



EMPLOYMENT TRIBUNALS

Claimant

Miss A Raj

v

Respondent

Adelie Foods Limited

Heard at: Bury St Edmunds

On: 18, 19, 20, 21, 22 & 25 November 2019
26 & 27 November 2019 (Discussion days – no parties present)

Before: Employment Judge Postle

Members: Mr C Davie and Mrs L Gaywood

Appearances

For the Claimant: Ms A Macey, Counsel

For the Respondent: Mr P Bownes, Solicitor

RESERVED JUDGMENT

1. The Claimant's claims brought under the Employment Rights Act 1996, public interest disclosure s.47B are not well founded.
2. The Claimant's claim under s.103A of the Employment Rights Act 1996, automatic unfair dismissal for making protected disclosures is not well founded.
3. The Claimant's claims under the Equality Act 2010 for the protected characteristic of race discrimination are not well founded.
4. The Claimant's claims under the Equality Act 2010 for the protected characteristic of sex are not well founded.

REASONS

1. At the outset of this Tribunal which was originally listed for 15 days it was clear there was not a final agreed list of factual issues. This was

somewhat disappointing bearing in mind both parties were represented and at the preliminary hearing on 23 April 2019 unfortunately the Employment Judge presiding did not ensure there was a final list of issues instead made an order that the Claimant produce a list of issues by 14 May 2019, the Respondent to respond by 21 May 2019 with any disagreements, thereafter... the Claimant must produce a revised list of issues taking account of the points made by the Respondent. At that stage, if there was still points of disagreement they must be addressed by both parties in a full written skeleton argument. Unfortunately, we are left at the start of a 15-day hearing with matters still in dispute. This is a most unsatisfactory state of affairs, particularly where parties are both legally represented.

2. Ultimately the Tribunal were told that the list of issues contained in a bundle of documents referred to as "Various List of Issues Tables of Further Particulars" consisting of 58 pages therein contained pages 29-34 was the nearest the parties could get to an agreed list of issues. However, there were still matters not agreed in that list and they were at paragraphs 18 and 19 relating to harassment (sex), and paragraphs 23 and 24 relating to victimisation (sex and race).
3. The Tribunal were asked to determine whether they could be included based on the Claimant's original particulars of claim and the amended particulars of claim. Both parties' representatives were given an opportunity to address the Tribunal as to their respective positions in relation to the outstanding issues in dispute.
4. The Tribunal determined that in relation to paragraphs 18 and 19 which related to unwanted conduct related to sex, particularly touching of the claimant's legs and hugging the Claimant from behind on the 11 January, it is clear that the factual basis was supported by paragraph 8 of the original particulars of claim.
5. In relation to paragraphs 23 and 24 which related to victimisation – sex and race involving three complaints; one made to Liz Rusk of HR on 19 December, a complaint made to Mr Casey on 11 January and the complaint regarding Miss Napper's racial comment. The Tribunal determined all of which appeared in the actual detail at paragraph 8 of the Claimant's amended particulars and quite clearly was a pleaded claim at paragraph 20f of the amended particulars. They were therefore included as list of issues to be determined.
6. This meant in summary the Claimant's claims were claims brought under the Employment Rights Act 1996 – Public Interest Disclosure, particularly s.47B, claims of automatic unfair dismissal under s.103A of the Employment Rights Act 1996, claims under the Equality Act 2010 for race discrimination direct s.13, sex discrimination direct s.13, harassment (sex) s.26, harassment (race) s.26 and finally victimisation under s.27. There are also jurisdictional issues as to whether some of the claims, if not all of them are out of time.

7. In the present case, the Claimant commenced the mandatory early conciliation with ACAS on 6 October 2017 (Day A) and the certificate was issued on 6 November 2017 (Day B). The ET1 was presented to the Tribunal on 14 December 2017. As Day B is more than one month before the date of issue of the ET1 the Claimant clearly is unable to rely on the extension of time under s.207B(4) of the Employment Rights Act 1996 and can only therefore benefit from the “stop the clock” provision of s.207B(3) of the Act. The conciliation period was 31 days, and therefore the limitation period applicable to the Claimant’s claim is 3 months plus 31 days from the date of issue of the ET1. This means that the earliest date the Claimant can rely on for any act complained of is 15 August 2017. Any earlier act is clearly outside the Tribunal’s jurisdiction.
8. Therefore, the only claims that fall within the limitation period are those relating to the dismissal itself, the reject of the grievance complaints and the alleged failure to conduct the appeal in a timely manner. All other allegations and complaints made by the Claimant are out of time.
9. Therefore, the Tribunal has to consider whether it should exercise its discretion in respect of the just and equitable extension.
10. The Tribunal’s discretion in respect of just and equitable course is wider than the not reasonably practicable discretion. The leading case in respect of the just and equitable extension remains Robertson v Bexley Community Centre [2003] EWCA Civ 576 at which the Court of Appeal commented:

“It is of importance to note that time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on the just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.

