



EMPLOYMENT TRIBUNALS

Claimant: Miss Clare Jayne Fox

Respondents: (1) Blaby District Council
(2) Miss Kirsty Price

Heard at: Leicester

On: 20 – 23 January 2020
23 March 2020 (in chambers)

Before: Employment Judge Ahmed

Members: Mrs B Tidd
Mr J D Hill

Representation

Claimant: Mr P Starcevic of Counsel
Respondent: Mr R Hutchison, Solicitor

RESERVED JUDGMENT

The unanimous decision of the tribunal is that:

1. The complaint of discrimination arising from disability succeeds against the First Respondent in relation to the allegation of allocating the Claimant's duties to the Second Respondent or others.
2. The complaints against the Second Respondent are dismissed.
3. The complaint of direct disability discrimination is dismissed against both Respondents.
4. All of the complaints of harassment are dismissed save as to the allegation that the Claimant was 'skiving'.
5. The issue of remedy is adjourned.

RESERVED REASONS

1. By a Claim Form presented on 7 October 2018, Miss Claire Jayne Fox brings complaints of disability discrimination and harassment against her former employer, Blaby District Council as the First Respondent and Miss Kirsty Price (who continues to be employed by Blaby District Council) as a named Second Respondent. All references in this decision to the 'Respondent' are unless otherwise indicated to the contrary to the First Respondent. This is a reserved decision following a meeting of the tribunal in chambers which regrettably could only take place no earlier than two months after submissions but thankfully it was the last time (to date) that a Tribunal has been able to meet in person due to the Covid 19 pandemic. We regret the delays in the delivery of the decision. This judgment represents the views of all three members of the panel.

2. In coming to our decision we have taken into consideration the evidence of all of the witnesses including the contents of their statements and the documents in the agreed bundle as well as the oral and written closing submissions of the parties' representatives to whom we are grateful. The Claimant has represented herself in correspondence but was represented by counsel both at this hearing and at an earlier attended preliminary hearing. The Respondents have been legally represented by Weightmans solicitors throughout

THE FACTS

3. The Claimant was employed by the First Respondent as a Senior Administrative Assistant from 16 September 2002. The effective date of termination is agreed as 10 February 2020. The Claimant resigned by giving notice on 9 January 2019. At the time that she presented her ET1 (on 7 October 2018) she was still employed. There is no complaint of unfair dismissal in these proceedings.

4. On 23 January 2017, the Claimant suffered a back injury whilst at home. The consequent injury was later diagnosed as a fractured spine. The disability relied on for the purpose of these proceedings is 'Osteoporosis'. The Respondent concedes that the Claimant is a 'disabled person' for the purposes of these proceedings by reason of Osteoporosis but there is a dispute as to when the Respondent became aware or should reasonably have become aware of the disability.

5. The Claimant was off work immediately after the injury and had a phased return to work on reduced hours from 24 July 2017 onwards. Prior to her return, the Claimant was referred to an occupational health specialist who produced a report on 9 May 2017. The report suggested, amongst other things, that the Claimant was likely to fall within the remit of the Equality Act 2010 as a disabled person.

6. Prior to the Claimant's absence she worked in a team of 3 people, which included Miss Price, the Second Respondent. During her absence, the Claimant's duties were shared by the other two members of the administration team but mostly fell to Miss Price.

7. At the time of the Claimant's absence, Ms Fox was on Pay Scale 4. Miss Price

was on Scale 2 and the other colleague in the team was on Scale 3. During the absence, Miss Price was paid an honorarium payment to reflect the fact that she was undertaking work outside of her normal pay scale.

8. During the Claimant's absence on sick leave her line manager changed to Mr Luke Clements, who joined the Council in March 2017 as Waste Operations Manager. In preparation for the Claimant's return to full time office-based duties, Ms Fox called into the offices on 8 September 2017. At a meeting with Miss Price the Claimant alleges that she was told by that on her return she was going to be "Luke's pet". The Claimant understood this to mean that she would largely be undertaking work directly for or under the instruction of Mr Clements upon her return rather than returning exactly to her previous role.

9. The Claimant returned to full-time hours on 27 September 2017. The nub of her case is that upon her return the majority of her duties were allocated to others. She argues that this was disability discrimination because her absence was as a result of a disability. Had she not been absent she would not have suffered changes to her duties and responsibilities.

