



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

V

RESPONDENT

Miss J Davis

Porthaven Care Homes No.2 Ltd

Heard at: London South Employment Tribunal On: 12 & 13 September
2019

Before: Employment Judge Hyams-Parish
Members: Ms C Edwards and Mrs S Dengate

Representation:

For the Claimant: Mr R Robison (Free Representation Unit)

For the Respondent: Ms J Hale (Solicitor)

JUDGMENT

The claim of direct sex discrimination is not well founded and is dismissed.

REASONS

Claim

1. By a claim form presented to the Tribunal on 17 July 2018, the Claimant brings a claim of direct sex discrimination contrary to s.13 Equality Act 2010 ("EqA"). The claim is denied by the Respondent.

Legal Issues

2. The questions to be determined by the Tribunal were canvassed with the representatives for the Parties prior to the commencement of the hearing and were agreed as follows:

(a) Did the Respondent treat the Claimant less favourably than it treated or would treat others?

(b) If the answer to the above question is yes, was the less favourable treatment because of a protected characteristic, in this case, sex?

The actual comparator in this case is a person known as Mr Gianluca Rossi but in the alternative, the Claimant seeks to rely on a hypothetical comparator.

Law

3. The EqA sets out provisions prohibiting direct discrimination. Section 13 EqA states:

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.

4. It is settled law that the focus in direct discrimination cases must always be on the primary question “*Why did the Respondent treat the Claimant in this way?*” Put another way, “*What was the Respondent’s conscious or subconscious reason for treating the Claimant less favourably?*” It is well established law that a Respondent’s motive is irrelevant and that the protected characteristic need not be the sole or even principal reason for the treatment as long as it is a significant influence or an effective cause of the treatment. In ***R v Nagarajan v London Regional Transport [1999] IRLR 572*** it was said that “*an employer may genuinely believe that the reason why he rejected the applicant had nothing to do with the applicant’s race. After careful and thorough investigation of a claim, members of an Employment Tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, that race was the reason why he acted as he did*”.

5. The provisions relating to the burden of proof are set out at Section 136(2) and (3) of EqA which state:

(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.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

6. Case law is clear that there is a two-stage test to proving discrimination: -
- a. Firstly it is for the Claimant to prove facts from which the Tribunal could conclude, in the absence of any evidence from the Respondent, that the Respondent committed an act of discrimination.

- b. Only if that burden is discharged would it then be for the Respondent to prove that the reason they dismissed the Claimant was not because of, in this case, sex.
7. Therefore, it is clear that the burden of proof shifts onto the Respondent only if the Claimant satisfies the Tribunal that there is a 'prima facie' case of discrimination. This will usually be based upon inferences of discrimination drawn from the primary facts and circumstances found by the Tribunal to have been proved on the balance of probabilities. Such inferences are crucial in discrimination cases given the unlikelihood of there being direct, overt and decisive evidence that a Claimant has been treated less favourably because of a protected characteristic.
8. When looking at whether the burden shifts, there is clear authority that something more than less favourable treatment than a comparator is required. The test is whether the Tribunal "could conclude", not whether it is "possible to conclude". In **Madarassy v Nomura International plc 2007 ICR 867, CA** it was said that the bare facts of a difference in treatment only indicates a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination. However, "the "more" that is needed to create a claim requiring an answer need not be a great deal. In some instances, it can be furnished by non-responses, an evasive or untruthful answer to questions, failing to follow procedures etc. Importantly, the fact that an employee has been subjected to unreasonable treatment is not necessarily, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift.
9. Having said that the shifting burden of proof involves two stages, case law suggests that in some instances, particularly where the Claimant is relying upon a hypothetical comparator, it may be appropriate to dispense with the first stage altogether and proceed straight to the second stage. In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** it was said that when considering the question whether an individual has been treated less favourably on the ground of sex, employment tribunals often apply a sequential approach, first determining whether the Claimant received less favourable treatment than the appropriate comparator and subsequently whether the less favourable treatment was on the ground of sex. Thus tribunals often consider the reason for the treatment only if the less favourable treatment issue is resolved in the Claimant's favour. The less favourable treatment is thus treated as a threshold that the Claimant must cross before the Tribunal is called upon to decide why the Claimant was accorded such treatment. However, the court considered in **Shamoon** that, especially where the identity of the relevant comparator is a matter of dispute, this sequential analysis may give rise to needless problems. It was said that "*sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined*".

