



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss W Yang

and

Respondents

R1 – Johnson Matthey Limited

R2 – Miss Vikki Roberts

Heard at Reading on: 2, 3, 4, 5, 6 and 9
November 2020

Appearances:

For the Claimant In person

For the Respondents Mr A Ohringer, counsel

Employment Judge Vowles

Members Ms C Anderson
Mr D Bean

UNANIMOUS JUDGMENT

Evidence

1. The Tribunal heard evidence on oath and read documents provided by the parties and determined as follows.

Automatically Unfair Dismissal – section 100(1)(c) Employment Rights Act 1996

2. The Claimant was not unfairly dismissed by reason of having raised a matter regarding health or safety. This complaint fails and is dismissed.

Direct Race Discrimination – section 13 Equality Act 2010

3. The Claimant was not subjected to race discrimination. This complaint fails and is dismissed.

Race Related Harassment - section 26 Equality Act 2010

4. The Claimant was not subjected to race related harassment. This complaint fails and is dismissed.

Sex Related Harassment - section 26 Equality Act 2010

5. The Claimant was not subjected to sex related harassment. This complaint fails and is dismissed.

Victimisation - section 27 Equality Act 2010

6. The Claimant was not subject to victimisation. This complaint fails and is dismissed.

Reasons

7. Reasons for this decisions were given orally at the hearing. Written reasons are attached at the request of the Claimant.

Public Access to Employment Tribunal Judgments

8. The parties are informed that all judgments and reasons for judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the Claimant and Respondent.

REASONS

Submissions and Claims

1. On 10 January 2019 the Claimant presented claims to the Tribunal of breach of contract, flexible working, health and safety dismissal, sex discrimination, race discrimination, unfair dismissal and unpaid holiday pay. On 1 March 2019 the Respondents responded and all claims were resisted.
2. The claims relating to flexible working and breach of contract were struck out after the Claimant failed to pay a deposit order. The claim for holiday pay has been paid and withdrawn.
3. The following claims remain for this Tribunal to consider:
 - 3.1 Automatic unfair dismissal under s.100 of the Employment Rights Act 1996, that is health and safety dismissal;
 - 3.2 Direct race discrimination;
 - 3.3 Harassment related to sex and race; and
 - 3.4 Victimisation.
4. Those claims were clarified in a list of issues set out in the case management order made at a preliminary hearing on 10 January 2020 and included at pages 59-65 of the bundle.

5. At the start of this six-day hearing, on 2 November 2020, the parties had not at that time exchanged witness statements. On the direction of the Tribunal that was done on that first day which was a reading day for the Tribunal. Also at the start of the hearing the Claimant made applications to amend the claim by adding a claim under s.44 Employment Rights Act 1996 and to introduce a separate bundle of documents with 1,100 pages. Both applications were considered by the Tribunal and were refused and reasons were given orally at that time.
6. Having dealt with those matters the Tribunal proceeded with the bundle of documents produced by the Respondent as ordered by the case management order and also based upon the witness statements exchanged on the first day of the hearing.

Evidence

7. The Tribunal heard evidence on oath from the Claimant, Miss Wei Wei Yang (Buyer).
8. The Tribunal also heard evidence on oath on behalf of the Respondents from Miss Vikki Roberts (2nd Respondent, Claimant's line manager and dismissing officer), Mr Michael Pachiti (grievance officer) and Mr Shaun Knowles (appeal officer).
9. Both parties also presented written and oral closing submissions.
10. From the evidence heard and read the Tribunal made the following findings of fact.

Findings of Fact

11. The Claimant, who is a Chinese national, was employed as a Buyer by the 1st Respondent from 12 March 2018 to 29 September 2018, a period of six and a half months, although the last month was on garden leave.
12. The Claimant was based at the Purchasing Department at the Brimsdown site. She was recruited in March 2018 by Miss Roberts, her line manager. Her job description as a Buyer included the following job purpose:

"The Buyer will support the refining and chemical business providing professional sourcing, negotiation and contract implementation services to the manufacturing operation covering both direct and indirect categories".

13. Miss Roberts did not work full time at the Brimsdown site as the Claimant did, but she said she visited regularly, at least once per week. She said she met with the Claimant on those occasions to discuss her work. The Claimant disputed this and said that the meetings between them were less frequent.