The burden of proving the explanation of the length and reasons for the delay relies with the Claimant as does the burden of convincing the Tribunal that an extension of time should be granted.”
11. The Tribunal having heard the evidence from the Claimant and Claimant’s counsel’s submissions have noted that there has been a complete failure to give any evidence or explanation as to the length or reasons for the delay, there is no suggestion of any lack of knowledge of the ability to bring a claim nor has the Claimant given any evidence as to why it was not reasonably practicable to bring a claim earlier. The Claimant has singularly failed to take any steps to ask for time to be extended despite this being highlighted within the list of issues raised at the preliminary hearing in April 2019.

12. What is clear from the evidence is that the Claimant specifically requested that the Respondent take no action in respect of Mr Casey at the time of the January incident as she confirmed to the Tribunal when questioned. Further, she delayed in raising grievances about multiple matters for some considerable time and nearly all of those issues were well out of time by the time she did raise her grievance. The Claimant has also referred during the course of these proceedings to having a legal representative on the line at her first investigation meeting in June 2017, and indeed was accompanied by a Trade Union Representative at her disciplinary hearing. What is noticeable is there is a 38 day delay between the receipt of the ACAS Early Conciliation Certificate and the lodging of the Claimant's ET1.
13. The Tribunal have therefore concluded on the evidence that came out and the lack of any justification to extend time, that there is no basis on which the Tribunal should exercise its discretion simply because the Claimant has provided no explanation whatsoever for the delay and there is simply no evidence from which the Tribunal can infer what the reasons for the delay were. Clearly the Claimant has not acted promptly in the time she became aware of the possibility of bringing a claim. Furthermore, at times the Claimant's case seemed to evolve during the hearing raising matters which had not been previously canvassed. Therefore, the Tribunal concluded that all claims prior to 15 August should be dismissed as being outside the Tribunal's jurisdiction and it not being just and equitable to exercise the Tribunal's discretion.
14. Having said that, the Tribunal have as can be seen in this Judgment gone on to decide even if we had exercised our discretion what the outcome would have been in any event.
15. In this Tribunal we have heard evidence from:
 - 15.1 The Claimant and on her behalf Miss Bernadette Pickering former employee of the Respondent having left their employment in September 2016, Mr Basima Nziko again a former employee of the Respondent who left in October 2016 he gave his evidence through Skype, Mr Ayobami Adewunmi an employee of the Respondent giving evidence through Skype, Mr Hussein an employee of the Respondent again giving evidence through Skype – all had prepared witness statements.
 - 15.2 For the Respondent we heard evidence from Mr Howard Batey who chaired the disciplinary and Mr Grant Beverley who dealt with the appeal who has now left the Respondent and he gave evidence through Skype and through a prepared witness statement.
16. The Tribunal also had the benefit of a bundle of documents consisting of 1084 pages.

The Facts

17. The Claimant was employed by the Respondent as a night shift production manager at the Milton Keynes site. She commenced her employment from 1 February 2016 and until her dismissal on 15 August 2017 as a result of her aggressive management style. The Respondent is a manufacturer of sandwiches, wraps and other takeaway foods for a range of supermarkets and other food retailers.
18. The Claimant is a British born Muslim woman of Pakistani ethnic origin.
19. The Claimant's role required her to liaise with and supervise other employees on the night shift to ensure they worked in a safe environment and adhering to appropriate Health & Safety and hygiene standards. At the time she reported to Mr Mark Casey the manufacturing manager until his dismissal in March/April 2017. He was apparently dismissed for his management style and sexual harassment. Mr Casey reported to Mr John Conway the general manager.
20. It is clear the Claimant was an uncompromising manager in terms of her professional standards with a personal style which the Claimant freely acknowledges was firm but fair.
21. The Claimant would prepare handover notes for shift changes, one of which was on 19 August 2016 (page 150) in which she refers to in an email:

“Hi all, accident x1, vital operative was moving a stack of clean trays from tray wash into prep and as she was pushing the trays the trays fell down and one grey tray hit her on her left eye. Inetta Strakauskaite was ok however complained that her eye was hurting and has a slight cut and bruising to her eye. We have administered first aid and sent her off to the walk-in centre. Inetta is due back into work tonight and I have started the accident investigation.

