



EMPLOYMENT TRIBUNALS

Claimant: Ms. K Garcia

Respondent: Fenwick Limited

Heard at: London South, Croydon
On: 24-28 February 2020

Before: Employment Judge Sage
Members: Ms. Y Bachelor
Ms. H Bharadia

Representation

Claimant: In person

Respondent: Ms. Ferber of Counsel

JUDGMENT

The Claimant's claims for race discrimination (direct, harassment and victimization) are not well founded and are dismissed

REASONS

Requested by the Claimant

1. By a claim form presented on the 29 December 2018 the Claimant claimed race discrimination (direct, harassment and victimization). The Respondent defended the claims.

The Issues

These were discussed at the start of the hearing and were agreed to be as follows:

2. The factual allegations were:
3. **Allegation 1:** FG in the interview for the Claimant's grievance on the 1 November 2018 compared the Claimant to other employees – Agnieszka Moore, Sandra Stimson and Crystal Romily.

4. **Allegation 2:** Ms. Claudia Rosen in her interview for the Claimant's grievance on the 18 October 2018 labelled the Claimant as "aggressive" and "incompetent".
5. **Allegation 3:** Mr Lloyd in his meeting on the 1 September 2018, to give the Claimant the results of her application for the Sales Consultant role, told her that "maybe it's time to move on".
6. **Allegation 4:** Mr Lloyd and Ms Ghassyri in the interview for the Sales Consultant role on the 30 August 2018 asked the Claimant discriminatory questions which were (1) "am I a confrontational person?"; (2) "why can't I work until 10.00?"; (3) "why aren't I doing digital receipts?"
7. **Allegation 5:** the Claimant was not offered training or development by comparison with Emma Wood, Charn Kaur, Agnieszka Moore (Assistant manager) and Giselle Saracino (Assistant Manager).
8. **Allegation 6:** this was added at the start of the hearing and was in relation to the insufficient investigation carried out by Ms. Cheetham into the Claimant's grievance as she failed to look at the appraisal forms or colleagues' feedback.
9. In respect of Allegations 1-6, can the Claimant prove facts from which, in the absence of any other explanation, the Tribunal could conclude that the Respondent treated the Claimant less favourably because of race?
10. If so, can the Respondent prove that such less favourable treatment was in no sense whatsoever because of her race?
11. Does each of the allegations above at 1-6 amount to unwanted conduct related to the Claimant's race?
12. If so, did that conduct have the purpose of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
13. Alternatively, did that conduct have the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
14. If that conduct had the prohibited effect (but not the prohibited purpose), was it reasonable for the conduct to have that effect on the Claimant?
15. What is the Claimant's protected act? The Respondent understands it is the Claimant's complaint of discrimination in a conversation with George O'Neill in July 2018 as reported by Mr O'Neill in the bundle at page 121.
16. Was each of the acts in allegations 1-6 done because the Claimant had complained of discrimination to Mr O'Neill in July 2018.

Preliminary Issues

17. The Claimant raised a concern on the first and second day of the hearing that the bundle was different to the one agreed. She referred to the word 'draft' used on the first page of the bundle and queried whether the documents in the bundle were the same as the ones she had agreed.
18. The Claimant told the Tribunal that the Respondent had failed to comply with the orders made in the case management hearing. She asked that the response be struck out. There was no evidence before the Tribunal that a fair hearing was no longer possible it was therefore concluded that strike out was a draconian sanction that was inappropriate. As a fair hearing could take place there were other ways of dealing with minor breaches of orders and suggested that at the end of the hearing, if appropriate an application for a preparation time order "PTO" could be requested. Although the Claimant asked about this after the decision was read out, she presented no evidence that the conduct alleged was unreasonable. It was not felt to be appropriate to make an award for a PTO.
19. The Claimant also raised a concern that the bundle did not contain a copy of her amended claim form. The Claimant brought a copy of the amendment on the 25 February 2020 and this was added to the bundle at pages 13A-C and accepted as an amendment
20. The Claimant raised a concern on the second day of the hearing that she had not been sent the statement of Mr Lloyd. The Respondent was asked to come to the hearing on the third day with a copy of the email used to send the attachments as it was the explanation given by the Respondent that they had all been sent under cover of the same email. On the 26 February the Respondent produced the email dated the 17 February 2019 which showed that all statements had been sent to the Claimant. On seeing this email, the Claimant conceded that they had been sent.

