EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mrs J Pratten	AND	Severnwye Farm Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Bristol ON 13, 14 and 15 January 2020

EMPLOYMENT JUDGE J Bax
MEMBERS Ms S Maidment
Ms G Meehan

Representation

For the Claimant: **Mr Evans (Citizen's Advice Bureau)**
For the Respondent: **Ms Nevins (Solicitor)**

JUDGMENT

The unanimous judgment of the tribunal is that:

(1) The claim for unlawful deductions from wages is dismissed upon its withdrawal by the Claimant on 3 June 2019

(2) The claims of automatically unfair dismissal for making a protected disclosure and for raising health and safety concerns, pursuant to s. 103A and 100 of the Employment Rights Act 1996 are dismissed

(3) The claims of detriment for making protected disclosures and for raising health and safety concerns, pursuant to s. 47B and s. 44 of the Employment Rights Act 1996 are dismissed.

(4) The claims of direct sex discrimination and harassment on the grounds of sex are dismissed.

REASONS

1. In this case the Claimant, Mrs Pratten, claimed that she had been automatically unfairly dismissed, and that the principal reason for this was because she had made a protected disclosure and/or that she had brought to her employer's attention, circumstances connected with her work that she believed were harmful to health and safety. The Claimant also brought claims of detriment for having made protected disclosures and/or having raised health and safety concerns and claims of sex discrimination. The Respondent contended that the reason for the dismissal was gross misconduct and not due to the Claimant having made a protected disclosure or having raised a health and safety concern. The Respondent further denied that the Claimant was subjected to a detriment or that it had discriminated or harassed her on the basis of her sex. There was originally a claim that there had been an unlawful deduction from wages, however it was dismissed upon its withdrawal by the Claimant.

The issues

2. The claim form identified that the alleged protected disclosures related to: (1) riding tack, (2) feeding horses/horses being hungry, (3) a blackthorn in a horse's mouth and (4) wild boar. The issues were discussed before Employment Judge Ford QC at a Preliminary Hearing on 3 June 2019. It was confirmed that the Claimant had less than 2 years of service and could not claim ordinary unfair dismissal, but was claiming automatically unfair dismissal for making protected disclosures/raising health and safety concerns, detriment for making such disclosures/raising the concerns and allegations of direct sex discrimination and/or harassment on the grounds of sex. The protected disclosures/health and safety concerns were detailed as relating to: (1) riding tack, (2) feeding horses, (3) a blackthorn in a horse's mouth, and (4) wild boar. Greater detail as to the disclosures was included in the case management order.

3. The Claimant, in her witness statement, referred to 13 additional protected disclosures. At the start of the hearing, the Respondent required the Claimant to make an application to amend her claim. The Claimant's representative said, in relation to why there had been a delay in making that the application, that the Respondent should have asked the Claimant for further information and that he thought she could raise additional matters in her witness statement. The Claimant's representative pointed out that, the Respondent had not presented its response in time, although its application to extend time was granted. The claim had been initially listed to deal with remedy only and that the remedy hearing was converted to deal with the Respondent's application to extend time, case management, the issues in the case and listing. The Claimant said that the wild boar disclosure/concern was the most important, followed by the riding tack disclosure/concern. It

was said that the other disclosures were supplemental, but the additional matters were essential to the Claimant's case. The Respondent referred to the lateness of the application, that there were 13 new allegations and it had only responded to those matters identified in the claim form and at the hearing on 3 June 2019. The Respondent said it had been prejudiced, because it had not prepared a case on the basis that the Claimant was seeking to present and that it was entitled to know the case it had to meet. We considered the guidance in Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650, Selkent Bus Company Ltd v Moore [1996] ICR 836, Abercrombie v Aga Rangemaster Ltd, [2013] IRKR 953, Ladbrooks Racing Ltd v Traynor EATS 0067/14 and Chandhok v Tirkey [2015] IRLR 195. We also considered the Presidential Guidance on General Case Management for England and Wales and the Overriding Objective in the Employment Tribunal Rules.

4. Taking all the circumstances of the case into account and the overriding objective, the application was refused. We took into account the lateness of the application, that the issues had been agreed and confirmed as the only issues in the case on 3 June 2019. The Respondent had prepared its case on the basis of the case management order and the claim form and was entitled to know the case it had to meet. The Claimant was seeking to introduce 13 new protected disclosures, when she originally relied upon 4. What the Claimant sought, was much more than a relabelling exercise and involved wholly new allegations, which would have involved a substantial increase in the areas of enquiry. The claim had been presented in 2018 and the new allegations would have been presented out of time. If the application had been permitted, it would have been necessary to postpone the case, so that the Respondent could properly respond to the allegations. It did not appear that any evidence was unavailable. The Claimant considered that the important disclosures were already part of the agreed list of issues. The prejudice to the Claimant was less than that to the Respondent, which was otherwise faced with wholly new allegations. We also considered proportionality, the cost to the parties and the interests of justice. We concluded that the balance of prejudice fell against the Claimant and therefore the application was refused.

5. The Respondent accepted that if the disclosures in relation to tack, feeding horses and the blackthorn occurred, that the Claimant had reasonably believed that they related to the health and safety of an individual and that she would have reasonably believed them to have been in the public interest. The position in relation to wild boar was reserved and therefore all elements remained in issue. It was also agreed that there was not a health and safety committee or representative within the Respondent.

6. At the start of the second day the Claimant was recalled, with the agreement of the parties. She gave evidence in relation to the reasons why her claim

was presented when it was, for the purposes of reasonable practicability, in the event that her detriment claims were presented out of time.

7. The Claimant's representative, during the course of cross-examination of the Respondent's witnesses, was reminded by the Judge about the issues that needed to be addressed with the witnesses.

The evidence

8. We heard from the Claimant and her son, Oscar Pratten. We also heard from Mr Fraser, Director of the Respondent and who was responsible for its everyday operation, and Mrs Fraser, Managing Director of the Respondent.

9. We were provided with a bundle of 101 pages, however other than the e-mail of 17 September 2018 there was not any contemporaneous documentation. Any reference in square brackets, in these reasons, is a reference to a page in the bundle.

10. There was a degree of conflict on the evidence.

11. The Claimant struggled to give specific examples of incidents that she relied upon. She often said that the matters were a regular occurrence and therefore she could not recall when they were. The allegations against the Respondent were vague and there was not any evidence to corroborate them.

The facts

12. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

13. On 22 August 2017, the Claimant commenced employment with the Respondent, as a yard manager. Her role included, caring for horses and animals, being a lead trek rider and riding instructor. Her role also included notifying the Respondent about riding equipment that needed replacing or repairing and in relation to the level of feed stocks for the animals.