Incident x0

Near misses x4 (x3 from team solution x1 despatch x1 prep not logged on the system yet)

Staff: x5 short on BS (agency shortage by x2) and x7 short on NS (no shorts from agency).”
22. The handover note then talks about quality, service, prep and AOB and concludes “all areas handed over to Justin kind regards Alisha Raj”.
23. Robin Frew the general manager responded by email (page 149) on 20 August 2016:

“I received your text this morning re the accident so thanks. Without prejudicing the investigation as this requires thorough investigation I do hope the accident was not caused by the stack of trays too high above the agreed level. John can

you set up a meeting with the relevant parties and myself post investigation.
Regards Robin”

24. On 20 August 2016 David Wickham the UK Hygiene Manager responds:

“Hi Robin, to assist in the investigation hygiene operational leaders have been tasked to assess stack heights on all three shifts as well as sense checking personnel are adhering to heights, this is a formal sense check and will be validated by Tuesday morning 0600 hours and submitted to John Salvin to assist the investigation. David”

25. It is in the Claimant’s grievance dated 24 July, the Claimant simply raises the issues of overloaded trays by the prep team and the fact they are too high. The Claimant goes on to suggest this was raised in a number of handovers despite the Tribunal only seeing the one in August 2016 referred to above.

26. The Claimant suggests having raised issues of Health & Safety and hygiene in relation to the order of wearing hair nets and hats, the Tribunal were not directed to any email or handover note in relation to this issue at the relevant time or a specific date that this occurred. There is no reference in the Claimant’s witness statement to this allegation. It is only raised by the Claimant as an issue during the course of Anna Wasowska’s investigation into the Claimant’s grievances. It was raised with Mr Haydn Fletcher and Victoria Grybauskaite on 6 June 2017 in which the Claimant makes reference to:

“I sent out the procedure on the wearing of hair nets. Fathema was in the boot room, she was not wearing a hair net in the right way, she had a hair net on, then her hat, then her mob cap. Therefore, I called Heydon to come to see what was right, he said hair net, head gear, mob cap. It didn’t sit right with me in my experience people who wear a hijab or turban do I have to tell them to take them off to put the hair net on? I left it to Heydon to check but it sent alarm bells ringing so because of the customer I sent it on the handover I sent it to Kim. May Heydon took that I was showing him up but I don’t believe I have done anything wrong.”

27. The Claimant further asserts that the management were not following procedure with regard to out of date products. Here the Claimant in the handover note of the shift of 15 September 2016 (pages 177-178) refers to a number of issues regarding lack of stock, and outdated stock delivered or mis-rotated. The Claimant arranges further deliveries and other products not being ready until late in the shift. The Claimant refers to wraps insufficiently defrosted due to the defrosting unit going down and copies that handover note to a number of staff.

28. That was immediately responded to by Mr Conway the general manager on 15 September at 14:08:

“Hi Alicia, thank you for your excellent communication on the issues last night. These have been highlighted to the appropriate level and give visibility around materials and communication.

We are in the process of trying to address the root cause of these issues and expect to see a significant improvement over the next few days (hopefully).

Clearly the last couple of weeks have been difficult and I want to thank you for your continuing support. Best regards John”

29. Although again the Claimant makes reference to another issue on 17 September the Tribunal were not directed to an email referring to the problem or is one referred to in the Claimant’s witness statement relating to any event on 17 September. The Claimant does raise the issue of running out of materials and prep team using out of date stock in her grievance dated 24 July (page 969) and further extending shelf life of egg products by the general manager. Further that she obtained a concession to make up further egg mix which of course is part of her job.
30. The Claimant asserts she raises further issues in May 2017 (out of date products) in an email of 12 May (page 424) the Claimant raises with a number of managers a quality issue with broken flaking eggs but it is a request to look into that issue.
31. Further on 13 May 2017 (page 450) in a handover shift email from the Claimant she raises packaging changes (wrong), bread changes, running both lanes, rejects of product and leaf insects. They were a collection of day to day issues that had occurred on shift. The Claimant further asserts that the Respondent was in some way overworking employees and not complying with the Working Time Regulations particularly the employee known as Emanuel worked over 7 days and a pregnant staff member working late in their shift. This was in an email at page 104, May 2016. In the respect of the pregnant workers the response from HR was the Respondent did have a duty of care to expectant mothers and any deviation from the required process for them would be treated as gross misconduct (page 104).
32. In the case of Emanuel – on 27 August 2016 (pages 158-159) the Claimant does raise an issue about his working days being a breach of the Working Time Regulations and this is responded to by Andy Wright on 28 August (page 156),