Witnesses.

The witnesses before the Tribunal were as follows:

The Claimant

Ms. Wood

Ms. Bovell

For the Respondent we heard from:

Ms. Rosam Fashion Accessories Sales Manager

Ms. Ghassyri Divisional Sales Manager

Mr Lloyd Divisional Sales Manager

Findings of Fact

The findings of fact which were agreed or on the balance of probabilities we find to be as follows:

21. The Claimant commenced employment with the Respondent on the 11 November 2003. At the date of the hearing she was employed as a Sales Assistant and this is the role that she has held throughout her

employment. The Claimant describes her ethnicity as a Black British Citizen of Caribbean descent.

22. The Respondent is a retail department store.
23. The Tribunal saw an Equality and Diversity Policy in the bundle at page 36-38 and noted that the policy had been updated in March 2019, after the acts complained of (and after the ET1 was presented). The Respondent's witnesses told the Tribunal that they had been provided with the policy when they joined, and Mr Lloyd told the Tribunal that he had been given regular training. The Claimant accepted that the policy was kept under the counter in a Green Folder.
24. The Claimant had raised a grievance against her manager Ms. Rosam on the 2 October 2006 (page 43 of the bundle), this was in relation to her disappointment of not being offered the role of Sales Consultant on the Swarovski counter. She did not allege in her grievance that this was an act of discrimination (however she mentioned discrimination in the investigatory hearing page 47). Her grievance was not upheld. It was noted by the Tribunal that after the grievance meeting and after the outcome was delivered, Ms. Cheetham of HR wrote to the Claimant on the 19 October 2006 following up the Claimant's reference to race discrimination in the meeting. The Claimant was referred to the Equal Opportunities Policy and told her the steps she needed to take if she wished to take this matter further (page 51 of the bundle). Although we noted that there was a policy referred to in the letter which was on pages 52, we were not taken to this by either party. The Claimant did not pursue this matter further.
25. It was not disputed that in July 2018 the Claimant went to see Mr O'Neill to inform him of the unfair treatment that she had experienced as an employee. She explained that equality and diversity was not practiced in the business and she asked him why this was. She stated that she asked him these questions because she wanted to prevent those coming through the door who shared her ethnicity experiencing what she had been through. She stated in her particulars that she asked him why this was and said that he took a few notes. The Tribunal saw an undated document at page 121 of the bundle which was a statement provided by Mr O'Neill for the grievance investigation. He described the Claimant as being tearful when she spoke to him and confirmed that she said that she had been unfairly treated in the past and she wanted to make sure that things "would be better in future". He said she was not specific about the actual incidents she was referring to but he "*believe[d] she was referring to things going back many years*". He stated that the conversation went on for about 45 minutes and he felt that she did not appear to have any specific issues but "*rather a feeling of unhappiness of how she felt she was treated in the past, this being in a heartfelt but vague presentation*". He stated that he was under the impression that this was an informal discussion and there was nothing specific he could progress or feedback from. From the evidence we have seen we conclude that it is consistent that the Claimant has done a protected act as she had either done a thing in connection with the Equality Act or that she had made an allegation that in the past to complain that there had been a contravention of the Act.

Allegation 5

26. The Claimant complained that over her career she was not offered training and development over the period 2006 to 2018. She claimed that this amounted to less favourable treatment because of race. The Tribunal noted that those in the role of Sales Assistant were only provided with training in the Tuesday morning briefing on matters such as Sales Techniques and Health and Safety. There was no evidence that those in the role of Sales Assistant received any training apart from the Tuesday morning meetings. There was no evidence to suggest that the Claimant was denied training on the grounds of her ethnicity, she received the same access to training as all other employees in that role. Although the Claimant referred to others who had received more advanced training such as Ms. Moore and Ms. Saracino, they were not in comparable roles as they were Assistant Managers.
27. The Claimant put to Mr Lloyd in cross examination that he started after her and he had been allowed to grow and she was not, however the Tribunal find as a fact that Mr Lloyd was also not in a comparable role to that of the Claimant. Ms. Rosam told the Tribunal in cross examination that Ms. Wood and Ms. Kaur, received the same training as the Claimant when they were in the role of Sales Assistant. The Claimant accepted in cross examination that she was provided with the same training as all other Advisers. In the light of the clear evidence before the Tribunal, there was no evidence of less favourable treatment because of race. We also find as a fact that Ms. Moore and Saracino were not appropriate comparators. Ms Wood and Ms Kaur were comparators and they received the same training as the Claimant before they were promoted. The Tribunal conclude that the Claimant has failed to show that she has been treated less favourably than those holding the same position. This claim is not well founded on the facts.