14. The Respondent's business, primarily involved, providing riding lessons and horse treks to customers.

15. There was not a health and safety committee or representative at the Respondent's yard.

16. The Claimant accepted, in cross-examination, that she was an animal lover and that her husband was an animal rights activist. The Claimant, during her employment, did not refer the Respondent to the RSPCA or any other body. This was significant when assessing the likelihood of the Claimant's account, in terms of the nature of the alleged disclosures and their frequency. We considered that it was unlikely that the Claimant's account, in relation to frequency, could be correct in the light of these facts and was a relevant factor we took into account when considering the rest of her evidence.

17. Shortly after the Claimant's employment ended, the RSPCA, following a report from a former employee, inspected the Respondent's yard. Following the inspection, the Respondent was told that nothing wrong had been found and that there was as good a setup, as the inspector had seen.

Alleged disclosure/health and safety concern in relation to a blackthorn in the mouth of a horse

18. The Claimant's evidence was, that in October or November 2017, she told Mr Fraser that a dentist had advised that a vet was needed to extract a blackthorn from a horse's (Guinness) mouth. She alleged that Mr Fraser said that a vet was expensive, and he was not going to call one out and called her a 'stupid naïve girl'.

19. Mr Fraser's evidence was that the dentist, who was newly qualified, had removed the blackthorn and had suggested to him that he got a vet to check that it all had been removed. His evidence was that the cost of vet was far less than the value of a horse and if a horse was unwell and unable to work, the business had an asset out of use. The following day, a vet attended the yard and whilst there, also checked Guinness's mouth. The vet told Mr Fraser that there was not a blackthorn present. We accepted Mr Fraser's evidence, that there was contract for a vet to attend the yard each month, but that the vet attended more frequently due to the needs of the horses.

20. We preferred the account of Mr Fraser, it was unlikely that, when his business was dependent upon fit and healthy horses, he would not take advice from an equine dentist seriously. We were not satisfied on the balance of probabilities that Mr Fraser said that a vet was expensive, and he would not call one out, or that he called the Claimant a stupid naïve girl for raising the issue with him. We accepted that the Claimant was concerned, because Guinness was experienced pain and shook his head, which could have frightened clients, thereby endangering them.

Alleged disclosures/health and safety concerns about the Wild boar

21. The Claimant said in her witness statement, that from about April 2018 until her employment ended, she told Mr Fraser at least once a week that there was overcrowding among the wild boar and they were hungry. Further that there was insufficient space to clean them out and they were not controllable. She also said that they were being fed pig swill from commercial premises, which and she understood was prohibited. The Claimant said that a client, Eleanor, regularly expressed anxieties about overcrowding and on each occasion the Claimant raised this with Mr Fraser. The Claimant did not suggest that there was any specific poor treatment towards her as a result of raising these issues, save that she believed she had been dismissed for it. The Claimant's witness statement said that she thought the Respondent was in breach of s. 9 of the Animal Welfare Act 2006 and s. 3 of the Health and Safety at Work Act 1974. The Claimant explained in oral evidence that when she kept chickens in 2008, she looked into what could be fed to them and discovered that they could not be fed commercial food waste.

22. The Claimant was cross-examined on the basis that, if she had raised the quality of feed with Mr Fraser, he would have told her that commercial food waste could not be fed to boar and pigs which were raised for meat. The Claimant accepted that Mr Fraser did not say this to her. The Claimant did not think that it was odd that if she repeatedly raised the same issue and that if Mr Fraser had an answer, about the feed, he did not give it to her. The Claimant also said that when the boar were cleaned out, they would run around the barn, knocking things over, and were difficult to get back in their pen.

23. The claimant was cross-examined on the claim form [p8] in which she said "on another occasion I expressed concern over the overcrowding of the wild boar that the Respondent kept and the poor quality of the food the animals were fed." The Claimant said that she had worded this incorrectly and that she had raised the matter more than once.

24. In answer to a question from the Tribunal, the Claimant said that whenever she asked when the pigs were going outside, she was told that it would be the next week. She said that the last time she would have raised the issue would have been at the end of August 2018, but was unable to provide any specific details.

25. The Claimant provided a new account in her witness statement, to include that when the boar were hungry, they would bite the staff's legs. This differed to what had been alleged in the claim form, namely, that when the boar were hungry, they became aggressive with each other. No such reference had been made at the case management hearing. The Claimant, in cross-examination, said that she had written everything down (no copy provided to the Tribunal) when she had left the Respondent's employment,

but did not suggest why it had not been included in the claim form. We considered it highly unlikely that the boar had bitten the legs of staff members. This was a significant allegation and if it had occurred it was very likely to have been at the forefront of the Claimant's mind when she set out the details of her claim. The Claimant also suggested that the wild boar were kept in a pen with dimensions of 8 x 4 feet. The Respondent disputed this and said that there were two pens of 12 x 8 feet and 14 x 12 feet. We considered it unlikely, taking into account that the Claimant's husband would bring people to the farm to see the wild boar, that they would be kept in a pen of 8 x 4 feet. These were relevant factors when assessing the overall credibility of the Claimant.

26. Mr Fraser's evidence was that the wild boar had been filmed many times by various television programmes and their condition had never been criticised. He also gave unchallenged evidence that the Claimant's husband brought people to the yard so that they could see how wild boar should be kept. The Respondent's evidence was that commercial waste could be fed to animals, if they were not being reared as part of the food chain. Further the boar were fed in the evening after the Claimant had left work, something which she accepted was the practice. We accepted the Respondent's evidence.

27. Mr Fraser was not cross-examined about the pen being difficult to clean, because the boar could not be controlled, as suggested in the Claimant's witness statement. In any event the Claimant's oral evidence was that the boar were let out of the pen into the barn, so that the pen could be cleaned. We were therefore not satisfied that the Claimant informed Mr Fraser that the pen could not be cleaned out, because the boar could not be controlled.

28. It was unlikely that the Claimant raised issues about the boar's feed with Mr Fraser on a repeated basis. Mr Fraser knew that commercial waste could be fed to the wild boar if they were not going to be part of the food chain. If the Claimant had repeatedly raised the same issue it was very likely that Mr Fraser would have explained that he was permitted to feed them commercial food waste. The change in the Claimant's account between her claim form and witness statement was significant and the Claimant could not provide a credible explanation. Further the claim form suggested that she had only made such a disclosure on one occasion. We were not satisfied on the balance of probabilities that the Claimant raised any concerns about the feed the wild boar received.