Hearing

10. The Tribunal was referred to documents in a hearing bundle extending to 104 pages.
11. Witness evidence was provided by the Claimant and, on behalf of the Respondent, Karen Pain and Heather Hadizad.
12. The evidence concluded at the end of the first day of the hearing. Legal submissions were made by the representatives on the morning of the second day and the Tribunal then retired to discuss the case and make a decision.
13. The decision was conveyed to the Parties on the afternoon of the second day with oral reasons. These written reasons are provided at the request of the Claimant.

Findings of fact

14. Lavender Oaks Care Home is a care home operated by the Respondent. It is a new build home which opened in the Autumn of 2017.
15. The Registered Manager of the home is Heather Hadizad. She joined the Respondent on 3 January 2017 and worked initially as a Home Manager at Woodland Manor Care Home (another home operated by the Respondent) for about six months before Lavender Oaks opened.
16. Karen Pain is currently the Registered Home Manager at Tonbridge Care Home, which was opened by the Respondent in 2018. She commenced employment with the Respondent in 2017. Before Tonbridge Care Home opened, Ms Pain spent a number of months working at Lavender Oaks as part of her induction and whilst she was setting up all the processes and procedures required for the new home. During her time at Lavender Oaks she met the Claimant four to five times but did not know her well.
17. Ms Hadizad has known the Claimant for some time. She recruited the Claimant to work with her at Sunrise Senior Living in Purley. She then recruited the Claimant to work at Belmont House in Sutton, a home managed by a company called Caring Homes.
18. Ms Hadizad resigned from Belmont House on 19 September 2016 but took some time out before joining the Respondent on 3 January 2017.
19. After Ms Hadizad left Belmont House she kept in contact with the Claimant.
20. Ms Hadizad appointed the Claimant to work for the Respondent for two days a week with effect from 17 July 2017 at Woodland Manor as the Claimant had not found a job following her resignation from Belmont House. She then

moved to Lavender Oaks with Ms Hadizad when it opened in October 2017. The Tribunal finds that the Claimant enjoyed working with Ms Hadizad and was happy to follow her to Woodland Manor and then to Lavender Oaks.

21. On 6 April 2018 the Claimant was appointed acting Deputy Manager when the Deputy Home Manager, Gemma Weldon, took leave of absence for eight weeks.
22. The Claimant was part of a four-nurse team at Lavender Oaks which was made up of the Claimant, two other female nurses and one male nurse called Mr Gianluca Rossi. Ms Hadizad recruited Mr Rossi and he joined Lavender Oaks on 16 October 2017. Mr Rossi also worked at Belmont House and worked there with the Claimant for a period of time.
23. The Tribunal finds that there was a history between the Claimant and Mr Rossi and that their working relationship at Belmont House had been difficult at times.
24. On Monday 16 April 2018, the Claimant spoke to Ms Hadizad querying a drug administered to a resident by Mr Rossi. The Claimant suggested that as a nurse one should not fear being asked for the rationale for anything they do and said that she would generally not be concerned about asking for a colleague's opinion on something relating to professional practice.
25. Due to the animosity shown to the Claimant on 18 April 2018 (see below), the Claimant assumed that when Ms Hadizad spoke to Mr Rossi about this, she told him that the Claimant had mentioned these concerns to her. Ms Hadizad agrees that she asked questions of Mr Rossi regarding his decision to administer a particular drug but she denies that she informed him that the concern was raised by the Claimant. She said that she would never have done this and that she respected the confidential nature of the Claimant's disclosure. The Tribunal only has Ms Hadizad's account of this conversation and accepts her evidence on this point. The Tribunal is also mindful of the evidence that it was alleged that the Claimant had been critical generally of Mr Rossi at around this time and therefore there could have been a number of reasons for Mr Rossi's animosity to her on 18 April 2018.
26. On 18 April 2018 a nurse called in sick for the nightshift which resulted in the Claimant having to return to work at 7:45pm, having already worked a normal dayshift, to carry out the medication round. Mr Rossi was also asked to come in for the nightshift but as he was in Brighton at the time of the call, he did not arrive until 9:45pm. During the handover, the Claimant explained what staff were doing, to which Mr Rossi replied "Yeah ok" and began to walk away. He then turned back and said "Next time you talk about me, wash your mouth". The Claimant said "Yes Luca, I seem to remember this conversation before" and continued with what she was doing. Mr Rossi started to walk back to the lounge but then turned back and said "You're a fucking idiot", which he said twice. The Claimant approached him, saying "I can't be an idiot because I am your deputy" at which point Mr Rossi came