“He appreciates the current situation with Emanuel and has had conversations with individuals going forward on the plan for both shifts being covered 7 days a week and problems seem to have occurred with somebody being on holiday not authorised which was then a setback for covering Emanuel’s time. This apparently had been discussed privately with Emanuel and resolved.”
33. There is reference to hours of work in the Claimant’s grievance but no specific detail or reference to pregnant employees in the Claimant’s grievance of 24 July (page 971).

34. On a date the Claimant is unable to identify but appears to be between April and May 2017, the claimant overheard a member of staff Ms Jackie Napper instructing someone on the phone to go to the “Paki shop”. The Claimant reported this to Rodney Mavenga and Liz Rusk of HR verbally and it is accepted that it is not clear what action if any was taken against Ms Napper.
35. It is also clear that on 11 January the Claimant was hugged from behind by Mr Casey in front of colleagues namely Mr Hall and Mr Hussein following a handover shift. This was after Mr Casey had previously been warned about his behaviour towards the Claimant in December 2016 and the Claimant had clearly raised this as an issue with Mr Casey as being unwanted conduct. Ultimately Mr Casey had apparently apologised at the time and it would appear that the Claimant at that time did not want the matter pursued any further. There was certainly no formal grievance by the Claimant raised at the time, in fact it was only raised in the Claimant’s grievance of 24 July, 7 months late. Ultimately Mr Casey was suspended for his management style and sexual harassment in March and dismissed following an investigation.
36. In the meantime, other male managers were suspended around this time for their management style towards staff and following a full investigation apparently no further action was taken against either of these two managers.
37. On 18 May 2017 Mr Haydn Fletcher night shift quality assurance manager during an altercation with the Claimant, raises a grievance against the Claimant (page 473a) and a further grievance against the Claimant on 23 May (page 473). The grievance being the way the Claimant deals with staff, speaks to people in particular the one on 23 May:

“Sorry to be having to submit another grievance regarding the unprofessional conduct of production manager Alisha Raj. I am formally submitting this based on an incident that occurred on the morning of 19 May where Alisha came into the technical office and started speaking in an aggressive and intimidating manner (about an NCR that was issued to production) towards Area TC Victoria Grybauskaite in the presence of Jackie Napper and I. Victoria was trying to explain the issue at hand to Alisha who continued to raise her voice towards her as she was visibly shocked by what was happening. I intervened and attempted to calm the situation down and asked Alisha on two occasions to lower her voice and reminded her that the way in which she was speaking to Victoria was inappropriate. Alisha then slammed down items she had in her hands onto the desk and then walked over into the direction of Victoria who seemed very nervous. After a short while arguing Alisha left the room then returned after a few minutes asking to have a word with me in the Boardroom which I agreed. When I walked in the Boardroom I saw Mohammed Hussein standing there and then Alisha started to shout at me and she was unhappy about what just happened and my attitude towards her. I then asked her to stop shouting at me but she continued to do so. I then asked her if she wanted to have this conversation on 2 occasions and she replied that Mohammed and I are the same and on hearing this I walked out of the Boardroom as I did not want to be put through any more humiliation by her. At this point I felt belittled, demoralised and humiliated.

Alisha again returned to the office 5 minutes later and asked me to have another conversation in the Boardroom. During this conversation I told Alisha that I was not happy about the way she spoke to me and asked her why she felt that it was ok to speak to me like that in front of Mohammed and she replied that it was because she does not trust me. I have asked Alisha to not refer to me in the future as being the same as Mohammed and reminded her that I am in fact a QA manager. I also told Alisha that I am not happy about the manner in which she spoke to Victoria and it was unacceptable.