14. On 27 April 2018 the Claimant wrote to Miss Roberts with concerns about various matters in connection with her employment. Miss Roberts replied on 30 April with a detailed response, referred to below.
15. On 25 June 2018 the Claimant again wrote to Miss Roberts about various matters in connection with her employment.
16. On 6 August 2018 Miss Roberts, who had become concerned about the Claimant's performance, wrote to her in the following terms:

"I am writing to advise you that the company has concerns about your performance and conduct against the expectations of your role. You are therefore invited to attend a formal performance review meeting on Wednesday 8 August 2018 at 3pm in the HR Office with myself and Jo Mildren, HR Business Partner. The purpose of the meeting will be to review your overall performance since you started your employment with us on 12 March 2018. Specifically, I would like to discuss the following:

- *Firstly, failure to complete tasks in an acceptable timeframe,*
- *Secondly, overly questioning instructions which causes unacceptable delay,*
- *Thirdly, poor attitude and behaviour towards internal stakeholders, and]*
- *Fourthly, short notice requests to work from home.*

The purpose of the performance review meeting is to further discuss our concerns, your suitability for the position of Buyer and to decide what actions are appropriate. You will be given the opportunity to respond to the company's concerns and put your case. Please be aware that one possible outcome of this meeting is that the company may decide to terminate your employment."

17. The Claimant was told that she may be accompanied at the meeting by a Trade Union representative or a colleague.
18. The meeting was delayed until 24 August 2018. It was described as a performance review meeting. The Claimant was accompanied by her Trade Union Representative, Mr Thornton. There was discussion regarding the Claimant's performance, her reliability and her attitude. At the end of the meeting Miss Roberts informed the Claimant that she was being dismissed.
19. On 30 August 2018 Miss Roberts wrote to the Claimant and the letter included the following:

"As advised to you the company has ongoing serious concerns about your suitability for the role. In our meeting we discussed each of these concerns and your explanations of mitigation. When discussing your failure to complete tasks in an acceptable

timeframe we provided some email examples whereby I have needed to chase you to complete tasks. One example of this was your failure to complete mandatory training on our learning management system within the required timeframe. You highlighted that you do not feel that the training is a priority. I advised that many of the courses are related to health and safety which is a priority for the whole company and I had advised you via email, to complete the training urgently. ...

The other examples of not completing tasks in an acceptable timeframe that we discussed were individual orders being overdue and failure to provide monthly reporting on the last day of the month. You stated that you did not feel you had been provided with adequate training to do the job. It was discussed that there was no formal training plan in place but I highlighted that training was provided on the job by other Buyers in the Team and that I had previously asked if you wanted any additional training on SAP but you failed to respond. I also don't believe that additional training would have helped you meet these deadlines as you have demonstrated that you are able to process both pieces of work previously.

Another mitigating factor discussed was the fact that I do not work at Brimsdown regularly so you feel there is a lack of support. However, this was made clear to you at your interview and when appointing the buyer, we were looking for somebody that could work independently. I also highlighted that you hadn't previously raised any reasons determining why you hadn't completed the work on time. You stated that you prioritise your work and you don't see the tasks that aren't being completed as a priority. I advised you that each of the examples discussed were significant and this was highlighted by the fact that I was repeatedly chasing you to complete the work and I felt this was showing a pattern of behaviour.

We moved on to discuss overly questioning instructions but after a discussion around the phrasing we decided to remove this point from the meeting as the wording was not clear.

We then discussed the point around your poor attitude and behaviour towards internal stakeholders. We discussed that Buyers provide a service to the rest of the organisation and therefore they need to be able to adjust to suit their audience. We reviewed some online email examples that I provided and you and Stuart responded that you felt this point was cultural and that the organisation needs to be more open to diverse backgrounds and ways of working and adapt to you. However, in previous conversations around the tone of your emails you did not mention that you felt your responses were normal within your culture. In the role we need to be adaptable, keep our customers informed of our

decisions and build strong working relationships and I highlighted that I felt that the email examples did not demonstrate the required attitude and behaviour.

Finally, we discussed short notice requests to work from home and I highlighted that when I interviewed you we discussed the fact that you would relocate from Brighton due to the length of commute. We offered £2,000 relocation fees on the agreement that you would move within 45 minutes of the Brimsdown site. After 5 months you have not relocated and you have made a number of short notice request to work from home since you feel fatigued and this has also resulted in you arriving to work late. I explained that I would have had serious concerns about employing you if I had known that you would not relocate notably due to your health and wellbeing but also the potential consequences to the business. Stuart questioned what our policy on working from home states and I highlighted that the odd occasion I have allowed my team to work from home if there is an emergency, that Wei Wei's requests have been significantly higher over a short period of time and that I could not see it improving if the long-distance commuting continued.

After fully assessing your performance over the last five months and listening to your mitigation we do not feel that you have demonstrated the attitude and behaviours expected of such a role within our Purchasing Team and as a result the company has taken the decision to terminate your employment. As discussed at the meeting we reached this decision due to our belief that you did not demonstrate any willingness to accept responsibility for missed deadlines and we would have serious concerns about you sufficiently and sustainably meeting deadlines in the future. The Purchasing Team provide a service to the rest of the business so we need somebody who can adapt to different situations with a focus on building positive working relationships and we have concerns that your attitude to internal stakeholders would not improve. Finally, we have concerns about your commute and the impact that this could have on the business in the future.