Allegation 4

28. The Tribunal will now make findings of fact about the interview for the role of Sales Consultant that took place on the 30 August 2018. We note that this would have been a promotion for the Claimant. The interview process was competency based and all interviewees for the role had to demonstrate that they met those competencies by providing specific examples in an interview. Prior to interview all candidates were provided with the job description (page 53) and they had to apply using an application form which was seen on page 55. We also heard that all applicants were provided with the core competencies for the role. The interview had a number of set questions that were asked of everyone and the candidates were asked follow-up questions to flesh out the answers that they had given. It was not disputed by the Respondent that the Claimant was asked a question about digital receipts and we note that this was a question asked of all interviewees.
29. The interview was conducted by Mr Lloyd and Ms. Ghassyri, both were senior managers and the Claimant's manager Ms. Rosam reported to Ms. Gassyri. Ms Gassyri was the notetaker but also took the role of asking supplementary questions to keep candidates on track and to ensure they

answered each question fully (paragraph 7 of her statement). Mr Lloyd made the selection and he told the Tribunal that he interviewed about 8 or 9 people from the Claimant's department. The Claimant accepted that the selection was based on the performance at interview.

30. The Claimant contends that the interview was conducted in a negative manner because of her protected act (see above at paragraph 25). The evidence of Mr Lloyd was that he was not aware of the Claimant's protected act at the time of the interview or when he made the selection for the role. Ms Ghassyri was also unaware that the Claimant had spoken with Mr O'Neill. As both were unaware of this the Tribunal conclude that they could not have treated the Claimant unfavourably on that ground. There was no evidence to suggest that either were aware or could have been aware of the protected act. This head of claim is not well founded on the facts.
31. The Claimant alleged that at the start of the interview Ms Ghassyri asked the Claimant if she was confrontational and asked why she could not work till 10pm. The Claimant's evidence given in cross examination was the "*whole interview was done in a negative way, she said if I was doing the rota I would have to work till 10, but I would not be a manager that was the third negative question*". She told the Tribunal and put to the witnesses in cross examination that these were asked at the very beginning and she had complained to Mr Lloyd about this.
32. We considered all the evidence and concluded that this was inaccurate as it was inconsistent with her grievance on page 96. The Tribunal felt that the Claimant's grievance was likely to be the most accurate account of what happened in the interview as it was written shortly afterwards (on the 15 October). In the grievance the Claimant stated that Mr Lloyd started the interview and asked the first few questions, his evidence was therefore consistent with the Claimant's recollection of the events. The Tribunal noted that Mr Lloyd's description he gave in his interview for her grievance at page 108 was consistent, that he stated that he started asking the Claimant questions. We find as a fact and on the balance of probabilities that Mr Lloyd asked the first few questions and the questions referred to in allegation 4 were not asked until later on in the interview.
33. In Mr Lloyd's evidence in chief he stated at paragraph 21 that she was not asked if she was a confrontational person, he also said that this was not a word he would use. In cross examination he said he did not remember that word being used. In the grievance investigation Mr Lloyd was interviewed and he was asked about this and his reply was "*there was something about confrontational but not at the beginning. I asked something about supporting a decision you do not agree with. Think FG asked would you back a manager something difficult to the team, e.g., opening hours*" (page 108 of the bundle). The Tribunal compared Mr Lloyd's evidence given in the grievance investigation and the notes of the interview and there was no record made of the word confrontational being used. We also noted that in cross examination Mr Lloyd thought that the word was used in connection with the resilience part of the interview. We found Mr Lloyd's evidence to be inconsistent on this point.