towards the Claimant aggressively, with a fist clenched and moved his head towards her face whereupon contact was made. There was no injury resulting from the contact. The situation ended with a colleague Ms Alexandra Ban (a Health Care Assistant) coming between them both.

27. The Claimant left work and drove home whereupon she telephoned Ms Hadizad to inform her that she had been verbally and physically assaulted by Mr Rossi. Ms Hadizad also spoke to Ms Ban by telephone to find out what happened. She was told by Ms Ban that there was no physical assault and therefore on the back of this account, Ms Hadizad did not believe immediate suspensions were necessary. She asked everybody to produce witness statements saying that she would investigate the matter the next day and meet with them.
28. Investigation meetings were held on 19 April 2018 by Ms Hadizad with the Claimant, Mr Rossi and Ms Ban. A decision was taken by Ms Hadizad not to suspend anyone, including Mr Rossi. Upon discovering this, the Claimant expressed her unhappiness that Mr Rossi was still working given what she alleged and which she said had been witnessed by Ms Ban. She told Ms Hadizad that she could not work in that environment and at that point went off sick.
29. During the period 20-27 April 2018, other complaints came to light and were investigated by Ms Hadizad. On 26 April 2018 a witness statement was provided by Mark Divers which gave three examples of inappropriate and unprofessional behaviour by the Claimant, occurring on 16 April 2018, in which it is alleged that she had been confrontational and using inappropriate language in front of residents. The Tribunal reaches no particular view on the seriousness or otherwise of the allegations but they are referred to here as these complaints formed part of the material that was considered at a subsequent disciplinary hearing referred to below.
30. On 26 April 2018, the Claimant sent Regional Manager, Laura Coupe, an email headed "Grievance" in which she complains about not having heard anything about the matter from Ms Hadizad. In that email she also refers to having gone to the police regarding the incident on 18 April 2018.
31. On 27 April 2018 the Respondent sent the Claimant a letter inviting her to a disciplinary hearing on Wednesday 2nd May 2018 [65]. The letter is headed "*An incident between you and RN on 18/4/18; your allegation of verbal and physical abuse; subsequent investigation into conduct issues arising from the initial investigation*" and goes on to state that the purpose of the hearing will be to deal with an allegation of "*Assault, provoking or being involved in violent or reckless behaviour or abusive language, deliberate disobedience or persistent refusal to obey a lawful or reasonable instruction or a serious act of insubordination*"
32. Prior to the disciplinary hearing, Ms Hadizad also set out her reflections on the Claimant in an email sent to herself on 30 April 2018. This, in effect, was

a collection of notes from various conversations, some of which the Claimant had been present, which is critical of the Claimant's style and behaviour [63]. In her evidence to the Tribunal, Ms Hadizad referred to the Claimant being hyper critical of Mr Rossi and a campaign by the Claimant to try to get her to question Mr Rossi and his clinical practice in circumstances where no one else was making such comments or complaints. When asked in evidence who had seen her note, Ms Hadizad said that no-one else had seen it.