10. The Claimant attended a meeting with Mr Clements on 18 October to discuss her role going forward. Mr Clements said that he may have made some mistakes as to the Claimant's return and regretted that. He did not believe that he was making any changes to her role but wanted Ms Fox to be flexible on what work she could do. It was nevertheless agreed that the Claimant's pre-accident duties would be returned to her. It is the Claimant's case that despite this agreement the reality was that things did not revert to their former position. The Claimant alleges that Ms Price and others continued to undertake the roles that had been shared out in her absence.

11. On 20 December 2017, the Claimant made a flexible working request to work from home. The application was granted as a reasonable adjustment. The Claimant alleges that as a result of working from home she was subjected to unfavourable treatment and harassment from colleagues. She alleges that from time unfavourable remarks were made by colleagues that she was 'skiving' and that working from home was seen as 'special treatment' for her. She also claims that she was shunned by her former colleagues who refused to work with her, refused to co-operate on routine work matters, that Miss Price would pull her up for every mistake, ignored her instructions when they were given and refused to work with her as part of a team. She also alleges that Miss Price blocked the Claimant's access to a system known as the R & R system, that Miss Price moved a number of work documents on from saved files to her own personal folders, that she changed a generic contact telephone number of the Council's Neighbourhood Services so that residents and businesses would call her personal work number thus diverting work away from the Claimant.

12. There are additional allegations as follows: that Miss Price damaged the Claimant's working relationship with others by making untrue and unwarranted remarks such as saying the Claimant was receiving 'special privileges' (or special treatment) by being allowed to work from home, that Miss Price spoke negatively about the Claimant to colleagues telling them that the Claimant was doing a "rubbish job", that Miss Price called the Claimant a "bitch" to a colleague, that Miss Price would pass notes to her colleagues and refused to contact the Claimant at home so that the Claimant was unable to undertake her work properly. The Claimant also alleges that

Miss Price continued to undertake work which had been passed back to Ms Fox following her meeting with Mr Clements. This included the raising of a purchase order by Miss Price which was work that the Claimant would ordinarily undertake prior to her absence.

13. On 9 May 2018, the Claimant raised a grievance. She was interviewed in connection with the grievance on 23 May 2018. The grievance was allocated to Mr Paul Coates, the Neighbourhood Services and Assets Group Manager, to deal with. Mr Coates wrote to the Claimant on 8 June to dismiss the grievance. He said he found no evidence to support the Claimant's allegations that there had been a permanent re-allocation of her work duties and tasks to Miss Price or others. Mr Coates acknowledged that personal relationships between the Claimant and Miss Price had become strained but found no evidence of bullying or harassment by Miss Price.

14. The Claimant appealed against the grievance decision on 22 June 2018. In a fairly lengthy response and after a detailed investigation, Miss Sarah Pennelli, the Strategic Director of Blaby District Council, dismissed the appeal. In the course of her investigation Miss Pennelli met and interviewed Mr Clements, Mr Warren, Mr Nicholas Warburton (the Neighbourhood Service Supervisor), an IT Advisor and an HR Advisor. Miss Pennelli found that working relationships has indeed broken down and recommended mediation between if agreed, and if not agreed for their working arrangements to be reviewed. She noted that Miss Price's honorarium ceased on 13 October 2017 which reflected that fact that she was no longer undertaking more senior work. She acknowledged that Mr Clements had apologised for the way in which the matters had been handled initially but Mr Clements had agreed to revise Miss Price's job description and to remove any tasks which had formerly belonged to the Claimant which had initially transferred over. She said that looking at the overall circumstances it was difficult to justify the rigidity which the Claimant was contending for and the fact that the Claimant was now working 'flexibly' (by which we understand to mean that she was working from home) an element of tasks reserved solely to the Claimant would result in a delayed service to customers. The allegations of bullying and harassment were wholly rejected.

15. The Claimant went off on sick leave prior to the grievance appeal decision on 24 May 2018. As it transpired she did not return to work. She commenced ACAS early conciliation on 29 July 2018 and submitted her resignation on 9 January 2019 having found a part-time role at Tuxford Town Council. On 7 October 2018, the Claimant presented her claim to this tribunal.