29. In terms of overcrowding, we took into account that the Claimant's husband was an animal rights activist and that the Claimant did not report any concerns to the RSPCA or other entity, which was odd given that she said she raised it regularly. Further the change in accounts between the claim form and witness statements cast some doubt on the Claimant's evidence

in this respect. We were not satisfied that the Claimant raised the issue on a regular basis or at all. The Claimant may have asked when the pigs were going outside and had been told that it would have been the following week. The wild boar were difficult to clean out, because they were wild animals and were therefore difficult to get back into their pens from the barn.

<u>Alleged disclosures/health and safety concerns in relation to riding tack</u>

30. The Claimant's evidence was that she tried to ensure that riding tack was in working order and she regularly found it necessary to inform the Respondent about concerns. She said that the tack was ill-fitting and needed replacing and on one saddle, a stirrup bar was bent. She also referred to repeatedly saying reins were frayed and might break. It is alleged that in response Mr Fraser called her a stupid naïve girl. The Claimant said in her statement that in June or July 2018 she feared for the safety of the riders and staff. The Claimant was unable to give specific examples or dates when alleged incidents occurred, but said that the last incident occurred in June or July 2018 and that Mr Fraser had huffed and growled and told her not to be negative. In cross-examination, the Claimant accepted that part of her role was to report tack related issues. She said she reported the stirrup bar on her first day of work and it had not been replaced when she was dismissed. She also accepted that reins were replaced fairly often. In answer to a question from the Tribunal the Claimant said that the last time she mentioned the tack was in June or July 2018.

31. Mr Fraser's evidence was that the Respondent had 30 saddles and if something broke, they could get something, and they were continually replacing things. He said that this was not surprising given the number of rides that occurred and referred to 750 treks having taken place in August 2018. It was not suggested to Mr Fraser that he had called the Claimant a stupid naïve girl. Mr Fraser also denied that the stirrup bar was bent throughout the Claimant's employment.

32. Mrs Fraser gave evidence that she organised replacement tack and the Claimant would report to her when items needed replacing or repairing. The Respondent had spare tack and was never was in a situation when they needed to get a replacement straight away.

33. The Respondent relied upon a report from the Royal College of Veterinary Surgeons dated 12 November 2018 [p51], which identified that the saddlery and tack was free from signs of defect or damage likely to cause suffering to the horse or accident to the rider. The saddlery and tack were considered suitable for the horses on the premises. We attached limited weight to this part of the report, because the inspection took place after the Claimant's departure.

34. Part of the Claimant's role was to report to the Respondent when items of tack needed to be repaired or replaced. It was therefore likely that she raised issues about tack during the course of her employment. The Respondent expected that tack would suffer from wear and tear and some spare tack was available to be used. In the event that an item needed to be replaced, Mrs Fraser arranged a replacement. We did not accept that a stirrup bar remained bent throughout the Claimant's employment. The Claimant did not give any evidence as to when she was called a stupid naïve girl and was vague in her allegation. We did not accept that Mr Fraser called the Claimant a 'stupid naïve girl', naïve or negative, when the Claimant raised issues about the tack.

Alleged disclosures/health and safety concerns regarding horses being underweight and their feed

35. The Claimant said, in her witness statement, that she regularly raised with Mr Fraser that the horses were underweight and their food had run out and if they were hungry, they might pull at grass and put clients at risk. The Claimant referred to an incident in January 2018 when a child had been thrown from a horse. In cross-examination, the Claimant confirmed that she did not report the Respondent to the RSPCA at any time. She accepted that 2 horses had been rescue horses and had been rescued because they were underweight. A horse also arrived shortly before her departure that was very underweight, and she accepted that it would take time for it to put on weight. It was explained in cross examination that the child, in January 2018, had tumbled off the horse when it moved its head down to the ground. The Claimant accepted that she had not asked for the accident book, but that she should have done. In answer to a question from the Tribunal the Claimant was unable to remember when she last mentioned feed for the horses, but it happened a fair few times.

36. Mr Fraser gave evidence that the yard never ran short of feed and that there was a weekly supply of food. Mrs Fraser gave evidence, that the Claimant would communicate with her all the time about whether food was running out or items were broken and that she would go out and buy them. She said that if things ran low, she would buy them and the farmer across the road would provide hay the same day that they requested it and that they never ran out of food.

37. The Respondent relied upon the veterinary report from November 2018, which identified that all horses had food and water and were in good condition [p48 and 49]. When Mr Fraser was questioned about the relevance of the report, given that it post-dated the Claimant's employment, he said that if horses were underweight he would not be able to wave a

magic wand and get them up to weight in 2 months, this was not disputed by the Claimant.

38. We accepted the evidence of the Respondent's witnesses. If the extent of the feed problems suggested by the Claimant existed, so that the horses were hungry and underweight, it was unlikely that on inspection in November 2018, the horses would all be stated to be in a good condition or that the RSPCA inspector had no concerns. Part of the Claimant's role was to notify Mrs Fraser about feed stocks and Mrs Fraser then bought supplies if required. We were not satisfied that feed stocks ran out or that the Claimant reported this to the Respondent. It was unlikely that the Claimant told Mr Fraser that the horses were underweight or hungry. The Claimant did not suggest any specific untoward treatment from Mr Fraser in relation to raising issues about feed.

<u>Other events</u>

39. The Claimant was required to wear appropriate horse-riding clothing, namely jodhpurs and was provided with a company uniform consisting of a top and a fleece jacket. In the summer of 2018, a client's husband complained that a staff member, Lucy, was wearing a revealing top. Mr Fraser asked the Claimant to speak to her about it, because he found such discussions embarrassing. The Claimant did not speak to Lucy, but attended work the following day wearing very short, shorts, which were revealing. Mr Fraser told the Claimant that she should be wearing Jodhpurs and Mrs Fraser spoke to the Claimant about how she was dressed.

40. In November 2017, the Respondent employed a general handyman, Pip. Mr Fraser was informed by Pip's father that Pip had lost his driving licence and had a history of supplying drugs. When Pip became homeless, Mr Fraser allowed him to use the staffroom and gave him access to his house. Mr Fraser believed that Pip was supplying the Claimant with drugs.

41. In about July 2018 some of the Respondent's bank statements went missing and its computer was hacked. Following this, someone purporting to be Mr Fraser requested that the bank cancelled the Respondent's overdraft facility. Mr Fraser believed that Pip was responsible.

