attendance management. The claim against VW for adjustments, therefore, is misconceived.

42. If that is wrong, then whilst it was a PCP to have satisfactory levels of attendance, and whilst that might have put the claimant at a substantial disadvantage, the Tribunal rejects the suggestion that it would be reasonable to disregard disability-related absences altogether. There has to be accurate counting in the first place. Further, it is reasonable to have a balance between the need for attendance and allowing for the disability. It was reasonable to expect an adjusted level of attendance. VW's target of no more than 3 absences in 3 months was a reasonable adjustment. The Tribunal rejects the suggestion that VW were required to do more. Absence triggers were adjusted. If the claimant left her shift early, that reasonably counts as absence of part-absence. No further reasonable adjustment was required even if this could be argued against VW.

The reasonable adjustments claim against Manpower – occupational health referrals

43. Manpower wrote with relevant questions to the claimant's GP on 21 November 2017. The reply came in on 2 January 2018 when the GP suggested referral to Occupational Health would be appropriate. By then the claimant had raised a grievance on 29 November 2017 which was answered by Dan Rodgers on 13 February 2018. A referral to occupational health was offered at the grievance outcome meeting but was described as being too late by the claimant notwithstanding that she was still signed off sick.

44. There was no provision, criterion or practice to the effect that the claimant would not be offered an occupational health referral. Medical enquiry was made of the GP first. The time span may not have been desirable but the claimant does not prove a PCP. In terms of the slippage of time, it plainly did not help that the claimant did not disclose the condition when first applying.

45. The Tribunal doubts that the occupational health referral itself can amount to an adjustment. A risk assessment, for example, cannot be an adjustment itself. What a risk assessment recommends might be. Occupational Health may have recommended adjustments but there is no certainty as to what these would be. (see by analogy Tarbuck v Sainsburys Supermarkets Ltd [2006] IRLR 664; Spence v Intype Ltd UKEAT/0617/06).

46. Furthermore, Manpower's failure to offer an occupational health assessment was not operating when the claimant resigned. She resigned after it had been offered.

Discrimination arising from disability: the claim against VW

(a) Permanent Role

47. VW did block an application for a permanent fleet role. The did so because of the claimant's absence history. There were 5 occasions amounting to 7 days of disability-related absence and 6 occasions resulting in 12 days absence for non-disability related reasons over an 8 month period. That was the information before the respondents, certainly the second respondent, in November 2017. So of 11 occasions of absence, 45% were disability-related; and of 19 days of absence, 37% were disability-related. Given that disability-related absence played a more than trivial role, we find that the blocking did arise in consequence of the disability. However, we find that the decision to block can be justified by VW. First, the majority reason for absences were non-disability related; the level of absence was unsatisfactory in any event whether disability-related absences were included or not, and there is a legitimate interest in recruiting permanent staff from temporary staff with a satisfactory absence history. It was proportionate to put on hold applications for permanent work until a satisfactory level of absence was observed. VW justify any prima facie unfavourable treatment.

(b) Temporary role

48. It is right that VW told the claimant they would reconsider her temporary role if she exceeded an allowance of three absences in three months, adjusting their permitted absences for probationary employees (permanent) which were taken as a comparative source. Employees within a probationary period have a trigger of two absences within six months leading to an informal discussion with one further absence in the probationary period leading to dismissal. The adjustment that seems to have been made was a tolerance of three absences within three months, that is an increase of one absence within half the time span, which is more advantageous to the claimant because the longer the period of monitoring, the more likely the absence will hit the trigger of intolerance. The figure of three absences in three months was on one view arbitrary but this was some adjustment made by VW.

49. The Tribunal has debated the significance of the fact that VW should not have been concerned with managing the absences of Manpower's staff. As we know, this was Manpower's responsibility. It might be argued how could VW justify stating this position when Manpower should have been managing the matter.

50. The position we arrive at is that insofar as Manpower were not managing the position, then VW were entitled to step in and do so. The practical reality of

the position was that the claimant worked for VW. Her absences were affecting VW output. There was a positive adjustment from an analogous position with probationer employees. VW put forward a concrete allowance which could be understood. VW had a legitimate interest in securing attendance at work, we find that setting the tolerance that they did was justifiable. In other words, insofar as the claimant was treated unfavourably by having an absence allowance, VW justify the allowance as a proportionate means of achieving the legitimate aim of good attendance. Three absences in three months was a reasonable allowance as a matter of fact.

51. In any event, VW position was not operating at the time of the claimant's resignation. Dan Rodgers concluded the grievance on 13 February 2018 on behalf of Manpower. He stated that whilst Manpower could not accede to the claimant's request to ignore disability-related absence as absence, he indicated that any sickness relating to disability would be considered and additional flexibility be given. So Manpower would have dealt with any further disability-related absences in that light.

52. The Tribunal rejects the view that VW or Manpower should have simply ignored disability-related absence. Counting disability-related absence and then dealing with it flexibly or making adjustments was reasonable as a matter of fact.

Harassment against Manpower – meeting with Manpower (probably 20 November 2017)

53. We reject the claimant's case that it was reasonable to regard her as having been harassed on this occasion: Manpower's mangers asked relevant questions with good intentions trying to establish the nature and extent of the disability and its implications for work. The claimant could not be reasonably regarded as having her integrity violated or an offensive environment being created for her during this process. Manpower was doing its job. That a trainee was there does not change that. Trainees need to learn how to do the job. There was no prima facie discrimination here.

Victimisation claimed against both Manpower and VW

54. A protected act is conceded. This claim centres upon the claimant's visit on 23 February 2018 to VW's offices to print off emails relevant to her grievance appeal. Her use of the computer was directly monitored by Agnes Tye (Manpower) and Lucy Elliott (VW) so that everything she looked at and printed off was seen by the two of them standing over her shoulder. The Second Respondent informs us that there is a protocol when an employee wishes to print off materials in respect of a grievance when that employee is absent and has to come in that his/her use of the computer is closely monitored so as to ensure that commercially sensitive information is not abused.

55. This supervision, it seems to the tribunal, could have been undertaken by parties not involved in the dispute. Someone other than Lucy Elliott or Agnes

Tye could have performed the supervisory role. As it happens, however, the claimant does not deal with this issue in her witness statement. Further, she did not object to the presence of the two ladies at the time. We accept the accuracy of Joanne Powell's notes of this meeting, which record that the claimant was fine with the presence of Mrs Tye and Mrs Elliott. The claimant does refer to the matter in her resignation email. However, the fact that this episode was not dealt with in her witness statement and the fact that she made no objection at the time suggests, and we find, that this was not detrimental to her.

_____
Employment Judge Smail

Date: ……28/10/19.

Sent to the parties on: .....1/11/19.

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For the Tribunal Office