34. We also considered Ms Ghassyri's evidence on this point which was in paragraphs 15-16 of her statement, she denied that this word was used to describe the Claimant by her or by Mr Lloyd. It was her view, that the word was used in the communications section of the interview. This also appeared to be contradictory when compared to the answer given by Mr Lloyd to the investigation. Ms Ghassyri denied when asked in the interview on the 1 November 2018 (page 112) that she used the term confrontational to describe the Claimant, her evidence was not consistent with Mr Lloyd's evidence as he recalled the term being used.
35. It was also noted that the Claimant's grievance letter at page 97, described the way in which the word confrontational was used. She reflected that there was a discussion on this point but no evidence that there was an adverse implication arising from the use of the word. She recorded in her grievance that Ms Gassyri's response to the Claimant was that they were "OK with people standing up for themselves".
36. The Tribunal find as a fact and on the balance of probabilities that the word confrontational was used in the interview but not in the way the Claimant is now alleging in Tribunal. The Claimant's grievance document was produced reasonably contemporaneously and reflected that there was a discussion about being confrontational but the words she recorded were said by Ms Ghassyri was supportive and not critical or negative. We conclude on all the facts that the word confrontational was used but there was no evidence to suggest that the word was used in a way that was unfavourable or that it was because of race.
37. In relation to the allegation that the Claimant was asked in the interview why she could not work until 10pm, her grievance stated at page 97 that she was told that if she got the position "*you might have to do rotas an (sic) ask people to work until 10.00 you need to lead by example*". The Claimant reported that she said "*the manager does the rota's. I said I have worked for 12 years during the Christmas period, until 10 o'clock when asked but I no (sic) live longer across the road*". The grievance showed that this was the subject of a discussion about leading by example. Ms Ghassyri denied that she put to the Claimant why she could not work until 10. When this was put to Mr Lloyd in cross examination, he denied that this was a question put in the interview. We therefore find as a fact and on the balance of probabilities that the Claimant was not asked this question, it was part of a wider conversation as described in her grievance about leadership and taking on new responsibilities that may be required in the new role. We also find as a fact that this question was not put to the Claimant at the start of the hearing or that it was put in a negative way. It was a question that arose out of an answer she gave in the interview and it was related to the job description.
38. The Tribunal will now consider the question asked in relation to digital receipts. The parties are agreed that this was a question asked of all candidates as it was on the list of questions. The Claimant objected to the fact that she alleged she was asked at the beginning of the interview why she did not do digital receipts. We have again gone to the grievance to see how she worded this complaint. This was referred to on pages 96-97 where she stated that Ms Ghassyri asked her "*why I wasn't collecting customers details for the database*". There was a discussion about this,

and the Claimant had told her that she had done two that week and Ms Ghassyri said that she had checked and she had not. Then the Claimant accepted that she replied that “maybe she was on holiday when they mentioned it”. This was a very different conversation to that alleged to have happened by the Claimant in Tribunal where she alleged that this was an accusation made at the start of the interview. The Tribunal find as a fact and on the balance of probabilities that this was a follow up question to a matter asked of all candidates and was legitimate due to the contradictory answers provided by the Claimant. There was no evidence to suggest that this was unfavourable treatment or that it was because of race. It may have been difficult for the Claimant and uncomfortable but no evidence to suggest that this was done because of or related to her race.

Allegation 3

39. We now turn to Allegation 3 in relation to the words spoken by Mr Lloyd on the 1 September 2018 where he was alleged to have said “*maybe it’s time to move on*”; by which the Claimant thought this meant that it was time for her to leave the Company. The reasonably contemporaneous note of this incident was on page 99 in the grievance. She stated that he told her that she had been unsuccessful but then said “*but don’t hesitant (sic) to apply again in the future I’m here to support you*”. It was not disputed that the Claimant said when she found out she had been unsuccessful: “are you being serious after working for almost 15 years”. She then alleged that after she said this he replied with the words “*maybe it’s time to move on*”. Mr Lloyd denied saying this. The Claimant in cross examination put to Mr Lloyd that she also said to him “wrong decision” before she walked out and that was consistent with her evidence in chief. In cross examination she claimed that she was sure that the words ‘moving on’ were not said in a supportive way and she interpreted those words as meaning that if she didn’t like it, she could leave. Mr Lloyd told the Tribunal that he said to the Claimant that he would like to move forward as he would be managing her in the future. He confirmed that the use of the words ‘moving on’ was about working with her in future, not leaving. The Tribunal looked at the evidence he provided to the grievance on page 110 where he provided a consistent explanation of what he meant.
40. The Tribunal also considered the contents of the letter Mr Lloyd handed to the Claimant in this meeting which was at page 76. It was noted that he stated that the outcome “*should not deter her from applying for suitable positions in the future*”. This is again consistent with Mr Lloyds interpretation of what he said to the Claimant.
41. The Tribunal find as a fact and on the balance of probabilities that the evidence of Mr Lloyd is preferred on this point. We noted that the Claimant’s contemporaneous note, which recorded that he said he was there to support her, and she should not hesitate to apply again would be entirely at odds with the Claimant’s interpretation that the words he used were intended to infer that she should leave. His explanation is more consistent with the words he used at the start of the meeting. We conclude that the words used were not unfavourable and there was no evidence to suggest that they were unfavourable because of race. That does not mean that the news he delivered was not deeply distressing to her. We accept that she was upset and deeply distressed in the meeting and she