I'm very concerned about this further issue as I have a duty of care to all my staff and I try my best to create a happy professional working environment for them work and prosper in. I am also very concerned about the wellbeing of my staff member Victoria who is pregnant and has been put through this ordeal looking forward to your response. Haydn Fletcher”

38. There was also said to be a third grievance raised by Victoria on the same day following the same incident which unfortunately despite a search by the Respondent they have been unable to locate a copy of the original grievance.
39. Given the concerns raised in the grievances and the concerns which had been raised with the Claimant in her probationary review about the need for the Claimant to work harder with her peers to convince them that she is working to be part of a team and to find a way to cement the relationship with her peers, the Respondent considered the matter seriously enough to instigate a full investigation into the Claimant's management style. Particularly as at the time of the probationary review the Claimant had acknowledged her short comings in dealing with her peers (pages 1068-1070).
40. Following the above, the Claimant is then suspended in a meeting with Mr Conway the general manager on 27 May and notes of that meeting are at page 541 at which she is informed “allegations have been made against her” with Mr Conway explaining that the allegations were around using inappropriate and aggressive management methods. Mr Conway further explains the suspension was not an indicator of guilt and there would be a full investigation. This was all confirmed to the Claimant in a letter dated wrongly 26 May (page 959). This was in line with the company's disciplinary policy (page 1072a).
41. An investigation was commenced by HR and the investigating officer was Anna Wasowska interim technical manager. The Claimant was informed who was to be the investigating officer and the reasons for the investigation. The Claimant was interviewed at some length on 6 June and 29 June and minutes of those meetings are at pages 575-585 and 619-624. The Claimant did not object to the investigating officer conducting the investigations. Miss Wasowska then conducted further interviews as part of the investigation, some of which included two interviews particularly with Haydn Fletcher and Victoria Grybauskaite (pages 543-656). In total 25 individual employees were interviewed

excluding the Claimant's two interviews. It clearly was a comprehensive investigation.

42. It is clear from those interviews that 15 were negative towards the Claimant, in particular describing the Claimant as;

“rude, abrasive, aggressive, intimidating, rude, abrupt, embarrassing, scary, flip, twists things, aggressive, her tone and how she addresses people is as if they are like nothing, how she talks to people is not nice, does not let us speak”

– a summary of the flavour of how the Claimant was described. Furthermore, Mr Conway general manager commented that 90% of the issues the Claimant raises, were in fact issues the Claimant was responsible for managing herself as the night shift Production Manager.

43. As a result of Anna Wasowska's investigation, given what transpired and the tenure of a large majority of those interviewed it was decided that a disciplinary was appropriate in order for the Claimant to respond to the serious allegations that had been made.
44. The Claimant was therefore invited by letter of 14 July to a disciplinary hearing (page 961) that letter set out the date of the disciplinary, the allegations, the right to be accompanied, who would chair the disciplinary hearing and enclosed copies of all witnesses interviewed their statements obtained during the course of the investigation. The letter also confirmed one potential outcome was dismissal, there was also a possibility no further action as well. The meeting was arranged at the Claimant's request (page 963) ultimately for 25 July. The disciplinary was to be conducted by Mr Batey who was the interim manufacturing manager who had never met the Claimant prior to the disciplinary and in fact the Claimant had already been suspended by the time Mr Batey commenced his employment with the Respondent.
45. The Claimant's response to being informed she was facing a disciplinary was to lodge a grievance on 24 July 2017 (pages 967-975) which starts off referring to unethical practices, victimisation, sexual harassment and discrimination. The first time the Claimant has raised such issues formally in a grievance. The grievance goes onto describe a number of issues, particularly the Ms Napper incident where she is heard talking to someone on the phone and making reference to the “Paki shop”. Mr Casey's sexual harassment and makes a number of allegations in which she says the company's failing in either the Working Time Regulations, Health & Safety without giving dates or clear evidence to support by way of emails, etc.
46. In accordance with the company's procedure where the grievance and disciplinary matters relate to the same issue the company can deal with those both together. If the grievance is unrelated the disciplinary can be dealt with first (page 1072h). Mr Batey dealt first with the Claimant's suspension raised in the grievance at a meeting on 10 August (page 656)

and then dealt with more generic historic grievances which were in part connected to the disciplinary at a further meeting on 10 August which followed on from the first meeting.