THE LAW

16. The relevant provisions of The Equality Act 2010 are as follows

"Section 13 - 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 - 15 Discrimination arising from disability

- (1) A person (A) discriminates against a disabled person (B) if—

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Section 26 - 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.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.

Section 123 - Time limits

- (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
- (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;
- (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.

Section 136 - Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court

must hold that the contravention occurred.

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

17. In **Pnaiser v NHS England & another [2016] IRLR 170**, the EAT set out the proper approach to dealing with cases of discrimination arising from disability under section 15 EA 2010:

“(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The ‘something’ that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A’s motive in acting as he or she did is simply irrelevant.

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is “something arising in consequence of B’s disability”. That expression ‘arising in consequence of’ could describe a range of causal links. Having regard to the legislative history of section 15 of the Act the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.....however, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.”

18. On the question of time limits, in **British Coal Corporation v Keeble [1997] IRLR 336**, the EAT set out various factors which should normally be taken into account in determining whether time should be extended: They include the following:

- (a) the length of and reasons for the delay;
- (b) the extent to which the cogency of the evidence is likely to be affected by the delay;

19. In **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640**, the Court of Appeal made it clear that tribunals have the “widest possible discretion” in deciding whether to extend time. In coming to our decision we have considered the factors identified in **Keeble**. We have looked at all of the circumstances of the case including the relative prejudice to the parties by extending or not extending time.

THE ISSUES

20. The issues are agreed as follows:

20.1 Did the Respondent know or could reasonably be expected to know of the Claimant's disability at the of the alleged discriminatory acts?

20.2 Did the Respondents (vicariously or otherwise) treat the Claimant unfavourably in relation to the allegations?

20.3 If so, were those acts because of something arising in consequence of the Claimant's disability?

20.4 If so, were they acts which were justified (that is, a proportionate means of achieving a legitimate aim)?

20.5 Did the Respondent treat the Claimant (vicariously or otherwise) less favourably because of her disability (or perceived disability) in relation to any of the allegations?

20.6 Did the Respondents engage in unwanted conduct (vicariously or otherwise) in relation to the allegations? If so, was it related to her disability? If so, did that conduct have the purpose or effect of violating the Claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

20.7 Are the allegations presented out of time and if so is it just and equitable to extend time?

THE ALLEGATIONS

21. The allegations of disability discrimination and harassment are as follows:

21.1 Allocating the Claimant's duties to the Second Respondent or others.

21.2 Harassment by reason of the following:

21.2.1 being told by employees of the Respondent that the Claimant was 'skiving' in relation to the days she was working at home;

21.2.2 demeaning behaviour related to the flexible working pattern provided.

The specific allegations against the Second Respondent are as follows:

21.3.1 shunning the Claimant or not speaking to her;

21.3.2 refusing to work together;

21.3.3 pulling up the Claimant for every mistake;

21.3.4 ignoring the Claimant's emails/instructions;

21.3.5 calling the Claimant 'Luke's pet ';

21.3.6 blocking the Claimants access to R & R system.

The allegations of direct disability discrimination and discrimination arising from disability against the First and Second Respondents are as follows:

22. Moving a number of personal work documents and saved files from shared file into the second respondent's folders and saving in a name.

23. Changing a generic contact telephone number of the Neighbourhood Services Administration team to the second respondent's direct telephone number.

24. Failing to address the Claimant's allegations of bullying and harassment.

25. Intentionally damaging the claimant's relationship with other employees by telling colleagues that the claimant was taking work from her stated that she did a "rubbish job".

26. Passing notes to other members of the team, excluding the Claimant.

27. Refusing to contact the Claimant when the claimant was working from home

28. By the Second Respondent saying the Claimant was receiving 'special privileges' because of a disability and home working questioning why she should be treated differently.

29. The Second Respondent being rude to the Claimant after a request for assistance to amend an address on R&R system.

30. Petty behaviour by others declining meeting invitations from the Claimant.

31. Negatively speaking about the Claimant with other employees including calling the Claimant "a bitch" to a co-worker Mr Nicholas Warren.

32. Performing a purchase order request raised by the First Respondent's colleague.

CONCLUSIONS

The time point

33. We do not find that the allegations form a continuing act or an act extending over a period. They are separate discrete stand-alone complaints which are capable of and are judged on their own individual merits. That is how they have been framed, identified and pleaded.