conflated the outcome of her previous attempts to seek promotion to this unsuccessful attempt. The Tribunal do not perceive the Claimant's evidence to be unreliable or inconsistent, it was a genuine misunderstanding of the message delivered by Mr Lloyd. However, even though the Claimant disagreed with Mr Lloyd's interpretation of what he said, and she was deeply hurt by the words spoken, that did not mean that it was unfavourable because of race or that it was degrading humiliating or offensive for a reason related to her race. It was a meeting to deliver disappointing news, although upsetting, the same news would have been delivered to anyone in the same way, irrespective of their ethnicity.

Allegation 2

42. The Claimant pursues a complaint that Ms Rosam labelled her as "aggressive" and "incompetent" in the grievance investigation meeting. This matter was investigated because the Claimant mentioned Ms Rosam in her grievance on page 100-101 where she provided a chronology of concerns dating back to her original grievance in 2006. This reflected that there had been a history of disagreements between the Claimant and her line manager. It was noted that Ms Rosam admitted in Tribunal to finding the Claimant aggressive in her tone and body language but denied saying she was aggressive; this was consistent with the interview notes on the 18 October at page 104-5. She denied that she said (or thought) that the Claimant was incompetent.
43. The words used in the interview by Ms Rosam where she stated "*No initiative, no lead. No qualities that are necessary*" was in relation to her views about the Claimant's ability to perform the Sales Consultant role not to the role she was performing. The Claimant asked Ms Rosam about what was meant in the interview on page 106 when it referred to theft and additional keys in cross examination and she replied that it was about the fact the Claimant did not like new procedures. There was no suggestion that the Claimant was dishonest in any way and this has not been alleged or even inferred by the Respondent.
44. We conclude on the balance of probabilities that Ms Rosam did not allege that the Claimant was incompetent in this meeting, she confirmed that in her role she was "great at customer service" and was good at her job and she confirmed this in cross examination. We further conclude that the word aggressive was put to Ms Rosam in the meeting because this was an allegation that the Claimant had pursued in her grievance. This was the reason the question was asked. As this was an allegation made by the Claimant it had to be investigated by the Respondent. The Tribunal therefore conclude on the facts that Ms Rosam did not label the Claimant as aggressive or incompetent, she was asked for and gave her views in an interview. Although the Claimant was upset to read the notes of the interview, there was no evidence that these comments were unfavourable treatment because of race.

Allegation 1

45. The Claimant complains that in the interview of Ms. Ghassyri on the 1 November 2018, she compared her to three other employees, Ms. Moore and Ms. Stimson (who are white) and Ms. Romily (who is Black). It is

accepted that Ms Ghassyri compared the Claimant with these three employees and confirmed that Ms Romily and Moore '*ran the department for her*' (page 114). She also commented in the interview that "*not every hard worker can be a leader. Role model. Has to have qualities*". The Tribunal noted that a comparison was being made by Ms Ghassyri between the capabilities of the Claimant and these two employees. She also differentiated Ms Stimpson's performance at interview by saying that in interview she gave good answers to questions asked. The Tribunal considered why these questions were asked and we accepted the evidence of Ms Ghassyri that they had been put to her to investigate the Claimant's grievance about the conduct of the interview. Although the Claimant appeared to object to the comparison based on her and others capability, these questions had to be put in order to investigate the Claimant's complaint that, in her view, she was already performing the role of Sales Consultant. These questions were focused on establishing responses on this point. It was not disputed that the Claimant was a good salesperson and was good at customer service. The comments were made in the course of the investigation and was nothing to do with the interview or the selection process and there was no evidence to suggest that these views were expressed by Ms Ghassyri at any other time.

