



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Cammack
Respondent: Quantum Logistics Limited
Heard at: Lincoln **On:** 2, 4 and 5 March 2020
Reserved to: 15 July 2020
Before: Employment Judge Blackwell
Members: Mr Hemmings
Ms Rawlins

Representation

Claimant: In person
Respondent: Mr G Price of Counsel

RESERVED JUDGMENT

The judgment of the Employment Tribunal is that:-

1. For the avoidance of doubt Mrs Cammack's claim of constructive unfair dismissal is dismissed because the Tribunal does not have jurisdiction to hear it.
2. The complaint of suffering detriments pursuant to Section 47B of the Employment Rights Act 1996 (the 1996 act) fails and is dismissed.
3. The complaint of direct sex and/or marriage discrimination pursuant to Section 13 of the Equality Act 2010 (the 2010 act) fails and is dismissed.
4. The claim of harassment pursuant to Section 26 of the 2010 act fails and is dismissed.
5. The claim of a failure to make reasonable adjustments pursuant to Section 20 and 21 of the 2010 act also fails and is dismissed.

REASONS

1. Mrs Cammack represented herself and called Mr Lucy, Mr Weston and Mr Castle to give evidence on her behalf. Mr Price of Counsel represented the Respondents and he called Mr Johnson QL's Managing Director, Mr Blanchard QL's Transport Manager, Mr Tarle and Mr Sharman both employees of QL. There was an agreed bundle of documents and references are to page numbers in that document.

HISTORY OF THE CLAIM

2. The Claimant presented two claims against the Respondent on 21 August 2018. They were consolidated by order dated 8 October 2018. By her first claim the Claimant claims she suffered discrimination related to the protected characteristics of sex, marriage and disability including harassment. By the second she expands the claim to include a claim of constructive unfair dismissal.

3. On 28 February 2019 there was a closed Preliminary Hearing held before Employment Judge Clark. He ordered that there be a Preliminary Hearing to determine:-

- (a) The Claimant's employment status.
- (b) Whether the Claimant was disabled at the material time.
- (c) To identify and particularise any claims that are to continue to a final hearing.
- (d) Such further case management orders as are then necessary.

4. Those matters were determined before Employment Judge Blackwell on 22 July 2019. He determined:-

"1. The Claimant is disabled within the meaning of Section 6 and Schedule 1 of the Equality Act 2010 (the 2010 act) in respect of the physical impairment of hearing loss.

2. The Claimant is not disabled within the meaning of Section 6 and Schedule 1 of the 2010 act in respect of the mental impairment of depression and anxiety.

3. The Claimant was not an employee of the Respondent within the meaning of Section 230(1) of the Employment Rights Act 1996 (the 1996 act).

4. The Claimant was however a worker as defined in Section 230(3) of the 1996 act.

5. The Claimant is entitled to the protection of the 2010 act because pursuant to Section 83(2)(a) she was employed under a contract personally to do work."

5. Unfortunately, there was not time to deal with further identifying the Claimant's claims nor to make directions. However, the parties eventually agreed a list of issues which appears at pages 58 to 61 of the bundle and Mrs Cammack completed a Scott Schedule which appears at pages 62-65 and which was supplemented by lengthy statements enclosed with Mrs Cammack's letter of 18 November 2019 beginning at page 67 to 102.

6. Normally an Employment Judge who has determined an issue in a case

would not sit on the final hearing. At the beginning of the hearing I invited Mrs Cammack with her companion to read my earlier judgment sent to the parties on 7 September 2019 and in particular I drew her attention to paragraph 26 of that judgment which reads as follows:-

“I prefer the evidence of Mr Johnson. Mrs Cammack was not a straightforward witness on the point. She claimed that she did not understand self-employed status, that she did not understand Carolan Functions accounts. I think she was being disingenuous. In my view she understood full well the advantages of being self-employed and being able to off-set the costs of Carolan Functions against the income she received from the Respondents.”