42. The Claimant said that during August 2018 she became aware that Mr Fraser had described her as looking like a retired prostitute to Tom Quirk (farrier), Lisa Tingle (mother of a client) and Shaun Edwards (employee of the Respondent). The Claimant did not witness this. Ms Tingle sent a message to the Respondent [p77] in which she said that this was not true. The Claimant's son, Mr Pratten, said that Mr Fraser denied calling the Claimant a retired prostitute and suggested that Mr Edwards had said it. Mr Pratten said he spoke to Mr Edwards who said he had not and said, 'you

know what he's like for bullshitting and stirring shit.' In evidence, Mr Fraser denied saying this about the Claimant and said that Shaun Edwards had said something similar. There was not any first hand evidence that Mr Fraser said the words. We were not satisfied on the balance of probabilities that Mr Fraser said the Claimant looked like a retired prostitute or referred to her as a retired prostitute.

43. Towards the end of the Claimant's employment, customers reported to the Respondent that the Claimant had advised them to transfer their business to a different riding stables.

44. At a similar time, two men attended the yard looking for Pip. They demanded money and threatened Mr Fraser. When Pip was told about the incident, he decided to leave the Respondent's employment. In the lead up to Pip's departure, Mr Fraser started to suspect that his conversations with him were being recorded

45. After Pip's departure, the Claimant told Shaun Edwards that he should look for another job and that the Respondent could not afford to keep the business running and that she had a copy of a bank statement. She also informed him that Pip had been making secret recordings of conversations with Mr Fraser. Mr Edwards reported the conversation to the Respondent on 7 September 2018.

46. During the weekend that followed, Mr and Mrs Fraser discussed what they had been told. They decided to terminate the Claimant's employment on Monday 10 September 2018, after she had given Eleanor a riding lesson.

47. On 10 September 2018, the Claimant said that Eleanor expressed concern to her about the conditions the wild boar were in. The Claimant said that she suggested Eleanor might have more success with her complaint if she raised it with Mr Fraser herself. She said that Eleanor then spoke to Mr Fraser for about 20 minutes, after which the Claimant was called into the house and was told that she was dismissed because she had been disloyal and notified customers not to carry on their business with him. She said she was also shown a Dictaphone, following which she explained that she had advised Pip to stop recording in the workplace. Mr Fraser denied that Eleanor had raised any issue with him about the wild boar, but had discussed a personal problem from her past. There was no supporting evidence either way in relation to this allegation. After assessing the evidence as a whole and taking into account that the Claimant was not present for the conversation between Mr Fraser and Eleanor, we were not satisfied on the balance of probability that Eleanor complained to Mr Fraser about the wild boar's conditions.

48. Mr and Mrs Fraser said that the Claimant had been dismissed, because the Claimant had accepted that she knew Pip was recording conversations with Mr Fraser and had told her colleagues, Shaun, Lucy and Emma, but not the owners of the business. Mrs Fraser said that, as yard manager, the Claimant had a responsibility to tell them about the recordings. The Claimant had also told customers to go elsewhere, that she had known that there were problems with the bank and had a bank statement. The claim form set out that the Claimant had been told that she was dismissed because she was disloyal because she had not informed Mr Fraser about Pip recording him and that she had expressed concerns to other members of staff. The Claimant accepted that this was what she was told and that she knew the conversation had been recorded. She also agreed that she received an e-mail on 17 September 2018 [p44], that stated when it was discovered that the Claimant knew that Pip was recording Mr Fraser and was encouraging it that there was no alternative but to terminate her employment.

49. There were inconsistencies in the Claimant's evidence and there was no evidence to corroborate her account. On considering the evidence as a whole and that the e-mail of 17 September 2018 tended to support the Respondent's version of events, we considered that the Claimant's account was unlikely and preferred the evidence of the Respondent, which we accepted. The Claimant was dismissed on 10 September 2018.

<u>Allegation that Mr Fraser called the Claimant a naïve girl, stupid girl or fucking idiot</u>

50. We accepted Mr Fraser's evidence that he had been brought up strictly and did not tolerate swearing amongst the staff. The Claimant did not provide any evidence as to when she was called 'a fucking idiot'. We considered it unlikely that Mr Fraser would have sworn at the Claimant or that this event occurred.

51. Oscar Pratten gave evidence that when he worked for the Respondent, he was treated differently to other staff, however he did not provide any corroboration as to the comments alleged to have been made by Mr Fraser.

52. On assessing the witnesses, taking into account the lack of detail from the Claimant and Mr Fraser's reluctance to talk to Lucy about what she was wearing, we did not consider it likely, that Mr Fraser referred to the Claimant as 'girl'.

53. Mr Fraser gave oral evidence, that he said the Claimant was naïve in relation to a discussion about alpaca and llama feed. Mr Fraser told the Claimant, after having read the product information, that the feed content was the same. Mr Fraser said that she was being naïve when the Claimant said that they should use feed that specifically stated it was for llamas. This

was the only incident in which we were satisfied that Mr Fraser said that the Claimant was being naïve. We considered that this admission was candid and tended to suggest that Mr Fraser was a credible witness.

54. We were not satisfied on the balance of probabilities that Mr Fraser called the Claimant a naïve girl, stupid naïve girl, stupid girl or fucking idiot.

Reasons for the timing of the presentation of the claim form.

55. The Claimant presented her claim when she did, because her sons were going back to university and she was looking for a new job. She approached the CAB for advice at the beginning of October 2018 and the CAB notified ACAS about the dispute. The Claimant knew that she needed 2 years' service to bring a claim of unfair dismissal and had heard about whistleblowing on the news. Mr Evans, of the CAB, had advised her about time limits. She did not have any discussions with the Respondent about bringing a claim. She said that the only thing stopping her bringing a claim was that she loved her job.

The law

56. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

57. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

58. Under Section 47B a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done

on the ground that the worker has made a protected disclosure. This provision does not apply to employees where the alleged detriment amounts to dismissal.

59. Section 44 of the Act (health and safety cases) provides:
 (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
(a) …
(c) being an employee at a place where—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,

60. Section 48(1) and (1A) of the Act state that an employee may present a claim that he has been subjected to detriment contrary to s. 44 and 47B of the Act. Under section 48(2) of the Act, on a complaint to an employment tribunal, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

61. s. 48(3) provides: An employment tribunal shall not consider a complaint under this section unless it is presented—
(*a*) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
(*b*) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
(4) For the purposes of subsection (3)—
(*a*) where an act extends over a period, the 'date of the act' means the last day of that period, and
(*b*) a deliberate failure to act shall be treated as done when it was decided on;
and, in the absence of evidence establishing the contrary, an employer[,a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonable have been expected to do the failed act if it was to be done.