46. The Tribunal find as a fact and on the balance of probabilities that the comparison was made but only in the context of the questions asked by HR in the course of the investigation into the Claimant's grievance. This was not unfavourable treatment of the Claimant because of race. There was also no evidence that the comments made during this interview created an intimidating hostile or degrading environment for the Claimant for a reason related to race.

Allegation 6

47. The Claimant alleged that the grievance investigation was unfair because Ms Cheetham of HR failed to look at appraisals and letters of support from her colleagues and she failed to investigate whether she was a team player. The Claimant conceded in cross examination that everyone had been told that the role of Sales Consultant was open to everyone and the selection was based on interview only. It was therefore reasonable and proportionate for the investigation to focus on the interviews and selection process and not to conduct a wider investigation into matters that were irrelevant to the process. The Tribunal conclude that this was a fair investigation and there was no evidence to suggest that the manner and conduct of the investigation was unfavourable treatment because of race or that the way it was conducted was intimidating or hostile.

The Law

Section 13 Equality Act 2010 Direct discrimination

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

**Section 26 Equality Act 2010
Harassment**

- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

**Section 27 Equality Act 2010
Victimisation**

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
- (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act—
- (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.

Submissions

The submissions were oral and in outline they are as follows:

48. **The Respondent** followed the list of issues and included allegation 6 which was that there was an insufficient grievance investigation where appraisal documents were not looked at.
49. In respect of allegation 1 the simple answer to this question is that yes it did happen. It is agreed that the Claimant was compared to Ms Moore, Ms Stimpson and Ms Romily. The Respondent states that this is nothing to do with race. In cross examination of the Claimant she agreed with me that it was not to do with race, it was a comparison of capability, particularly in relation to Ms Romily who is also Black. The Respondent submits that the comparison was not related to race.
50. In respect of allegation 2 where Ms Rosam labelled the Claimant as aggressive, we agree that this word was used. This was an allegation of incompetence and if you are not with me you will have to make a finding of

fact. Ms Rosam said in the interview that she did not believe the Claimant had leadership qualities. The notes are shorthand and came across sharply. Page 113-4 Ms Ghassyri and Ms Rosam at pages 104-5 are about the Claimant being aggressive and leadership qualities.

51. The important thing is there is no suggestion that the Claimant was incompetent or not good at her job. At page 106 Ms Rosam said the Claimant was great at customer service but said the Claimant did not have the qualities to step up to the role. There is a dispute about the label of incompetence.
52. The label aggressive, this was discussed, and she agreed with the point that she felt the Claimant was aggressive, but she never said so. The reason why was because she was asked that question. The reason she was asked the question was because this was an allegation. It needed to be asked but this does not relate to race.
53. Allegation 3 this is the one that upsets the Claimant the most. The Respondent does not say that the Claimant was not genuinely terribly upset, and she genuinely believed that Mr Lloyd said that she should leave the business. However, there was no evidence to support that intention. There was not only no evidence of that intention, but the context strongly suggested the opposite and I ask you to re-read page 99, that note is agreed. It would make no sense for him to have said this and suggest he expected the Claimant to stay, it makes no sense he would then say that she should leave the business. It makes more sense in the natural reading of what is written to suggest that he intended her to remain. You have heard his evidence and I ask you to accept what he said. He wanted her to be able to move forward; this was nothing to do with race.
54. Allegation 4, the first two questions are straightforward. There is a dispute of fact. You heard from the Respondent's witnesses, those questions were not asked, perhaps it was a misunderstanding. She was very upset and perhaps she misremembered. The mind plays tricks on us all. You have the notes of the meeting. They did not ask those questions. The third question was asked and the reason it was asked was for reasons unrelated to race. It was a follow up. The reason she was asked a follow up question was because the Claimant said she did not do them (digital receipts).
55. Allegation 5 you have evidence of all three witnesses. They all said that Moore and Saracino had more training because they were in junior management positions. Wood and Kaur had no different management training while in the same jobs, when they became consultants, which was a junior supervisory role the training changed. The comparators were doing the same job; there was no difference.
56. Allegation 6 page 125 see what Ms Cheetham described, she said lots of people applied for the role and the decision was taken to interview. They decided on the performance at interview and not on colleague feedback. The fact that the Claimant had not succeeded did not require those documents to be reviewed or those people to be interviewed.