47. It is clear from the minutes of the disciplinary and grievance that all the witness evidence was gone through with the Claimant, and the Claimant was given every opportunity to respond. The Claimant was accompanied by her Trade Union representative and regular breaks were afforded to the Claimant. The Claimant had requested two witnesses to attend, one did attend and although the Claimant's other witness was clearly aware of the date of the meeting failed to attend as it fell on his day off, for reasons best known to himself decided not to come in to support the Claimant. Given the weight of feeling against the Claimant from a wide variety of employees interviewed, which the majority corroborated the fact that the Claimant had an aggressive management style and behaved in an offensive and intimidating manner Mr Batey concluded that the only sanction available was dismissal and that decision was confirmed to the Claimant in a letter dated 14 August (page 978), with his reasoning for that decision.
48. In the letter Mr Batey had concluded that there was overwhelming evidence to support the allegations brought against the Claimant, including the Claimant's management style was indeed aggressive and the Claimant's behaviour and the ability to leave her peers and colleagues feeling humiliated and intimidated. Further evidence suggested the Claimant believed her ability was superior to that of her colleagues and peers which was offensive and undermined her colleagues and had a detrimental impact on an effective working relationship and in those circumstances, it was concluded dismissal was reasonable and appropriate in all the circumstances.
49. In the letter of dismissal, the Claimant was given right of appeal which she exercised by letter of 17 August (page 979) where she cited eight reasons/points of appeal. The Claimant's appeal was acknowledged on 23 August. On 24 August (pages 982-985) Mr Batey then set out in some detail identifying each of the Claimant's main grievances why they were not upheld.
50. Despite a number of dates being given to the Claimant for an appeal to be heard, not only against her grievance but the dismissal - the Claimant would not agree a date and ultimately the appeal meeting conducted by Mr Beverley proceeded in the Claimant's absence and he gave his decision by letter of 30 October (pages 999-1004). By any objective assessment it is a detailed response to both the grievance appeal and the dismissal appeal, the appeal having been heard on 20 October 2017. His letter sets out the witnesses / colleagues who voiced similar concerns about the Claimant's behaviour as those which started the disciplinary process following the grievance raised by Mr Fletcher and Mrs Grybauskaite which confirmed the Claimant was rude, doesn't listen, talked over people, shouted, raised her voice, embarrassed or publicly

humiliated colleagues in front of others. The other witnesses / colleagues described the Claimant's behaviour as,

“disciplinarian, disrespectful, intimidating, scary, frightening, aggressive manner, autocratic, authoritarian, abrupt, talked down to people, cut people off, dismissive, anger issues, twists things accusatorial, creates an atmosphere, tone of voice is not nice, condescending, psychological bullying, talked down to people, usual status, blame others, bossy, blunt, argumentative, unprofessional, forceful, angry attitude, talk to people like they are nothing, mood switch, your way or the high way, questioned peoples integrity and was intimidating”

As a result of these findings he felt that the dismissal was the appropriate sanction. It is clear that the reason then given by Mr Batey and Mr Beverley was the Claimant's management style and behaviour. There was no other reason for her dismissal. Furthermore, it was only after the disciplinary process was commenced that the Claimant decided to raise issues and grievances, when they were raised they were properly investigated insofar as was practicable given the lack of evidence in support of some of the issues raised by the Claimant. From the Respondent's point of view there was no reason to get rid of the Claimant for any trumped-up charges, she was managing a very important part of the Respondent's process and removing a night production manager would not be high on the Respondent's agenda.

The Law

Direct discrimination – s.13 EqA

51. A person (A) discriminates against another (B) if because of a protected characteristic (A) treats (B) less favourably than he treats or would treat others.

52. Under s.136 of the Equality Act 2010 the burden of proof, this will be required under sub-section (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.”

53. Sub-section (3) states:

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

54. Therefore, the Tribunal looking to see if the Claimant has been treated less favourably than a real or hypothetical comparator.

Harassment – s.26 EqA

55. The Tribunal will have to consider whether the Respondent engaged in any unwanted conduct.
56. Then, was the conduct related to the Claimant's protected characteristic?
57. Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
58. If not, did the conduct have the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
59. In considering whether the conduct had that effect the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation – s.27 EqA

60. Has the Claimant carried out a protected act?
61. If there was a protected act, has the Respondent carried out any of the treatment that the Claimant relies upon because the Claimant had done a protected act?