33. Karen Pain was given responsibility for chairing the disciplinary hearing. She was sent documents which are produced in the hearing bundle from page 46 to 63, which included the email referred to at paragraph 32 above which Ms Hadizad had sent herself and said in evidence had not been seen by anyone, yet it became clear from Ms Pain's evidence that not only did she have it as part of the pack for the hearing but that she also took it into account when reaching her decision.
34. Prior to the disciplinary hearing, the Respondent did not send the Claimant copies of witness statements or other evidence upon which they sought to rely, seeking instead to rely on a clause in the disciplinary policy which stated that copies of witness statements would not be made available if the consent was not given by the person who provided the statement. Ms Pain said in evidence that the Claimant had a reputation at the home for being aggressive and that those staff who gave statements were concerned about retribution. That said, it became clear when being questioned by the Tribunal during the hearing that the witnesses had not really been questioned in any depth about their belief they would be subject to retribution and indeed the Respondent appeared to accept this without challenge, and without considering the potential impact on the Claimant with regards fairness.
35. The disciplinary hearing lasted only 25 minutes, a very short time given the number of issues and seriousness of the allegations and potential consequences. In her evidence to the Tribunal, the Claimant said that only those complaints about her that had come to light during the disciplinary were discussed and that the incident that occurred on 18 April 2018 was not discussed at all. Ms Pain maintained in her evidence that the incident on 18 April 2018, and the Claimant's part in it, was discussed and that she spent some time going through what was contained in the statements by witnesses. The Tribunal finds as fact that all issues (namely the 18 April incident and other complaints) were raised and discussed during the hearing but the Claimant was angry and upset and did not fully engage with the process. The Tribunal finds that the Claimant did not provide the best account of herself faced with an approach by the Respondent which, as she saw it, appeared to be defensive of Mr Rossi and critical of her.
36. Ms Pain's evidence was that she attempted to talk to the Claimant about her role in the 18 April 2018 incident and how what she did may have made matters worse than they needed to be and that in her role as Deputy Acting

Manager she could have done things to better diffuse the tension between her and Mr Rossi. Ms Pain said in evidence that what she wanted the Claimant to do was to speak to her, yet she said the Claimant did not want to talk about the incident at all or properly engage with her about other complaints. Ms Pain explained to the Claimant that the situation was serious and that her job was at risk. She gave the Claimant time to leave the meeting, if she wanted, in order to take some time to think about things. Ms Pain described the Claimant as upset, angry and defensive, eventually leaving the meeting, swearing as she went out.

37. Notwithstanding what Ms Pain was faced with at the disciplinary hearing, it is fair to say that the Tribunal did have sympathy with the Claimant's position. She was clearly not the aggressor on 18 April 2018 and was faced with a disciplinary hearing which she could not prepare for and did not know in advance of the hearing what was being said about her. The Respondent appears to have blindly followed their disciplinary procedure without considering the unfairness to the Claimant and they didn't appear to consider whether the reasons for not wishing statements to be disclosed were valid or proportionate bearing in mind the prejudice to the Claimant in circumstances where she was faced with the prospect of losing her job. If this had been an unfair dismissal claim, the Tribunal considers that it would have been likely to have found in favour of the Claimant, at least in terms of procedural unfairness, based on the evidence heard during the hearing. However, the Tribunal is clear that this is not an unfair dismissal claim and unreasonable behaviour on the part of the Respondent, both in terms of how they conducted the disciplinary process, and the determination reached, does not inevitably mean that the reason why they dismissed her was discriminatory.
38. The Claimant was informed at the meeting that she was being dismissed and the Tribunal concludes that this is the reason why the Claimant stormed out of the meeting.
39. The Claimant's dismissal was confirmed by letter dated the same day [67] which said as follows:

Dear Miss Davies

Incident between you and RN Rossi on 18 April 2018-your allegation of verbal and physical abuse; subsequent investigation and conduct issues arising from the initial investigation

I'm writing to confirm the outcome of the disciplinary hearing held on 2 May 2018.

I was accompanied by Katie Hall, administrator as notetaker, and you were accompanied by Sue Stutter, team leader for support.

At the hearing, I asked if you are in receipt of the pack of information regarding the incident and process. You had this with you.

I asked if you are officially sick from work now and if so had you self

certified or had a GP sign off. At this point you had not self certified nor in receipt of a GP sign off. You stated that you did have a GP appointment on 24 May. I explained you needed to provide a certificate which you agreed to provide.

You understood that the hearing was in relation to the incident with another RGN where there was an escalation in behaviours.

I explained that the disciplinary also considered behaviours after this incident where you had used unprofessional behaviour and language, as evidenced in witness statements.

I referred you to the actual allegation and that this would be considered under Porthaven rules as gross misconduct and that this is a serious disciplinary matter, also potentially being in breach of your NMC code of conduct.

I asked if you had any further questions or wanted to say anything more in relation to this to impact the final decision, to which you replied no. I asked if you needed to take time out to think about this and come back to me, you replied no.