57. The legal issues were then dealt with. For each of the six allegations, there were no such facts from which the Tribunal could conclude that the Claimant had been treated less favourably because of race. If you do not agree and if there are such facts, I ask you to think about all three witnesses and all the page references and ask you to find what the reason was for each of the acts (treatment) and that it was not due to race.
58. In relation to the claim for harassment, none of the six factual allegations are related to race. We accept that the conduct was unwanted. To the extent that you go on to consider the allegations, in the alternatives, if any such conduct did have that effect, it was not reasonable for any of those events to have that effect.
59. Victimisation, you heard from all the three witnesses, they did not know about the Claimant's complaint to Mr O'Neill. They knew nothing therefore they could not be motivated by the knowledge of the complaint.

The **Claimant's oral submissions** are as follows:

60. I am asking the Employment Tribunal to consider carefully all the facts before you. There were several breaches of the contract, under the contract and under the Equality Act, responsibilities of HR and the Directors of the store. There were numerous failures, in 2006 I complained in a letter to Mr Hughes which was at page 46 of the bundle about unfair treatment. After that Ms Cheetham failed to put in any remedies to prevent this happening again. No managers or HR members of staff had adequate training to implement actions when the complaint was received.
61. The investigation was based on protecting the company. The investigation notes were malicious and unjustified, harming my character and my progress.
62. I was told by Mr Lloyd to move on if I didn't like it. I refer back to the reasons statement where she said I would not be a good consultant as I would encourage people to speak against the store in respect of uniform, theft and keys (the Claimant referred to page 106 of the bundle). Look at how she portrays me, the characteristics she labels me with. I was never accused of this.
63. Under the GDPR regulations this information is on paper is damaging implying incompetence and not having or showing the necessary skills to do something successfully. This is a discriminatory accusation, why did she not have this to say of any other employee? There was no evidence of theft in the company, why did she imply this. It was discrimination.
64. There was the responsibility of Ms Cheetham as the HR officer. She cannot make a statement like this. This says that I am 'vocal'. I am vocal now; my right to be treated with equality and fairness like everyone else.
65. They wrote the statements showing me in a negative light. They have lied to destroy my credibility. I was a valid candidate. They made false accusations and said how I did not give the correct answers in the

interview. The only people with white ethnicity or those with lighter skin than me were allowed to grow in the business.

66. Mr Lloyd mentioned he did have training in the last eight months but the emphasis was on maternity. It is fair to say from this admission of the three witnesses that discrimination is not of a concern for the business. Everyone needs to be trained in discrimination and the mental effects that this has. The omission of the Respondent's witnesses shows negligence. There is a clear issue under employment law and protected characteristics. I was never listed for any training; on retail law and other subjects you would have needed if you became a manager. I refer to Ms Bovell's statement, she was the lead in the Committee, that was two years ago and nothing has been put into place.
67. The workplace is somewhere we spend all our lives. We should be treated with dignity. If I applied again, I would be in the same position. Why did Ms Rosen put responsibility on me? It was due to race.
68. Turning to allegation one, I was compared to other people, she compared me with others to discredit me. That is why she compared me because I complained about the discrimination to Mr O'Neill.
69. In allegation two the word aggressive came out of the incident in the workplace when I was in the office and they said I was aggressive. I reported them to HR. Locking the door without permission is a criminal offence. I continued to work on with tolerance. Ms Rosam continued to put unreasonable conduct before me.
70. We are here today to ask the Tribunal to look at all the incidents. I am asking you to look at how much pain I have been put through.
71. Ms Rosam does not believe that I have leadership skills, but I am here today. They did not think that I would go through with it.
72. In the interview I am told I am full of myself, that makes me feel ashamed of my success. Not only am I good at sales but people skills. Customers of mine are still friends on Facebook. How could Ms Rosam say that? It was damaging to my character. I may have misremembered but everything is fresh in my mind as the day it happened, and I am ashamed.
73. All the harassment was unwanted. It was unlawful how they have treated me and what they have done.
74. In the interview they said it was based on performance, but I say it was based on discrimination and they had already decided what would happen in the interview room. As Mr Lloyd pointed out, I was very talkative and a happy person and that changed after I went into the interview room.
75. Victimization – the barrister said that Mr Lloyd did not know about the previous complaint, but I don't believe him. In cross examination it showed weak links about what they believed happened.