Public Interest Disclosure claims under the ERA

62. The Tribunal will have to consider what the Claimant said or wrote. In any or all of those alleged disclosures was the information disclosed which in the Claimant's reasonable belief tended to show under s.43B(1)(b)

"that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject" or 43B(1)(d) "that the health or safety of any individual has been, is being or is likely to be endangered".
63. In respect of each alleged disclosure, were they qualifying protected disclosures in the meaning of s.43, in particular was there a disclosure of information, and if so, did the Claimant reasonably believe that it was in the public interest? If protected disclosures are proved, was the Claimant subjected to the detriments she lists in her list of issues? Was it because the Claimant made the alleged protected disclosures?

Automatic Unfair Dismissal – s.103A ERA

64. Again, did the Claimant make the disclosures? Were the disclosures qualifying protected disclosures within the meaning of s.43B and was the sole or principle reason for the dismissal that the Claimant had made the protected disclosures?

Conclusions

Race Discrimination, Direct – s.13 EqA

65. The Claimant relies on three allegations; the suspension, the investigation into her management style and conduct which commenced around June and the Claimant's dismissal on 15 August.
66. In relation to the Claimant's suspension, even if the Tribunal were wrong because that is out of time and their decision not to extend time on the just and equitable principle, this claim would fail in any event. The reason being there is a clear comparator, white, male and as far as the Tribunal is aware, British. The employee in this case was himself suspended, investigated and dismissed for unacceptable managerial conduct. There were also other managers suspended for the same thing.
67. It is clear that when Mr Conway took the decision to suspend, he was clearly entitled to do so faced with the serious allegations raised in the grievances against the Claimant. They would clearly have to be investigated and had such allegations been made against a hypothetical comparator, it is clear that they would likewise have been investigated.
68. It is further clear that the only reason for the Claimant's dismissal was not due to her race, it was quite simply due to her management style which had clearly been described by many of her colleagues as aggressive, rude, intimidating and many more negative descriptions. Therefore, the Claimant's claim that she was dismissed because of her race is fatally flawed.

Sex Discrimination – s.13 EqA

69. The Claimant relies upon a hypothetical male employee as a comparator.
70. The allegations the Claimant makes is the failure to properly investigate and / or address allegations of harassment by Mr Casey and that she complained on 19 December and 11 January to Liz Rusk and Mr Casey directly. Further, that her dismissal was an act of sex discrimination.
71. With regard to the failure to investigate the incident of 19 December, the Claimant on her own evidence had spoken to Mr Casey and the matter had been dealt with by his apology and resolved at that stage. The

Claimant did not wish the matter to be pursued. It is accepted, on 11 January that Mr Casey wrapped his hands around the Claimant from behind, it would appear ultimately, this was or may have been investigated in any event as Mr Casey was dismissed, not only for his management style but also for sexual harassment towards the end of March, beginning of April.

72. The allegations that Ms Rusk did not take the Claimant's complaint seriously seems undermined by the fact that something must have been done as clearly Mr Casey was suspended, investigated and ultimately dismissed for a combination of his management style and sexual harassment.
73. Therefore, this claim fails.
74. Again, dealing with the dismissal, it is clear that the only reason for the Claimant's dismissal is her aggressive management style and behaviour towards her colleagues and had absolutely nothing to do with her sex.

Sexual harassment – s.26 EqA

75. The allegation here was that the Claimant was subjected to unwanted conduct by Mr Casey by the touching of her legs and hugging her from behind on 11 January.
76. Whilst it is accepted this occurred, this claim is clearly out of time and was not pursued at the time as a formal grievance. Ultimately, Mr Casey was suspended, investigated and dismissed in any event and the Tribunal are satisfied that the Respondent had taken all reasonable steps which shows the Respondent's take matters seriously and do not tolerate such behaviour.

Race Harassment – s.26 EqA

77. Here the Claimant complains that she was subjected to unwanted conduct relating to her race when Ms Napper was heard to refer to "*the Paki Shop*" in the presence of the Claimant and a colleague, that in the first place occurred at best at the end of April, early May and is out of time. As the Tribunal previously explained, it was not raised as an issue at the time and the Tribunal has not been persuaded it was just and equitable to extend time in any event.
78. If the Tribunal were wrong, it clearly would have been unwanted conduct and it is not clear whether or not Ms Napper was formerly investigated or counselled about this issue at the time. However, the Claimant certainly did not raise the matter to HR at the time.