20. The letter concluded by saying that the Claimant was entitled to one month's notice and that she would be sent on garden leave for the final month and that her employment would terminate on 29 September 2018. The Claimant was then told that she had a right to appeal.
21. The Claimant did appeal on 5 September 2018. The main headings were:
 - 21.1 Dismissal is wrongful, breach of employment contract;
 - 21.2 Dismissal is unfair, without justification, factualness and solid evidence;
 - 21.3 Violation of Johnson Matthey's culture and values code of ethics

and internal policy; and

- 21.4 Negative business implication.
22. Before the appeal was heard, the Claimant presented a written grievance on 26 September 2018 alleging bullying and race discrimination, largely directed at Miss Robert's conduct towards her. It was decided that the grievance should be dealt with before the appeal.
23. A grievance meeting was held on 2 October 2018 chaired by Mr Pachiti. The Claimant was again accompanied by Mr Thornton, her Trade Union representative.
24. On 24 October 2018 Mr Pachiti provided a written outcome to the grievance and the grievance was not upheld.
25. The appeal meeting was held on 1 November 2018 chaired by Mr Knowles. The Claimant was again accompanied by Mr Thornton. The appeal outcome letter was sent by Mr Knowles to the Claimant on 26 November 2018. The appeal was unsuccessful.
26. The individual claims pursued by the Claimant were as follows:

Automatic Unfair Dismissal – section 100 Employment Rights Act 1996

27. Section 100:

(1) An employee who is dismissed shall be regarded for the purposes of this part as unfairly dismissed if the reason or if more than one, the principal reason for the dismissal was that-

(c) being at a place where –

- (i) there was no such representative or safety committee, or*
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,

he brought to his employer's attention by reasonable means circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health and safety.

28. The burden of proof in this case is on the Claimant to show that state of affairs, because she has less than two years employment.
29. The Claimant confirmed that there were two complaints regarding health and safety matters. The Respondent has recorded in its closing submission that there was only one on page 217 (3 July 2018) but in her evidence to the Tribunal the Claimant also relied on page 185 (4 July 2018). Page 217 is

an email dated 3 July 2018 to Miss Roberts:

“Urgent Sick Leave 2 July 2018 attempt to work at home. Apologies for bothering you at training. I felt fatigues, stomach ache and headache this morning due to several factors, emotional stress, late departure from office last night, severe disruption of evening trains and lack of rest. Also, according to the traffic information there is a severe delay of Victoria Line this morning therefore could I request permission of another sick leave urgently but I will try getting some work done at home.”

30. Miss Roberts replied:

“We do need to discuss this when you are back as I cannot see the travelling improving and I am worried that this will continue which isn’t good for your health.

31. On 4 July 2018 the Claimant sent a text message as follows:

“Hello Vicky,

Could you kindly authorise sick leave today. I’ve emailed you around 1am my physical and emotional state are not fit for work today. Please allow 1 day off. Hope catching up with you later. Thanks and kind regards.”

32. The Tribunal considered that those communications were connected with the Claimant’s work and did relate to her health. However, the Tribunal went on to consider whether the content of these communications were the reason, or the principal reason, for the dismissal. The Tribunal concluded that they were not.

33. The detailed dismissal letter, quoted at some length above, from Miss Roberts on 30 August 2018, sets out what the Tribunal found were the true reasons for dismissal.

34. The communications were simply examples of the Claimant’s lengthy commute causing her stress and fatigue and resulting in her requests for sick leave and to work from home. Between 15 March and 23 August 2018, there were 14 occasions on which the Claimant was late or absent largely due to her lengthy commute which amounted to two hours journey each way. The subject of these communications from the Claimant were put to her during the performance review meeting on 24 August 2018 and referred to in some detail in the dismissal letter of 30 August 2018.

35. The Tribunal found that the true reason for dismissal was not because the Claimant made health and safety complaints but, in part, because she was regularly late or absent due to her lengthy commute. Those were the reasons set out in the dismissal letter. There was no causal link between complaints about health and safety and the dismissal. It was about lateness

and absence.

Direct Race Discrimination – section 13 Equality Act 2010

36. Section 13

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

37. The protected characteristic in this case is the Claimant's race.

38. In the decision of the Court of Appeal in the leading case of Madarassy v Nomura International Plc [2007] the court said:

“The Court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the Respondent could have committed an unlawful act of discrimination. They are facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not without more sufficient material from which a Tribunal could conclude that on the balance of possibilities the Respondent had committed an unlawful act of discrimination. The Claimant must show in support of the allegations of discrimination, a difference in status, a difference in treatment and the reason for the differential treatment.”

39. The Claimant relied in her allegations of direct race discrimination, apart from two complaints, on a hypothetical comparator. In her closing statement she summarised her position as to why she said the less favourable treatment was because of race. She said the only material difference between the Claimant and the comparators was being a Chinese national. She said there was no other plausible explanation.