62. Under section 100 of the Act an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the

dismissal is that … (c) being an employee at a place where – (i) there was no such [health and safety] representative or safety committee, or (ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means, he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety.

63. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

64. There was also a claim alleging discrimination on the grounds of a protected characteristic under the provisions of the Equality Act 2010 ("the EqA"), namely sex. The Claimant complained that the Respondent contravened a provision of part 5 (work) of the EqA. The Claimant alleged direct discrimination and harassment.

65. As for the claim for direct discrimination, under section 13(1) of the EqA 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.

66. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B.

67. S. 23 (1) EqA provides:
"*On a comparison of cases for the purposes of sections 13, 14 or 19, there must be no material difference between the circumstances relating to each case.*"

68. The provisions relating to the burden of proof are found in section 136 EqA, which provides in s. 136(2) that 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. However, by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.

69. The provisions relating to time limits are found in S. 123, which state:

(1) **[** Subject to sections 140A and 140B**]** proceedings on a complaint within section 120 may not be brought after the end of—

(a)the period of 3 months starting with the date of the act to which the complaint relates, or

(b)such other period as the employment tribunal thinks just and equitable.

(2) …

(3) For the purposes of this section—

(a)conduct extending over a period is to be treated as done at the end of the period;

(b)failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a)when P does an act inconsistent with doing it, or

(b)if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

70. The remedies available to the tribunal are to be found in section 124 of the EqA. The tribunal may make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate; may order the respondent to pay compensation to the complainant (on a tortious measure, including injury to feelings); and make an appropriate recommendation. In addition, the tribunal may also award interest on any award pursuant to section 139 of the EqA.

Protected disclosures

71. First, we had to determine whether there had been disclosures of '*information*' or facts, which was not necessarily the same thing as a simple or bare allegation (see the cases of Geduld-v-Cavendish-Munro [2010] ICR 325 in light of the caution urged by the Court of Appeal in Kilraine-v-Wandsworth BC [2018] EWCA Civ 1346). An allegation could contain '*information*'. They were not mutually exclusive terms, but words that were too general and devoid of factual content capable of tending to show one of the factors listed in section 43B (1) would not generally be found to have amounted to '*information*' under the section. The question was whether the words used had sufficient factual content and specificity to have tended to one or more of the matters contained within s. 43B (1)(a)-(f). Words that would otherwise have fallen short, could have been boosted by context or surrounding communications. For example, the words "*you have failed to comply with health and safety requirements*" might ordinarily fall short on their own, but may constitute information if accompanied by a gesture of pointing at a specific hazard. The issue was a matter for objective analysis,

subject to an evaluative judgment by the tribunal in light of all the circumstances.

72. Next, we had to consider whether the disclosure indicated which obligation was in the Claimant's mind when the disclosure was made such that the Respondent was given a broad indication of what was in issue (Western Union-v-Anastasiou UKEAT/0135/13/LA).

73. We also had to consider whether the Claimant had a reasonable belief that the information that she had disclosed had tended to show that the matters within s. 43B (1)(a), (b) or (d) had been or were likely to have been covered at the time that any disclosure was made. To that extent, we had to assess the objective reasonableness of the Claimant's belief at the time that she held it (Babula-v-Waltham Forest College [2007] IRLR 3412 and Korashi-v-Abertawe University Local Health Board [2012] IRLR 4). 'Likely', in the context of its use in the sub-section, implied a higher threshold than the existence of a mere possibility or risk. The test was not met simply because a risk *could* have materialised (as in Kraus-v-Penna [2004] IRLR 260 EAT). Further, the belief in that context had to have been a *belief* about the information, not a doubt or an uncertainty.

74. 'Breach of a legal obligation' under s. 43B (1)(b) was a broad category and has been held to include tortious and/or statutory duties such as defamation (Ibrahim-v-HCA UKEAT/0105/18).

75. Next, we had to consider whether the disclosures had been '*in the public interest.*' In other words, whether the Claimant had held a reasonable belief that the disclosures had been made for that purpose. As to the assessment of that belief, we had to consider the objective reasonableness of the Claimant's belief at the time that he possessed it (see Babula and Korashi above). That test required us to consider her personal circumstances and ask ourselves the question; was it reasonable for her to have believed that the disclosures were made in the public interest when they were made.

76. The '*public interest*' was not defined as a concept within the Act, but the case of *Chesterton-v-Normohamed* [2017] IRLR 837 was of assistance. The Court of Appeal determined that it was the character of the information disclosed which was key, not the number of people apparently affected by the information disclosed. There was no absolute rule. Further, there was no need for the 'public interest' to have been the sole or predominant motive for the disclosure. As to the need to tie the concept to the reasonable belief of the worker;

> "*The question for consideration under section 43B (1) of the 1996 Act is not whether the disclosure per se is in the public interest but whether the worker making the disclosure has a reasonable belief that the disclosure is made in the public interest*" (per Supperstone J in the EAT, paragraph 28).

77. Finally, we did not have to determine whether the disclosures had been made to the right class of recipient since the Respondent accepted that if they had been made, they were made to the Claimant's 'employer' within the meaning of section 43C (1)(a).

Detriment (s. 47B)

78. The next question to determine was whether or not the Claimant suffered detriment as a result of the disclosure. The test in s. 47B is whether the act was done "*on the ground that*" the disclosure had been made. In other words, that the disclosure had been the cause or influence of the treatment complained of (see paragraphs 15 and 16 of the decision in *Harrow London Borough Council-v-Knight* [2002] UKEAT 80/0790/01).

79. Section 48 (2) was also relevant, in that, "*On such a complaint it is for the employer to show the ground on which any act, or deliberate failure to act, was done.*"

80. A detriment is something that is to the Claimant's disadvantage. In Ministry of Defence v Jeremiah 1980 ICR 13, CA, Lord Justice Brandon said that 'detriment' meant simply 'putting under a disadvantage', while Lord Justice Brightman stated that a detriment 'exists if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment'. Brightman LJ's words, and the caveat that detriment should be assessed from the viewpoint of the worker, were adopted by the House of Lords in Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL.

81. The test in s. 47B is whether the act was done "*on the ground that*" the disclosure had been made. In other words, that the disclosure had been the cause or influence of the treatment complained of (see paragraphs 15 and 16 in Harrow London Borough Council-v-Knight [2002] UKEAT 80/0790/01). It will be infringed if the protected disclosure materially influenced (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower (NHS Manchester-v-Fecitt [2012] IRLR 64 and International Petroleum Ltd v Osipov UKEAT 0229/16).