34. We find that all of the allegations have been presented outside the time period required by section 123 EA 2010 with the exception of:

Shunning the Claimant or not speaking to her;
Refusing to work together or with the Claimant;
Pulling the Claimant up for every mistake;
Ignoring emails/instructions;
Telling colleagues that the Claimant had done 'a rubbish job';
The 'special privileges' comment;
The Claimant being called a bitch;
Performing a purchase order request.

35. The Claimant has the burden of explaining why time should be extended. The delay is not extensive. It has not affected the cogency of the evidence. The Respondents have been able to call all their intended witnesses and to marshal all relevant evidence. Much of the evidence was in the form of written communications and emails. The Respondent have not suffered any prejudice by reason of the delay. The Claimant would suffer significant prejudice in that she would be deprived of the opportunity of having these issues determined. In exercising our discretion we consider it is just and equitable to extend time where the allegations have been presented out of time.

Knowledge of the Claimant's disability

36. We are satisfied that the Respondent was aware of the Claimant's disability (or ought reasonably to have been aware) by no later than 9 May 2017 when it undertook an occupational health assessment. The occupational health report made it clear that the Claimant was likely to fall within the remit of being a disabled person under the Equality Act 2010. Whilst that remains a legal rather than a medical issue the Respondent ought reasonably to have discovered the fact of disability by 9 May 2017. All of the relevant acts therefore occurred with knowledge of the disability

Direct discrimination

37. This type of complaint clearly cannot succeed. It requires the Tribunal to find the Claimant was treated less favourably because of the disability. The Claimant was not treated the way she was *because* of her disability. The Respondent unquestioningly accepted the Claimant's disability and made all reasonable adjustments including allowing the Claimant to work from home. Prior to that it permitted a phased return to work. There was simply no aversion on the part of the employer in dealing with this type of disability. No evidence has been led as to any less favourable treatment in comparison with an actual comparator. In terms of a hypothetical comparator, we are satisfied that the Respondent would have acted in the same way for someone who may have absent for any non-disability reason.

Allocating the Claimant's duties to the Second Respondent or others.

38. We are satisfied that following the Claimant's absence a number of her former responsibilities were allocated to others, if not permanently then sufficiently so from time to time that the Claimant was no longer undertaking them. Whilst it cannot be said that the role she was performing was radically or wholly different to the one prior to the absence it is right to say that there were material differences. The Claimant had a fairly prescriptive job description which did not admit a great deal of flexibility. Whilst some effort was made to return some of the Claimant's former responsibilities (after

she complained) a significant number of duties were still being undertaken by others from time to time which could and should have been undertaken by the Claimant. These included: purchasing goods and raising invoices, ordering goods from the Freight Transport Association, dealing with members of the public to create new trade waste contracts, inputting information into sheets for the crew to follow, invoicing trade waste clients and responding to requests for clinical waste and Sharp's collections. Whilst the Claimant still undertook the majority of these tasks there are unexplained instances as to why Miss Price or others were being asked to undertake them from time to time. There is no suggestion that, with the exception of one allegation relating to a purchase order which we deal with below, that there were tasks the Claimant could not do when working from home.

39. Whilst the allegation is disputed the documentary evidence clearly supports the Claimant's case. For example, in the list of invoices there are a number of invoices raised together with a number of purchase orders completed or raised by Miss Price. These tasks were the responsibility of the Claimant before her absence for disability reasons. It is clear that after the Claimant returned this work at least was being undertaken by Miss Price or others than the Claimant. There is no reason why the Claimant could not have undertaken these duties. Whilst we do not accept the Claimant's contention that purchasing goods and raising invoices amounted to 70% of her work, it is clear that the Respondent's contention that *all* of the work was returned to her is not sustainable or true on the facts.

40. The Respondent's contention that Mr Clements envisaged that Miss Fox would be undertaking a more senior and more responsible role upon her return is also consistent with the fact that some responsibilities were removed. It could not have been envisaged that the Claimant would undertake more senior work on top of her "normal" duties. The Claimant's new role, as envisaged by Mr Clements, therefore necessarily involved some of the old duties being done by others.