The Tribunal gave Mrs Cammack time both to read the judgment and to consider whether she wished to make an application for Employment Judge Blackwell to recuse himself.

7. After consideration Mrs Cammack stated that she had no objection to Employment Judge Blackwell continuing to hear the claims.

ISSUES AND THE LAW

8.1 Background findings of fact relevant to all issues

8.1.1 Mrs Cammack began providing her services to the Respondent as a Courier/Delivery Driver on 18 November 2015 and ceased providing her services on 31 May 2018.

8.1.2 The Respondent (QL) is a small family run business started by the Managing Director Paul Johnson in July 2012 and whose clients are local food production companies. The majority of the work is collecting raw materials and packaging required at short notice from anywhere within mainland UK and delivering the finished product produced too late for normal distribution means to distribution depots anywhere within mainland UK. At the time of the response there were 19 employees and two self-employed contractors.

8.1.3 From January 2016, Mrs Cammack was the regular driver on Sundays only of a laboratory van leased from QL by Bakkavor, a large food production organisation.

8.1.4 During the week Mrs Cammack drove other of QL's vans on a variety of work. There is a good deal of conflict or evidence about what she did which we will return to in the context of her individual claims.

8.2 Issue 1 **DETRIMENT FOR MAKING A PROTECTED DISCLOSURE – SECTION 47B 1996 ACT:-**

8.2.1 Did the Claimant make a protected disclosure as defined by Section 43A of the 1996 act?

8.2.2 In respect of each of the disclosures relied on in her Scott Schedule did the Claimant make a “disclosure of information” for the purposes of Section 43B(i)?

8.2.3 Did the Claimant have a reasonable belief that each disclosure was made in the public interest?

8.2.4 Did the Claimant have a reasonable belief that each disclosure tended to show that one of the sub categories under Section 43B(i) applied?

8.2.5 Was the disclosure made in good faith?

8.2.6 Was the Claimant subjected to any detriment by any act or any deliberate failure to act by the Respondent on the ground that the Claimant had made a protected disclosure?

8.3 The Claimant relies on the following as amounting to detriments:-

8.3.1 Conduct by Mr Johnson and in particular unpleasant, nasty, spiteful language, that he ranted and raved.

8.3.2 That less work was allocated to her as a consequence.

8.4 **Conclusions on issue 1**

8.4.1 In relation to the agreed list of issues, the Respondent concedes that Mrs Cammack made a number of protected disclosures as defined. They also concede that there was a disclosure of information and that Mrs Cammack had a reasonable belief that her disclosures were made in the public interest. They also concede that the disclosures which were all related to the condition of the vehicles that she drove were related to breaches of the Construction and Use Regulations and/or that the health and safety of any individual has been, is being, or is likely to be endangered. They also concede that the disclosure was made in good faith.

8.4.2 The question for us therefore to determine is whether or not Mrs Cammack suffered either of the detriments that she pleads occurred, namely that on many of the occasions that she made the disclosures Mr Johnson ranted and raved at her and/or she was given less work as a consequence of making the disclosure.

8.4.3 Most of the disclosures made by Mrs Cammack concerned the laboratory van (known as Skippy) which was leased by Bakkavor from QL. Its purpose was to convey samples of food from Bakkavor's various production units to their central laboratory for testing for food hygiene purposes. The van was driven from Tuesday to Saturday by Mr Lucy, an employee of Bakkavor. Mr Teal regularly drove the van on a Saturday and he was an employee of QL. Mrs Cammack regularly drove the van on a Sunday from September 2016 until she had an altercation with the security guard at the laboratory in April 2018.

8.4.4 Bakkavor did their own risk assessments of the laboratory van and it seems to us highly unlikely that they would have permitted an unroadworthy vehicle to be used in connection with their business. There

is ample evidence that defects once reported were dealt with, though not always successfully.