Victimisation – s.27 EqA

79. The Claimant relies upon sex and race in relation to the complaint made to Ms Rusk on 19 December, the complaint made to Mr Casey on 11 January and the complaint of Ms Nappers racial comment as being protected acts. The Tribunal repeats, all of these are out of time and for reasons already set out, the Tribunal did not exercise its discretion to extend time on the just and equitable principle.
80. However, even if the Tribunal were wrong in relation to the detriments relied upon, there is simply no evidence supporting the fact the Claimant was treated in any way in a hostile manner because of the complaints.
81. So far as the suspension is concerned, the Tribunal repeats its reasons, given the allegations that had been made in the two grievances raised by colleagues of the Claimant, clearly the Respondents were entitled to suspend.
82. Further, it is clear that there was a thorough and reasonable investigation into the Claimant's grievances and the Respondents were entitled to deal with the grievance in conjunction with the disciplinary proceedings where the two were inter-related and this was clearly part of the Respondent's policies and procedure.
83. In so far as the Claimant's dismissal is concerned, again the Tribunal repeats, the only reason for the Claimant's dismissal was her aggressive management style and behaviour towards her colleagues. It had nothing to do with the Claimant's sex, race or any complaints she had made.
84. The Respondents clearly did consider the Claimant's appeal and did so in a timely manner and that appeal was thorough and full reasons were given for the decision to uphold the dismissal. Furthermore, the Claimant in the end did not engage in the appeal process by attending in person.

Whistle Blowing

85. The Tribunal questioned whether there was at any stage a disclosure of any information which satisfies s.43B of the Employment Rights Act 1996. The Tribunal were satisfied they were all issues that occurred on shift and are reported in the Claimant's hand over note to the next Production Manager. They are in any event, to quote Mr Conway in his investigation,

“being 90% of the matters the Claimant raises are issues the Claimant should have dealt with as the Production Shift Manager in any event.”

They were house keeping matters. No more and no less, they were simply not qualifying disclosures.

86. The Tribunal then further questions whether the Claimant at the time of the alleged disclosures, reasonably believed that it tended to show that one or more of the six situations specified in s.43B(1) had taken place, was taking place or was likely to take place. It is to be noted that some of the issues, in particular in relation to pregnant women, were not even raised by the Claimant in the first place. If the Claimant seriously believed that the matters were occurring and in the public interest, it is surprising they were not raised in a formal email to the General Manager at the relevant time. In fact, where issues were raised by the Claimant, they were acknowledged by the managers and dealt with appropriately and taken seriously depending on the issues raised.
87. In relation to the detriment the Claimant is relying upon, there clearly was thorough and reasonable investigation into the Claimant's grievances and a proper response was given by Mr Batey to those grievances in a very detailed letter of 24 August.
88. It is clear that the staff were not making up unwanted grievances against the Claimant, these were serious matters raised by work colleagues which the Respondents were duty bound to investigate. When they investigated fully, it was apparent that a large portion of the work force corroborated to original grievances raised, in particular the Claimant was intimidating, rude, aggressive and had an uncompromising management style, to mention just a few of the descriptions made by her work colleagues which were largely negative towards the Claimant.
89. The Claimant's suspension on 27 May by Mr Conway was reasonable and proportionate given the allegations made. It was within the company's policies and was fully explained to the Claimant by Mr Conway at the relevant time the reason for the suspension.
90. In so far as necessary to repeat, it is clear from Mr Batey's letter of 24 August why the Claimant's grievance was rejected and that was a reasonable conclusion to draw from the investigations he undertook.
91. There was no failure by the Respondents to conduct the Claimant's appeal against her dismissal in a timely manner, far from it. The Claimant did not want to engage in the appeal process.
92. In any event, for the avoidance of doubt, all of these alleged detriments are out of time and for the reasons already canvassed earlier in this decision, the Tribunal were not persuaded it was just and equitable to extend time.

Automatic Unfair Dismissal – s.103A ERA

93. Firstly, the Tribunal questioned whether there were qualifying protected disclosures actually made, qualifying for protection under s.43B of the Act, but assuming for one moment there were, what was the sole or principal

reason for the Claimant's dismissal? The Tribunal unanimously concluded without hesitation, that the clear reason and only reason for the Claimant's dismissal was her aggressive, uncompromising management style which was borne out of the majority of the work force in the statements they gave during the course of the investigation. Clearly, in those circumstances, the principal reason for the Claimant's dismissal had absolutely nothing to do with any alleged making of qualifying disclosures.

Employment Judge Postle

Date: 06/02/2020

Sent to the parties on: .12/02/2020

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For the Tribunal Office