41. There is no doubt that Mr Clements was seeking to reverse his decision to make the initial changes. That much is clear from the email trail. These emails demonstrate that Miss Price's job description was initially revised to take account of additional responsibilities (that is those previously undertaken by the Claimant) and then revised once again for her to revert to her former role. Mr Clements would not have needed to undertake a reversal of his position if Ms Fox did not have anything removed from her role and responsibilities in the first place.

42. This reduction of duties or responsibilities was clearly unfavourable treatment because such duties and responsibilities would no doubt continue to be done by the Claimant were it not been for the disability-related absence. There was therefore unfavourable treatment because part of the Claimant's role was being allocated or performed by others. The unfavourable treatment was something arising from disability because it arose out of a disability-related absence. The number of links in the causation chain are therefore relatively few. We are satisfied that causation between unfavourable treatment and disability is established. The Claimant has established a *prima facie* case and the Respondent is not able to provide a non-disability related reason for the treatment.

Justification

43. The Respondent bears the burden of establishing that any unfavourable treatment was a proportionate means of achieving a legitimate aim, or 'justification' for short. There was in fact very little evidence from the Respondent's witnesses on the issue of justification. It refers to "resilience" which is understood to mean a desire to maintain a flexible workforce whereby all those in the team could undertake each other's duties.

44. We do not accept that justification (a proportionate means of achieving a legitimate aim) is established in this case for the following reasons:

44.1 The Respondent's evidence in relation to justification is both scant and contradictory. On the one hand Mr Clements' evidence was that he was intending to introduce changes on the grounds of resilience yet on the other he accepts that he acted inappropriately in making the changes for which he later apologised to Ms Fox;

44.2 Neither the evidence of Mr Clements or Miss Pennelli establishes why resilience, even if it was in pursuance of a legitimate aim (flexibility) was a proportionate means of achieving the legitimate aim;

44.3 If resilience was what he was seeking, Mr Clements makes it clear in his evidence that this is not what he had in mind for the Claimant. At paragraph 28 of his witness statement he says:

"Contrary to the assertion of Miss Fox, I did not impose resilience on the expectation that she would have further absences due to her osteoporosis. I simply wanted resilience throughout the Department so that services could always be provided quickly and efficiently if another member of staff was unavailable for whatever reason. This was generally, not just in relation to Miss Fox's duties".

44.5 There is nothing in the evidence to suggest that Mr Clements undertook any evaluation as to how taking away some of the Claimant's responsibilities would be a proportionate means of achieving any legitimate aim. There is no such evaluation undertaken by Miss Pennelli either. There is no evidence that the proposed changes were justified on business or commercial grounds.

Being told that the Claimant was 'skiving' in relation to the days she was working at home.

45. These are allegations of harassment against Mr Murray Warburton and Mr Nicholas Warren, both of whom gave oral evidence at the hearing. It is denied by both that the alleged comments were made.

46. We find on a balance of probabilities that such comments were in fact made. They were made because the Claimant was working from home, which was in turn because of a disability, and they were made because of a perception in the minds of those who made them that working from home was somehow easier than working in the office. Such comments would clearly violate the Claimant's dignity and would clearly create a degrading and offensive environment.

47. The alleged comment was heard by the Claimant directly and she is thus able

to give first-hand evidence of this. We find her evidence in this respect credible. Mr Warren merely denied the allegation without in any way explaining what the conversation was actually about if it was something else. He put forward a blank denial which was unconvincingly delivered under cross-examination. Mr Warren seemed more concerned about the apparent breach of trust in the Claimant than a vigorous denial that the remark was actually made. He accepts that the two of them had a friendly relationship when they often shared a joke. This would be consistent with the comment being made rather than not. We are satisfied that this was not banter and the ingredients of a harassment claim under section 26(1)(b) EA 2010 are established.

48. Mr Warburton was an Environmental Supervisor who also enjoyed a good friendly working relationship with Miss Fox. He denies making one or more remarks about skiving but accepts that he would engage in jovial banter with the Claimant. He was very 'hurt' (as he describes it) by the accusation. We are satisfied that he also made remarks about skiving as alleged. We are also satisfied that it was not banter nor viewed by the Claimant as such.

49. For the reasons given the complaint of harassment on this particular allegation succeeds. The Claimant also appears to be suggesting that this was unfavourable treatment under section 15 EA 2010. However, it seems to us more appropriate for this to be defined as an act of harassment rather than of unfavourable treatment.