8.4.5 In relation to the alleged detriment of being ranted and raved at, clearly such would be a detriment if we accepted that Mr Johnson had regularly ranted and raved at Mrs Cammack. Mrs Cammack's evidence is supported in that regard by that of Mr Lucy, the driver employed by Bakkavor. Unsurprisingly since his statement was written by Mrs Cammack, he also uses the same phraseology as Mrs Cammack. Mr Weston notes that Mr Lucy is a friend of Mrs Cammack's. Mr Weston who was also an employee of QL and was called by Mrs Cammack to give evidence does not support that evidence. He says that Mr Johnson was not rude to him, even when he reported defects.

8.4.6 Mr Johnson's evidence is that whenever defects were reported he dealt with the matter politely and calmly. We have to say at this point that we did not find Mrs Cammack to be a reliable witness. Her evidence was prone to exaggeration and in our view in parts was pure fantasy as we will set out in relation to other issues. Mr Johnson also said that he rarely came into contact with Mr Lucy and it seems highly unlikely that Mr Johnson would have ranted and raved at an employee of Bakkavor who provided QL with valuable business.

8.4.7 We therefore find on balance that Mr Johnson did not rant and rave at Mrs Cammack.

8.4.8 The second matter complained of is that whenever Mrs Cammack made protected disclosures she suffered the detriment of receiving less work. In cross examination, Mrs Cammack was taken to a number of specific dates when she had made protected disclosures and was then taken to the record of hours worked, which begins at page 303. Mrs Cammack was unable to identify any correlation between the making of the protected disclosures on specific dates and a consequent diminution of work being offered. Therefore, that part of her claim must fail because she cannot show that any alleged diminution in work was "done on the ground that the worker has made a protected disclosure".

9.1 Issue 2 DIRECT SEX/MARRIAGE DISCRIMINATION (SECTION 13 OF THE EQUALITY ACT 2010):-

9.1.1 Did the Respondent treat the Claimant less favourably than it treated or would treat an actual or hypothetical comparator who was not of the Claimant's sex/or was not married? The acts relied on are set out in her Scott Schedule.

9.1.2 Does the Claimant rely on an actual or hypothetical comparator? If an actual comparator who?

9.1.3 If less favourable treatment occurred are there facts from which the Tribunal could fairly and properly conclude in the absence of any explanation from the Respondent that the acts complained of were because of sex/marriage status?

9.1.4 Can the Respondent show a none discriminatory reason for the acts of potential discrimination identified?

9.2 **Conclusions on issue 2**

9.2.1 Complaints of less favourable treatment are set out at page 63 in Mrs Cammack's Scott Schedule supplied as part of the further and better particulars. The first act complained of is the allegation that Mr Johnson when he saw Mrs Cammack lifting the bonnet of a van told her that no woman lifts the bonnet of a van. Mrs Cammack maintains that thereafter she never lifted the bonnet of a van.

9.2.2 Nothing illustrates more clearly why we found Mrs Cammack to be an unreliable witness than this allegation.

9.2.3 Mrs Cammack's account was that the van in question, a Ford Transit, would not start due to a flat battery. So, in preparation she raised the bonnet so that it could be started from another battery. At that point Mr Johnson is alleged to have made the remark complained of. When Mr Johnson was cross examined on this point he first denied that such an event had ever occurred and reminded Mrs Cammack that the battery in a Ford Transit sits beneath the driver's seat and not in the engine compartment. Mrs Cammack's cross examination ceased abruptly. We therefore find that the remark was never made.

9.2.4 The next allegation is that Mr Johnson told Mrs Cammack in relation to the distribution of work that married women such as herself would always come second because they could rely upon income derived from their husband. Again, if true that would be a clear act of less favourable treatment on the ground of the protected characteristic of marriage. Mr Johnson's evidence was that he never made such a remark and that he had no idea whether Mrs Cammack's husband was in work or not. We accept Mr Johnson's evidence and we do not believe that the remark was made.

9.2.5 The next matter is an allegation that Mrs Cammack was forced to wear the black company uniform of male fit whereas her male colleagues could wear what they wished. The evidence in this regard is that Mrs Cammack at her request was issued with a number of items of company uniform on 4 September 2017, see page 302A.