82. The test was not one amenable to the application of the approach in *Wong-v-Igen Ltd*, according to the Court of Appeal in NHS Manchester-v-Fecitt [2012] IRLR 64). It was important to remember, however, if there was a failure on the part of the Respondent to show the ground on which the act

was done, the Claimant did not automatically win. The failure then created an inference that the act occurred on the prohibited ground (International Petroleum Ltd v Osipov EAT 0058/17).

Dismissal (s. 103A)

83. We considered the test in Kuzel-v-Roche [2008] IRLR 530;
   (a) whether the Claimant and had showed that there was a real issue as to whether the reason put forward by the Respondent was not the true reason for dismissal;
   (b) if so, had the employer showed its reason for dismissal;
   (c) if not, it is open to the tribunal to find that the reason was as asserted by the employee, but that reason does not have to be accepted. It may be open to the Tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not one advanced by either side.

84. However, since the Claimant lacked the requisite service to bring an ordinary unfair dismissal claim, the burden was on her to prove the reason for her dismissal under s.103A on the balance of probabilities; it is a greater burden than the requirements to merely prove a prima facie case if she had a two-year service under Kuzel-v-Roche [2008] IRLR 530; Ross-v-Eddie Stobart [2013] UKEAT/0068/13/RN.

Health and Safety

85. In Balfour Kilpatrick Ltd v Acheson and Ors [2003] IRLR 683, the EAT identified three requirements that needed to be satisfied for a claim under S.100(1)(c) to be made out. It must be established that:
   (i) it was not reasonably practicable for the employee to raise the health and safety matters through the safety representative or safety committee
   (ii) the employee must have brought to the employer's attention by reasonable means the circumstances that he or she reasonably believes are harmful or potentially harmful to health or safety, and
   (iii) the reason, or principal reason, for the dismissal must be the fact that the employee was exercising his or her rights.

86. The question of what amounts to reasonable grounds for believing that there were circumstances harmful to health and safety was considered in Kerr v Nathan's Wastesavers Ltd, EAT 91/9. The EAT emphasised that not too onerous a duty of enquiry should be placed on the employee in this regard. The purpose of the legislation is to protect employees who raise matters of health and safety; the fact that concern might be allayed by further enquiry need not mean that the employee's concern is not reasonable.

87. Section 100(1)(c) protects employees who bring to their employer's attention by reasonable means circumstances connected with their work which they reasonably believed were harmful or potentially harmful. In Brendon v BNFL Flurochemicals Ltd EAT 766/95, the question arose as to whether S.100 is confined to health and safety in the workplace, or whether it protects employees who express concern about potential damage to third parties outside the workplace, such as consumers of a company's products or the general public. The EAT accepted that it was arguable that S.100 might stretch beyond hazards in the workplace and that an employee might legitimately be concerned about something which happened elsewhere. However, it did not decide the point. A tribunal took the view that S.100(1)(c) did cover complaints about hazards to third parties in Lines v Johnson t/a County Coaches ET Case No.2500359/96. In that case L was dismissed because he refused to drive a 29-seater bus to transport 33 passengers. A tribunal found the dismissal unfair under S.100(1)(c). The employer had required L to use the bus in contravention of the Public Service Vehicles (Carrying Capacity) Regulations 1984 SI 1984/1406, the purpose of which is to ensure the safety of passengers. Similarly, in Barton v Wandsworth Council ET Case No.11268/94 a tribunal held that an ambulance driver's concerns for the safety of patients following a reduction in the quality of the escort service provided to assist patients in ambulances was a concern that could be protected by the health and safety provisions of the ERA.

88. However, since the Claimant lacked the requisite service to bring an ordinary unfair dismissal claim, the burden was on her to prove the reason for her dismissal under s.100(1)(c) on the balance of probabilities.

Discrimination

89. With regard to the claim for direct discrimination, the claim will fail unless the Claimant has been treated less favourably on the ground of her sex than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The Claimant needs to prove some evidential basis upon which it could be said that this comparator would not have suffered the same allegedly less favourable treatment as the Claimant.

90. In Madarassy v Nomura International Plc [2007] EWCA Civ 33 Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate 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 act of discrimination". The decision in Igen Ltd and Ors v Wong [2005] IRLR 258

CA was also approved by the Supreme Court in Hewage v Grampian Health Board [2012] IRLR 870. The Court of Appeal has also confirmed that Igen Ltd and Ors v Wong and Madarassy v Nomura International Plc remain binding authority in both Ayodele v Citylink Ltd [2018] ICR 748 and Royal Mail Group Ltd v Efobi [2019] EWCA Civ 18.

91. "Could conclude" must mean that "a reasonable Tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of discrimination. It would also include evidence adduced by the Respondent contesting the complaint.

92. The test within s. 136 encouraged us to ignore the Respondent's explanation for any poor treatment until the second stage of the exercise. We were permitted to take into account its factual evidence at the first stage, but ignore explanations or evidence as to motive within it (see Madarassy-v-Nomura International plc and Osoba-v-Chief Constable of Hertfordshire [2013] EqLR 1072). At that second stage, the Respondent's task would always have been somewhat dependent upon the strength of the inference that fell to be rebutted (Network Rail-v-Griffiths-Henry [2006] IRLR 856, EAT).

93. We needed to consider all the evidence relevant to the discrimination complaint, that is (i) whether the act complained of occurred at all; (ii) evidence as to the actual comparator(s) relied on by the claimant to prove less favourable treatment; (iii) evidence as to whether the comparisons being made by the claimant were of like with like; and (iv) available evidence of the reasons for the differential treatment.

94. The Claimant did not need to have to find positive evidence that the treatment had been on the alleged prohibited ground; evidence from which reasonable inferences could be drawn might suffice. Unreasonable treatment of itself was generally of little helpful relevance when considering the test. The treatment ought to have been connected to the protected characteristic. What we were looking for was whether there was evidence from which we could see, either directly or by reasonable inference, that the Claimant had been treated less favourably than others not of her gender, because of her sex.

95. The circumstances of the comparator must be the same, or not materially different to the Claimant circumstances. If there is any material difference between the circumstances of the Claimant and the circumstances of the comparator, the statutory definition of comparator is not being applied (Shamoon). It is for the Claimant to show that the hypothetical comparator in the same situation as the Claimant would have been treated more

favourably. It is still a matter for the Claimant to ensure that the Tribunal is given the primary evidence from which the necessary inferences may be drawn (Balamoody v UK Central Council for Nursing Midwifery and Health Visiting [2002] IRLR 288).