50. We now deal with a number of allegations primarily against the Second Respondent. We should mention that where we have dismissed the allegation for lack of evidence we use that as shorthand to mean that the claimant has failed to establish a prima facie case within the meaning of section 136(2) EA 2010.

Demeaning behaviour related to the flexible working pattern provided to her.

51. This appears to be a repetition of a similar allegation set out earlier. Insofar as it is something else, the Claimant has not specified what she means. We therefore reject this allegation as lacking in evidence.

Shunning the Claimant or not speaking to her

52. It is clear that there was a major falling out between the Claimant and Miss Price at some point which led to the breakdown in working relationships. Prior to that the two enjoyed a friendly and harmonious working relationship.

53. The reason as to why they fell out is in dispute. Miss Fox argues it was because of her disability-related absence, the return to work and the issues that arose from Ms Price being allocated some of the Claimant's work. She therefore links it to the disability as necessarily she must in order to succeed. Miss Price suggests that it was for other reasons. She says that the Claimant's attitude towards her changed shortly after she returned from holiday in Christmas 2017 when the Claimant was uncommunicative then and thereafter.

54. We are satisfied that whatever the cause of the breakdown it was nothing to do with the Claimant's disability. It is possible that there were rumours and counter-rumours spread by other employees as to what they were supposed to have said in the absence of the other and these flourished over time. There was a circulating

rumour that Miss Price (denied by Miss Price) that she had said the Claimant was doing 'a rubbish job' in turn that the Claimant had said the same thing about Miss Price.

55. It is clear that feelings were running high between the Claimant and Miss Price after the falling out. In our judgment the majority if not all of the Claimant's allegations against Miss Price set out in this decision are primarily motivated by the bitterness and rancour from the ending of friendly relations between the two rather than anything connected with the Claimant's disability. That is the only rational explanation as to why (1) the Claimant has chosen to bring proceedings against Miss Price personally as a named Respondent despite the fact that the First Respondent accepts vicarious liability for any acts of Miss Price (2) Miss Price rather than Mr Clements is chosen to be a named Respondent. If any single individual was to blame for her state of affairs it was arguably Mr Clements who made the relevant decisions as to the Claimant's role. The Claimant has had the benefit of legal advice from counsel yet maintained her claim against Miss Price personally. We can see no logical reason for it other than personal animosity.

56. Returning to the specific allegation we find that the failure to communicate was not confined to Miss Price alone. It was mutual and it had nothing to do with the Claimant's disability.

Refusing to work together or with the Claimant.

57. There is no evidence of Miss Price *refusing* to work with the Claimant. If the allegation refers to a specific comment that Miss Price said she no longer wanted to be civil with the Claimant, this was because of the breakdown in friendships not disability.

Pulling up the Claimant for every mistake

58. There is clearly an exaggerated allegation. The Claimant was clearly not pulled up for *every* mistake. She may have been corrected on a few occasions but there is no series of mistakes identified. In fact the Claimant only identifies one instance in support of this allegation. On that occasion a complaint had been made about Miss Fox by a third party relating to trade waste. Miss Price was instructed by Mr Clements to deal with it. Miss Price was therefore acting upon managerial instructions and she was not reporting the Claimant's error.

Ignoring emails/instructions.

59. There is no evidence of emails or instructions being ignored by Miss Price or others. There is a very large bundle in this case yet no evidence of a systematic refusal to respond. Insofar as this allegation relates to a comment that the members of the Claimant's team were not using a whiteboard to set out details of their whereabouts as had been the case once, we find that the use of the whiteboard had fallen out of use generally and it did not relate to the Claimant or her situation.

Calling the Claimant 'Luke's pet'

60. Whilst we find that this comment was made, we do not accept that it amounts to

harassment within the statutory definition. The Claimant herself accepted at the time that it was 'banter'. It did not therefore have the necessary legal effect.

Blocking the Claimants access to R & R system

61. We do not find that the Claimant's access to the system was blocked by Miss Price. She would have no authority to do so. There were other employees who were also locked out, not just the Claimant.

Moving a number of personal work documents and saved files from shared file into the second respondent's folders and saving in a name.