9.2.6 It is common ground that Mrs Cammack never wore the uniform. Mrs Cammack alleges that on 31 May 2018 Mr Johnson required her to wear the uniform. Mr Johnson's evidence is that the company uniform was unisex. Examples of the product supplied as company uniform are at pages 291-293 and are all labelled as "unisex". We accept that the uniform was unisex.

9.2.7 We also accept Mr Johnson's evidence, uncontested by Mrs Cammack, that the uniform was regularly worn by two of the female office staff and by Ms Whitworth, a female driver.

9.2.8 It was Mr Johnson's evidence which again we accept that there was no compulsion to wear the uniform and nobody was ever disciplined for failing to do so. It was merely recommended.

9.2.9 As to the events of 31 May, Mrs Cammack alleges that she was told she must wear the uniform. Mr Johnson's evidence is that he merely asked, given that she had asked for the uniform and that it had been issued as long ago as September 2017, why she did not wear it. Again, we prefer the evidence of Mr Johnson. In our view therefore, there was no less favourable treatment.

9.2.10 The final matter complained of is that Mrs Cammack was offered less work than 3 other comparators. The named comparators are Steve Sharman, Matt Pointon and Graham Wakefield. At pages 303-306 we see the relevant records of Mrs Cammack, the 3 male comparators and 6 other drivers including Mr Weston who we note makes similar complaints that he was given less work, though he is male.

9.2.11 It is clear from these records that Mrs Cammack did work less hours than the 3 male comparators. So too did Mr Weston. It does not seem to us on its own to reverse the burden of proof as set out in Section 136 of the 2010 act. In any event QL advanced a number of factors which would explain why Mrs Cammack worked less hours than the 3 comparators. The first was that Mrs Cammack ran a small business of her own organising events. That meant that she was generally unavailable on Saturdays. Mrs Cammack denied that that was the case and that she was always available on Saturdays.

9.2.12 The second matter relied upon by QL is that she declined to undertake local jobs. The consequence of that was that if other work became available during the undertaking of a local job, then more hours would then be worked. Mrs Cammack again denied that she refused local runs. However, both Mr Johnson and Mr Blanchard gave evidence that she did and we prefer that evidence.

9.2.13 Mr Blanchard also gave evidence that if work was short he gave preference to the employed drivers rather than Mrs Cammack and the other driver of the same status. Again, we accept that evidence. In fact, the evidence points to the fact that there were material differences between the circumstances relating to Mrs Cammack and to her 3 male comparators. We particularly note that Mr Weston, a male, makes the same complaint. It seems to us that this particular complaint is simply motivated by a feeling of grievance that other employees were doing more hours and therefore earning more money. We therefore find that this allegation of less favourable treatment fails because there are material differences as outlined above between Mrs Cammack and the 3 male comparators.

10.1 Issue 3 HARASSMENT ON THE GROUNDS OF SEX (SECTION 26, 2010 ACT):-

10.1.1 Did the Respondent harass or engage in unwanted conduct related to the Claimant's sex? The Claimant relies on the acts of alleged harassment set out in her Scott Schedule.

10.1.2 If any act complained of is found to have been unwanted, did it have the purpose or effect of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

10.1.3 Was it reasonable having regard to the Claimant's perception and the Court of Appeal's guidance in **Grant v HM Land Registry**, for the conduct complained of by the Claimant as violating her dignity or creating an intimidating, hostile etc environment, as the case may be, to have had the effect complained of?

10.2 Conclusions on issue 3

10.2.1 It seems to us from the document produced by Mrs Cammack at pages 231-239 and in particular at page 238 Mrs Cammack would have us believe:-

(a) That Mr Johnson was attracted to her and flirted with her on a regular basis.

(b) That as a consequence Mrs Johnson, who worked in QL's office, was jealous of Mrs Cammack and;

(c) that Mr Johnson was jealous of Mr Sharman because he perceived that Mr Sharman was attracted to Mrs Cammack.