76. Under harassment my dignity was violated by things they wrote on paper and they were offensive to me. I would like you to consider all the legal issues. I am not a solicitor and I do not have the knowledge of the barrister. I depend on the judicial system to judge me fairly. Where there are inconsistencies in the Respondent's actions, they are legally responsible.
77. Ms Cheetham did not do a good investigation; she was more concerned with who I spoke to on the outside. She said that if I am not satisfied, I could take it to Mr Taylor, and I had a meeting with the head of HR Ms Buckingham, but she declined to say anything when I took a witness. After that I refused to speak to the management team.

Decision

The unanimous decision of the Tribunal is as follows:

78. We would firstly like to make some observations about the quality of the evidence before us. We agree with the Respondent that the Claimant was honest, hardworking, well respected and knowledgeable in her role. We also found that the Claimant held a genuine belief that she had suffered discrimination in the workplace. We also found that she had suffered considerable distress arising from her genuine belief. The one concern we had about the Claimant's complaint was accurately identified by Mr O'Neill in his statement given to the grievance where he remarked that the Claimant's concerns were "heartfelt but vague", this is exactly what we observed. Although it was evident that the Claimant was genuinely distressed about not securing the role her reasons for that distress were not corroborated by the facts. We found that the Claimant's distress appeared to be based on a misunderstanding that length of service equated to an entitlement to promotion and advancement. She failed to appreciate the theory behind competency-based interviews where candidates had to evidence to the interviewer that they met those competencies. The Claimant was disappointed that no one had looked at her long service record however this would have been irrelevant and unfair to the other candidates.
79. We have made detailed findings of fact about each of the allegations set out above. In each case we have found as a fact that the Claimant has failed to show facts from which we could conclude that she had been treated less favourably because of race. The burden of proof does not shift to the Respondent. There was no evidence to show that, in the case of where there was unfavourable treatment that race was the reason. The Claimant's claims for direct discrimination are not well founded and are dismissed.
80. In the case of her claim that she has been subjected to harassment, which is an argument made in the alternative, we have concluded that none of the incidents relied upon were intimidating hostile degrading or offensive. Even in respect of allegation 4 where the Claimant described the interview as hostile and negative, her grievance letter did not support the evidence she gave in Tribunal. It did not suggest that the negative questions had been put at the start of the interview or in the manner she suggested to us. We have concluded that the description she used in her

grievance letter was more likely to have been the accurate description of the process being the more contemporaneous document. The description she used in her grievance was also corroborated by Mr Lloyd and we have therefore concluded that the interview was not negative and hostile. We have also concluded that the interview process was common to all and was not therefore unfavourable treatment because of her race or related to her race.

81. We also considered whether allegation 3 could also amount to harassment and we conclude that it could not be regarded as intimidating hostile or degrading. Although the Claimant received news she did not agree with or like, the meeting was conducted professionally and respectfully. It was the Claimant who challenged Mr Lloyd with the words “wrong decision” and walked out. There was no evidence that Mr Lloyd conducted himself in a manner that could be described as intimidating or hostile.
82. We now deal with the claim for victimization and we have accepted that the Claimant had done a protected act. In order to commit an act of victimization the person has to have knowledge of the protected act. Neither Mr Lloyd or Ms Ghassyri knew at the relevant time that the Claimant had met with Mr O’Neill or that she had complained about discrimination. They only became aware during the course of the grievance investigation. There was no evidence before the Tribunal that the Claimant had been victimized because of her complaint to Mr O’Neill. Even if they had been aware (which they had not) there was no evidence of unfavourable treatment. There was also no evidence that Ms. Rosam was aware of the protected act when she was interviewed in connection with the grievance investigation so could not have subjected her to treatment on that ground. On the facts therefore the claim for victimization is not made out.
83. All the Claimant’s claims are not well founded and are dismissed for the reasons given above.

Employment Judge **Sage**

Date 5 May 2020