96. If we had made clear findings of fact in relation to what had been allegedly discriminatory conduct, the reverse burden within the Act may have had little practical effect (per Lord Hope in *Hewage-v-Grampian Health Board* [2012] UKSC 37, at paragraph 32). Similarly, in a case in which the act or treatment was inherently discriminatory, the reverse burden would not apply.

97. When dealing with a multitude of discrimination allegations, a tribunal was permitted to go beyond the first stage of the burden of proof test and step back to look at the issue holistically and look at 'the reasons why' something happened (see Fraser-v-Leicester University UKEAT/0155/13/DM). In Shamoon-v-Royal Ulster Constabulary [2003] UKHL 11, the House of Lords considered that, in an appropriate case, it might have been appropriate to consider 'the reason why' something happened first, in other words, before addressing the treatment itself.

98. As to the treatment itself, we always had to remember that the legislation did not protect against unfavourable treatment per se but less favourable treatment. Whether the treatment was less favourable was an objective question. Unreasonable treatment could not, of itself, found an inference of discrimination, but the worse the treatment, particularly if unexplained, the more possible it may have been for such an inference to have been drawn (Law Society-v-Bahl [2004] EWCA Civ 1070).

99. We reminded ourselves of Sedley LJ's well-known judgment in the case of Anya-v-University of Oxford [2001] ICR 847 which encouraged reasoned conclusions to be reached from factual findings, unless they had been rendered otiose by those findings. A single finding in respect of credibility did not, it was said, necessarily make other issues otiose.

Harassment

100. Not only did the conduct have to have been 'unwanted', but it also had to have been 'related to' a protected characteristic, which was a broader test than the 'because of' or the 'on the grounds of' tests in other parts of the Act (Bakkali-v-Greater Manchester Buses [2018] UKEAT/0176/17).

101. As to causation, we reminded ourselves of the test set out in the case of Pemberton-v-Inwood [2018] EWCA Civ 564. In order to decide whether any conduct falling within sub-paragraph (1) (a) has either of the prescribed effects under sub-paragraph (1) (b), a tribunal must consider both whether

the victim perceived the conduct as having had the relevant effect (the subjective question) and (by reason of sub-section (4) (c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). A tribunal also had to take into account all of the other circumstances (s. 26 (4)(b)). The relevance of the subjective question was that, if the Claimant had not perceived the conduct to have had the relevant effect, then the conduct should not be found to have had that effect. The relevance of the objective question was that, if it was not reasonable for the conduct to have been regarded as having had that effect, then it should not be found to have done so.

102. It was important to remember that the words in the statute imported treatment of a particularly bad nature; it was said in Grant-v-HM Land Registry [2011] IRLR 748, CA that "*Tribunals must not cheapen the significance of these words. They are important to prevent less trivial acts causing minor upset being caught by the concept of harassment.*" See, also, similar dicta from the EAT in Betsi Cadwaladr Health Board-v-Hughes UKEAT/0179/13/JOJ.

Conclusions

Did the Claimant make protected disclosures?

Was information disclosed by the Claimant which tended to show the health or safety of an individual was being put at risk, that there had been a breach of legal obligation or a criminal offence had been committed?

On numerous occasions for more than a year, she disclosed to Mr Fraser problems with the horses' riding tack being ill-fitted and broken

103. As part of her role, the Claimant informed, Mr and Mrs Fraser when riding tack was damaged or not working properly and therefore information was provided that tended to show that the health and safety of an individual could be put at risk.

Throughout her employment she often raised that the horses were underweight and their feed had run out. Further that the horses were hungry and might pull at grass and put clients at risk.

104. It was part of the Claimant's role to notify the Respondent if feed stocks were running low, which she did from time to time. The Claimant did not inform Mr Fraser that the horses were underweight or that they were hungry. We were not satisfied that the horses' feed ran out or that they were working when they were hungry or that the Claimant told the Respondent this. Accordingly, we were not satisfied that the Claimant provided

information to the Respondent in this respect and therefore there was not a protected disclosure.

In about October or November 2017 the Claimant told Mr Fraser, on the advice of a dentist, that a vet was needed to extract a blackthorn from the mouth of a horse (Guinness)?

105. Mr Fraser was present when the dentist extracted the thorn and was advised by the dentist, that a vet should check Guinness's mouth, this information was not provided by the Claimant and therefore she did not make a protected disclosure in this respect.

From April 2018 on a weekly basis informed Mr Fraser that the wild boar were over-crowded, that they were hungry due to minimal and poor quality food and when the staff were alone they could not clean them out in the small space where there was excrement and in which the boar were not controllable?

106. In the light of our findings of fact, the Claimant did not raise issues about the wild boar's feed, that they were overcrowded, or that they could not cleaned out because they were uncontrollable. The Claimant therefore did not provide information that tended to show that the health and safety of an individual was at risk, or that there had been a criminal offence committed or that there had been a breach of a legal obligation. Accordingly, this was not a protected disclosure.

<u>In the Claimant's reasonable belief did the information tend to show that the health and safety of an individual had been or could be endangered, a criminal offence had been committed by the Respondent or that the Respondent was in breach of its legal obligations in relation to animal welfare?</u>

107. The Respondent conceded that if appropriate information had been provided, the Claimant had a reasonable belief that the health and safety of an individual was at risk in relation to all of the alleged disclosures, apart from that relating to the wild boar.

108. The Claimant therefore made protected disclosures in relation to the tack.

109. In relation to horses being underweight, that their feed had run out and that they were hungry and might pull at grass, we were not satisfied that the Claimant provided information in this respect and it was therefore unnecessary to consider this part of the test. In any event, we were not satisfied that the horses' feed ran out or that they were hungry when working, which was the alleged basis for the Claimant's concern for the health and safety of clients and the animals' welfare. Accordingly, we would not have been satisfied that the Claimant reasonably believed that the

information tended to show that there was a risk to health and safety, a criminal offence had been committed or that there had been a breach of legal obligation.

110. In relation to the blackthorn, we found that the Claimant did not inform Mr Fraser about the advice from the dentist, because he was present when it was given and therefore, she had not provided information and that this was not a protected disclosure. We did not need to consider this part of the test.

111. In relation to the wild boar we were not satisfied that the Claimant had provided the information alleged and therefore did not need to consider this aspect of the test.

Did the Claimant reasonably believe the disclosure was made in the public interest?

112. The Respondent conceded that the Claimant had a reasonable belief that the disclosures were in the public interest relation to all of the alleged disclosures, apart from that relating to the wild boar, which we found was not a protected disclosure.