62. We accept Miss Price's evidence that no work documents were deleted or removed from shared files but were in fact copied and placed into a Shortcut for easy access. The Claimant has misunderstood the situation. Miss Price did not have the authority to remove another employee's work documents and if she had done so this would have been investigated further.

Changing a generic contact telephone number of the Neighbourhood Services Administration team to the second respondent's direct telephone number.

63. Miss Price did change the generic contact number for operational reasons but she did so on the instructions of her managers.

Failing to address the Claimant's allegations of bullying and harassment.

64. This should of course be an allegation against either Mr Clements or the employer generally but because of the Claimant's attitude to the Second Respondent it is included as an allegation against her. Miss Price did not have any control over the grievance process. We therefore find any such allegation against Miss Price to be made in bad faith.

65. Insofar as the allegations is against the employer, it is without any factual basis. The Respondent correctly found there was no bullying or harassment. The Claimant had the fullest opportunity to air her grievances and her allegations were carefully considered but rejected. The grievance hearing was followed by a detailed appeal process with a comprehensive response.

Intentionally damaging the claimant's relationship with other employees by telling colleagues that the claimant was taking work from her stated that she did a "rubbish job".

66. We accept that Miss Price did not make the alleged remark. Miss Price held the Claimant in respect prior to the breakdown in relationships. The Claimant kept personal diaries where she kept a daily note of what happened. The diaries make no reference to such a remark.

Passing notes to other members of the team and excluding the Claimant.

67. It is unclear as to precisely what is said to have been included in the notes. We

accept Miss Price's explanation that whilst notes were passed between colleagues to keep a dialogue open as to work they did not seek to deliberately exclude the Claimant.

Refusal to contact the Claimant when she was working from home

68. There is nothing to suggest that Miss Price was not contacting the Claimant at her home when needed. The allegation is therefore dismissed for lack of evidence.

By the Second Respondent saying the Claimant was receiving 'special privileges' because of a disability and home working questioning why she should be treated differently.

69. The date of this allegation is 21 February 2018. The Claimant submitted her written grievance on 4 May 2018. However, the Claimant somewhat inexplicably did not mention this allegation in her grievance despite the fact that it would have been fresh in her mind at the time.

70. We do not find that on the facts the comment was made. The Claimant had no reason to be upset over the Claimant working from home or to say that Ms Fox was receiving special privileges. Given the breakdown in relationships it is more likely Miss Price welcomed it.

The Second Respondent being rude to the Claimant after a request for assistance to amend an address on R&R system.

71. The Claimant does not explain how the Second Respondent was rude or what words were used. We reject the allegation because of a lack of evidence.

Petty behaviour by others declining meeting invitations from the Claimant.

72. The Claimant does not identify any date when others are said to have declined invitations from the Claimant or what the circumstances were. This allegation is dismissed for lack of evidence.

Negatively speaking about the Claimant with other employees including calling the Claimant "a bitch" to a co-worker, Mr Nick Warren.

73. The allegation is denied by Mr Warren to whom the comment was supposedly made. Therefore the Claimant's only source of information is a person who denies it. We do not find on a balance of probabilities that the remark was made. It would have been out of character given that there is no allegation of Miss Price having used inappropriate language on any other occasion. In any event the remark has nothing to do with disability. The remark is alleged to have been made some two days before the grievance yet is not mentioned in the grievance letter or at the subsequent grievance hearing.

Performing a purchase order request raised by the First Respondent's colleague.

74. We accept that a purchase order was raised by Miss Price but this was because it was deemed urgent by her supervisors and Miss Price was instructed that she should

deal with it. Miss Price therefore had no choice but to comply. Insofar as it is therefore an allegation against Miss Price it is rejected.

75. For the reasons given all of the allegations of harassment with the exception of the skiving comment, the direct discrimination complaint and (with the exception of the allegation of the removal of responsibilities) all of the complaints are dismissed.

76. The case will now be listed for a telephone preliminary hearing to give directions as to a remedy hearing. There was one allegation which was the subject of a deposit order. The deposit was paid but the allegation has been dismissed. Any application for costs will therefore be dealt with at the same time as remedy.

Employment Judge Ahmed

Date: 5 May 2020

JUDGMENT SENT TO THE PARTIES ON

18th May 2020

FOR THE TRIBUNAL OFFICE

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