(d) In that context we will deal first with the examples of harassment at paragraphs 3 and 4 of the Scott Schedule at page 64. The first alleges that Mr Johnson hounded and badgered Mrs Cammack as to what Mr Johnson perceived to be a relationship with Mr Sharman. Closely connected with that is the fourth allegation that Mr Johnson threatened Mr Sharman and Mrs Cammack over the telephone at a point where there was a handover of goods between the two drivers as a consequence of a change of plans and an urgent need of a client.

(e) As to the badgering and hounding complaint Mrs Cammack draws particular attention to an occasion where she alleges that she drove Mr Johnson to a nearby garage to collect a van which had been repaired. She alleges that he asked her at least 25 times in that short return journey about her relationship with Mr Sharman. Mr Johnson denies that there was ever such a conversation and points out that he would not have gone to the garage if the garage had not told him that the van was ready for collection. There therefore would have been no return journey.

10.2.2 In relation to the layby incident, Mr Johnson's evidence, confirmed by Mr Sharman, is that the purpose of Mr Johnson's calls was simply to find out whether the transfer had taken place and the estimated time of arrival at the customer's premises because he, Mr Johnson, was being asked by the customer to confirm that ETA. Mr Sharman described Mrs Cammack's account both of the alleged relationship and the layby incident as pure fantasy. We agree. We simply do not believe Mrs Cammack's

account which as with almost all of her complaints is unsupported by any other evidence whether oral or documentary.

10.2.3 The other two complaints of sexual harassment are that Mr Johnson asked Mrs Cammack as to whether she was happily married and that “you really ought to be nice to me” implying that Mrs Cammack would receive more work if she was nice to Mr Johnson. Again, these are matters denied by Mr Johnson and again we simply do not believe Mrs Cammack’s evidence.

10.2.4 Therefore, her claims brought under Section 26 have no basis in fact and must fail.

11.1 Issue 4 FAILURE TO MAKE REASONABLE ADJUSTMENTS, SECTION 20 AND 21 OF THE 2010 ACT:-

11.1.1 Did the Respondent apply a provision, criterion and/or practice which put C at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled? The Claimant relies upon a practice of the Respondent ringing her whilst she was driving. She says that the substantial disadvantage was that she could not hear the call because of her disability. She says that reasonable adjustments would have either to have given her written instructions or to have sent messages by text.

11.1.2 Did the Respondent take such steps as were reasonable to avoid the disadvantage?

11.1.3 Did the Respondent not know or could not reasonably have been expected to know that the Claimant had a disability or was likely to be placed at the disadvantage complained of?

11.2 Conclusions on issue 4

11.2.1 Mrs Cammack complains that there was a practice of communicating changes in itinerary by telephone whilst she was driving. Although Mr Blanchard gave evidence that he had on occasions texted Mrs Cammack at her request with such changes, on the evidence of Mr Johnson and Mrs Cammack we find that there was a practice of communicating changes by telephone.

11.2.2 Mrs Cammack further alleges that she was put at a substantial disadvantage compared to drivers whose hearing was not impaired because she would have to pull over in order to ring the person instructing her of the change. In relation to reasonable adjustments, she says that changes should have been communicated by text or by written instructions. As to the latter, that plainly could not occur where there was a change of itinerary after the delivery route had begun because such change could only be given by way of a telephone call or by text.

11.2.3 In relation to a text, Mrs Cammack said that if she received a text, she would need to pull over in order both to read the text, reply to it and, if necessary, to reset her satellite navigation. In other words, she would have pulled over whether the change was communicated by text or phone.

11.2.4 On those facts therefore, we cannot see that texting a change of itinerary would have assisted because precisely the same process would have followed with a communication by telephone. In our view, therefore, Mrs Cammack was not put at a substantial disadvantage, nor would any of the reasonable adjustments she suggests have assisted. This claim must therefore fail.

Employment Judge Blackwell

Date: 6 August 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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