113. The Claimant therefore only made protected disclosures in relation to tack.

Was a disclosure made to the employer?

114. The disclosures were made to the Respondent, the Claimant's employer.

Health and Safety concerns

Was there a safety representative or safety committee at the workplace?

115. There was not safety representative or safety committee at the yard.

Did the Claimant bring to the Respondent's attention, by reasonable means, circumstances connected with her work which she reasonably believed were harmful or potentially harmful to health and safety?

By on numerous occasions for more than a year, she disclosed to Mr Fraser problems with the horses' riding tack being ill-fitted and broken

116. As part of her role the Claimant informed Mr and Mrs Fraser when riding tack was damaged or not working properly. The Claimant, therefore, by reasonable means, brought to the Respondent's attention circumstances

connected to her work which she reasonably believed were potentially harmful to health and safety.

Throughout her employment she often raised that the horses were underweight and their feed had run out. Further that the horses were hungry and might pull at grass and put clients at risk

117. We did not find that the Claimant reported to Mr Fraser or Mrs Fraser that the horses were underweight, that their feed had run out or that they were hungry. We also found that the Claimant did not reasonably believe that the horses were hungry and therefore could not have believed that this was a cause of a potential risk to clients. Therefore, we were not satisfied that the Claimant brought such circumstances to the attention of her employer.

In about October or November 2017 she told Mr Fraser, on the advice of a dentist, that a vet was needed to extract a blackthorn from the mouth of a horse (Guinness)?

118. Mr Fraser was present when the dentist extracted the thorn and was advised by the dentist that a vet should look at Guinness's mouth. The information was not given by the Claimant and therefore it was not the Claimant that brought the matter Mr Fraser's attention.

From April 2018 on a weekly basis informed Mr Fraser that the wild boar were over-crowded, that they were hungry due to minimal and poor quality food and when the staff were alone they could not clean them out in the small space where there was excrement and in which the boar were not controllable?

119. In the light of our earlier findings, the Claimant did not raise these matters with Mr Fraser and therefore did not bring such matters to her employer's attention.

120. The only health and safety concerns that the Claimant brought to the Respondent's attention related to tack.

Detriment

Was the Claimant subjected to a detriment by the Respondent on the ground that she had made a protected disclosure and/or raised a health and safety concern, by: Calling her a stupid naïve girl, Calling her stupid or a fucking idiot?

121. In the light of our findings of fact Mr Fraser did not call the Claimant a stupid naïve girl, stupid or a fucking idiot.

122. Mr Fraser did tell the Claimant, on one occasion, that she was being naïve in relation to llama feed, however, this did not relate to a protected disclosure or health and safety concern which we were required to consider as part of this case.

123. Accordingly, the Claimant was not subjected to a detriment for making a protected disclosure or for having raised a health and safety concern. In the light of our findings it was unnecessary to consider whether the claims were presented in time.

Dismissal

What was the principal reason for the Claimant's dismissal?

124. The burden of proof was on the Claimant to show that the principal reason for her dismissal was that she had raised a health and safety concern or made a protected disclosure. Mr and Mrs Fraser had significant concerns about what Pip had been doing whilst he had worked for the Respondent, which included matters relating to its bank account. Shaun Edwards had reported to the Respondent that the Claimant had told him the Respondent was in financial trouble and she had seen the bank statements and that she had told him Pip had been recording conversations. The Claimant was the yard manager and did not report these matters to the Respondent, which they considered to be very serious. We considered that the evidence of the Respondent was more likely and accepted it, therefore the Claimant failed to discharge the burden of proof that the sole or principal reason for her dismissal was that she had made a protected disclosure or raised a health and safety concern.

Direct Discrimination

Did Mr Fraser carry out the following treatment?

In about September 2018 referred to the Claimant looking like a retired prostitute in front of Tom Quirk, and Lisa Tingle?

125. We were not satisfied that Mr Fraser referred to the Claimant as 'looking like a retired prostitute'.

In about September 2018 referred to the Claimant as a retired prostitute in the presence of Shaun Edwards, a co-worker

126. We were not satisfied that Mr Fraser referred to the Claimant as looking like a retired prostitute

On many occasions throughout her employment, including in October 2017 in front of clients, refer to the Claimant as a stupid naïve girl?

127. In the light of our findings of fact, Mr Fraser did not refer to the Claimant as 'girl'. We did not find that he referred to her as a 'stupid naïve girl'. Mr Fraser, on one occasion, told the Claimant that she was being naïve in relation to a discussion about llama feed.

Has the Claimant proved facts from which the Tribunal could conclude, in the absence of adequate explanation, that the Respondent carried out the acts because of her sex?

128. In the light of our findings of fact that Mr Fraser did not refer to the Claimant as looking like a retired prostitute or that he referred to her as 'girl' and taking into account the evidence as whole, the Claimant had not proved facts from which we could conclude that she was called naïve because of her sex. Accordingly, the burden of proof did not shift to the Respondent to show the reason for any alleged treatment and the claim of direct discrimination failed.

Harassment on the grounds of sex

Did the Respondent engage in the following conduct and was it unwanted?

In about September 2018 referred to the Claimant looking like a retired prostitute in front of the farrier, Tom Quirk, and Lisa Tingle?

129. We were not satisfied that Mr Fraser referred to the Claimant as 'looking like a retired prostitute'.

In about September 2018 refer to the Claimant as a retired prostitute in the presence of Shaun Edwards, a co-worker?

130. We were not satisfied that Mr Fraser referred to the Claimant as 'looking like a retired prostitute'.

On many occasions throughout her employment, including in October 2017 in front of clients, refer to the Claimant as a stupid naïve girl?

131. We repeat of our findings in relation to direct sex discrimination.

Was the conduct related to the Claimant's sex?

132. Mr Fraser did not refer to the Claimant as 'girl'. In the circumstances of the discussion about llama feed, there was no evidence that the reference to being naïve had anything to do with the Claimant's sex. We were not satisfied that the conduct was related to her sex.

Did the conduct have the purpose or effect of (i) violating the Claimant's dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant

133. In the light of our findings it is unnecessary to consider this part of the test.

Time limits

134. In the light of our findings it was unnecessary to consider the question of whether the claims were presented in time.

Conclusion

135. Accordingly, the claims of automatically unfair dismissal, detriment and sex discrimination were dismissed.

Employment Judge J Bax

Dated: 12 February 2020

Judgment sent to parties: 12 February 2020

FOR THE TRIBUNAL OFFICE