I asked again if you would like to say any more and you declined apart from saying that you felt this was unfair and stated that you were gutted and really liked working here and that you hadn't sworn.

I explained from the evidence that no you had not sworn during the incident but had on subsequent occasions.

You had become at this point upset and tearful saying that you had received threatening behaviour from Luca and that you are only human.

You also stated that you were the Acting Deputy in the absence of Gemma Weldon but you had not received any training for this position.

I explained that in light of the evidence and the lack of mitigation expressed by you at the meeting I had no choice but to summarily dismiss you for gross misconduct with immediate effect.

Having considered all of the facts, I have decided that the evidence provided confirms a breach of professionalism and behaviours whilst in an acting deputy manager role which I consider to be gross misconduct and accordingly that you should be dismissed without notice with effect from today's date.

Your P 45 and any outstanding monies will be forwarded to you in due course.

Under this procedure, you have the right of appeal against my decision. If you wish to exercise your right of appeal, you should write to Lance Herbert operations director as soon as possible, but in any case, by no later than five working days from the date of this letter.

Please be aware that considering the potential breach in your Code of Professional Conduct (NMC), the Director of Nursing, Pauline Cichy, will be informed, to consider if this warrants referral to the nursing and midwifery Council.

referred herself to the NMC and that no action was taken by them in relation to these matters.

41. On 3 May 2018, a letter was written to Mr Rossi inviting him to a disciplinary hearing on 10 May 2018. He too was not provided with any of the witness statements in advance of the hearing. A letter issuing him a warning was given to him dated 10 May 2018. Ms Pain explained that the demeanour of Mr Rossi was completely different than the Claimant. He was more reflective and accepted his own shortcomings and fault during the incident.
42. The Claimant appealed but this did not proceed as the Respondent would not consider it as it had been submitted out of time.

Submissions

43. The Representatives for the Parties produced written submissions for the Tribunal which were used as a basis for their oral submissions given at the beginning of the second day. The Claimant had been asked to address the Tribunal specifically on the comparator issue and the evidence upon which he wanted the Tribunal to rely when deciding whether the burden of proof had shifted. In particular the Claimant's Representative had been asked what primary facts, if any, he would be inviting the Tribunal to draw inferences from.
44. On the comparator issue, he relied on the fact that both the Claimant and Mr Rossi were registered nurses and that the Claimant's promotion to acting deputy was not something which should detract from the similarity of their positions. In the alternative the Tribunal was invited to construct a male hypothetical comparator doing the same work.
45. In addressing the Tribunal on the "something else" needed to shift the burden, the Claimant's Representative invited the Tribunal to consider:
 - a. the timing of sending out the disciplinary invites to the Claimant and Mr Rossi, suggesting that Mr Rossi's was "an after thought";
 - b. the leniency shown towards Mr Rossi, including the fact that he was given a written warning rather than being dismissed;
 - c. the lack of any evidence produced to the Tribunal about the reasons why statements were not given to the Claimant at the disciplinary hearing;
 - d. the information given to the NMC seemed to be at odds with what the Claimant was being told;
46. The Respondent's representative urged the Tribunal to remind itself that it was not dealing with an unfair dismissal claim and that unreasonableness in the way the Claimant was dealt with did not inevitably mean that there

was conscious or unconscious discrimination. She said that Ms Pain, who made the decision to dismiss the Claimant was clear and consistent in her evidence and that it was clear that the Claimant's gender played no part in the decision.

Conclusions

47. The Tribunal reached the following conclusions applying its above findings of fact to the law.
48. In reaching its decision, the Tribunal took into account the submissions prepared and presented to the Tribunal including the case law referred to.
49. In answer to the question whether there was less favourable treatment of the Claimant using the actual comparator, the Tribunal finds that there were material differences between the Claimant's situation and Mr Rossi. Not only was the Claimant of a different rank to the Claimant at the time of the incident and therefore, in the eyes of the Respondent, a different standard of behaviour was expected by her; more significantly, they were in effect facing different disciplinary allegations. Whilst the feature common to both was the incident on 18 April 2018, the Tribunal finds that the Respondent made their decision not just in relation to how she dealt with the incident on 18 April but also the other complaints about her performance. The Tribunal finds that these other complaints, of which there were a number, played a significant part in the ultimate decision. Accordingly if the Tribunal takes the view that Mr Rossi is not an appropriate comparator, it could not reach a finding of discrimination and therefore the Tribunal concludes that the burden of proof could not shift to the Respondent.
50. However that is not the end of the matter because it then went on to consider the Claimant's treatment as against a hypothetical comparator. Here, the Tribunal found it difficult to consider whether the Claimant had shifted the burden of proof without considering the reason for dismissal as all of the issues are interlinked.
51. The Tribunal therefore looked carefully at the "reasons why" the Respondent dismissed the Claimant and whether this was in anyway connected with the Claimant's gender. In doing so, the Tribunal considered carefully the evidence of Ms Pain. The Tribunal was concerned by what it considered to be a number of procedural failings and the fact that in many ways the process was unfair and could have led to a finding of unfair dismissal had the Tribunal been considering such a claim. It therefore looked carefully at any inferences it would have been appropriate to make from its findings of fact. The Tribunal concluded however that Ms Pains decisions regarding process and how the Claimant was dealt with were borne more from a lack of knowledge and experience in dealing with such matters than a conscious or unconscious desire to treat the Claimant differently because of her sex. Whilst Ms Pain claimed to have been involved in other disciplinary matters, her answers to some questions

appeared to show a lack of insight into the consequences of her decisions. Despite any failings, the Tribunal found Ms Pain to be an honest witness who was clear about her recollections and consistent in her evidence.

52. When looking at the reasons for the difference in treatment of the Claimant (as set out below) the Tribunal was of the view that to draw adverse inferences would have produced the wrong result. The Tribunal was also not prepared to draw inferences from those matters drawn to its attention during submissions for the Claimant as there were other plausible explanations, such as:
- a. the timing of sending out the disciplinary invites: the period of time was short and the Tribunal rejected the suggestion, on the evidence, that sending out the invite for Mr Rossi was an after thought;
 - b. the seemingly more lenient approach to Mr Rossi: Ms Pain differentiated them both by their contrasting approaches to the disciplinary hearing and the fact that there were other factors about the Claimant's conduct that was the subject of the disciplinary hearing;
 - c. the Tribunal is sympathetic to the criticism by the Claimant of the fact that the Respondent did not challenge witnesses about their fears of retribution but, as is said above, blindly followed what was available to them in their disciplinary policy without considering the unfairness to the Claimant. It is clear also that this same approach was taken to Mr Rossi;
 - d. there was insufficient information relating to the NMC enquiry that enabled the Tribunal to draw any inferences from this. It appears that what the NMC was told was decided by someone who did not give evidence during the hearing
53. The unanimous view of the Tribunal is the Respondent proved that the decision was in no way connected with sex. The Tribunal finds that the Respondent dismissed for the following reasons:
- a. Her rank played an important part of the decision and that they expected a different approach from and indeed said in evidence that they would have expected have de-escalate.
 - b. Rightly or wrongly, the way the Claimant reacted in the hearing played a major part of the decision by Ms Pain. That is no criticism of the Claimant but had she reacted differently, there might have been a different outcome
 - c. The Respondent formed a view about her based on the other incidents raised by Mark Divers and Ms Hadizad – on the face of them, they were fairly damning of the Claimant but again we make

no comment about the validity or seriousness of these incidents but nonetheless the Respondent clearly formed a view of them that contributed to their decision to dismiss.

- d. The Respondent had enough faith in her to promote her and give her a pay rise and had they wanted to discriminate, it is difficult to believe they would have done that. When the Claimant was asked about why she thought the Respondent had discriminated, she suggested that women were less available for shifts but that is not borne out by the evidence.
- e. The Respondent is an organization which employs a high proportion of women; indeed, on the nursing and HCA side, aside from Mr Rossi, the evidence presented was that all registered nurses and HCAs were women. Neither witness appeared to hold stereo typical views about women and which, out of male or female members of staff, were better placed to work shifts. There was no evidence to support what the Claimant said about the reasons for the differences in treatment, namely that men were better able to work shifts.

54. In all the circumstances and for the above reasons the Tribunal concludes that the complaint is not well founded and is dismissed.

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Employment Judge Hyams-Parish
27 September 2019

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