40. The allegations of direct race discrimination were as follows.

41. **The Respondent had failed to follow the company disciplinary policy and procedure in relation to the Claimant's dismissal.**

42. Miss Roberts had decided to pursue a performance review procedure for which there was no written policy. The Respondent has pointed out that the disciplinary policy is not contractual. The Tribunal could find no evidence of a racial motive in Miss Roberts' decision to deal with the Claimant under a performance review rather than the disciplinary policy. The comparator is hypothetical, but the Tribunal could find no evidence that a person of another race, who was not Chinese, but in similar circumstances, would have been treated any differently. On the contrary, there was a plausible non-discriminatory explanation for the course that Miss Roberts pursued, that is performance, attitude and reliability.

43. Miss Roberts set out in detail her explanation in the dismissal letter of 30

August 2018. That was consistent with the performance review meeting and the evidence before this Tribunal over the course of six days. The Respondent has provided documentary evidence of the performance review. There is no evidence of a causal link between the decision not to follow the disciplinary policy and the race of the Claimant. The burden of proof did not shift to the Respondent. The Tribunal was satisfied that Miss Roberts had provided compelling evidence of a non-discriminatory reason why she went down the performance review route.

44. That claim therefore is not successful.

45. **There were three allegations said by the Claimant to be “ungrounded” allegations against her:**

45.1 Failure to complete tasks in an acceptable timeframe – used to criticise the Claimant’s performance.

45.2 Overly questioning instruction which causes unacceptable delay – used to criticise the Claimant’s performance, and

45.3 Poor attitude and behaviour towards internal stakeholders – used to criticise the Claimant’s performance.

46. The Tribunal found no causal link between those allegations and the Claimant’s race. None of those allegations were ungrounded. They were all justified by the documentary evidence which Miss Roberts had produced to the Claimant at the meeting and which was referred to in the dismissal letter. The Tribunal found these were not proved as acts of direct race discrimination.

47. Next, the Claimant said that the Respondent had used the allegation of short notice requests to work from home to criticise the Claimant’s performance. The Tribunal found that proved, because Miss Roberts did find that the short notice requests were affecting the Claimant’s performance. The Claimant’s decision not to relocate closer to work gave her a lengthy commute. She denied that she had told Miss Roberts that she would relocate, but the Tribunal found that the Claimant did confirm her decision to relocate, that finding supported by the fact that she signed the form for the payment of up to £2,000 to assist her to relocate.

48. As said above, there were 14 occasions when the Claimant was late or absent. Many of these mention the fact that they were caused by the Claimant’s ill-health, but her lateness and absence was clearly being caused by the commute, and train delays meant that she could not perform the commute efficiently.

49. The Tribunal concluded that there was a plausible non-discriminatory reason for Miss Roberts to criticise the Claimant’s performance on this ground and there was no evidence of any racial motive.

50. **Next, the Claimant alleged that Miss Roberts failed to discuss the Claimant's personal development plan with her.**
51. Miss Roberts said that she had regular meetings with the Claimant and discussed her performance with her at those meetings. However, she made no written record of those meetings and the frequency of them was disputed by the Claimant. The Tribunal, having no written record of those meetings, were not in a position to say how frequently they took place. But, as with the other matters, the Tribunal could find no racial motive in Miss Roberts failing to discuss the personal development plan with the Claimant. There was simply no evidence of a racial motive and no evidence that a hypothetical comparator would have been treated any differently.
52. **Next, the Claimant alleged that Miss Roberts failed to progress the Claimant's request regarding external IT training whereas Miss Roberts granted external training courses for Gemma Cooper and Sarah Maule.**
53. So far as Gemma Cooper was concerned, Miss Roberts confirmed that she did not grant external training for her, that had already been approved from another section. That allegation was not proved.
54. Sarah Maule was an actual comparator, but Miss Roberts said that her circumstances were wholly different to those of the Claimant. She had been a long serving employee, she worked for the 1st Respondent for 14 years whereas the Claimant had only recently been recruited and had not even completed her internal NMS training much less be entitled to any external training. The Respondent had provided compelling evidence of a non-discriminatory reason why the Claimant's request for external IT training was not granted. There was no evidence of any racial motive.
55. **Finally, as an act of alleged direct race discrimination, the Claimant said that Miss Roberts did not provide the Claimant with managerial support and did not allow the Claimant time to self-learn the role.**
56. The Tribunal found this allegation not proved. In the bundle there are examples of support provided to the Claimant by Miss Roberts. At pages 193 and 194 there is a request to discuss various matters which were causing the Claimant concern in her employment, dated 27 April 2018. There were eight matters which were causing the Claimant concern. Miss Roberts replied on 30 April 2018 in what was clearly a supportive reply. She provided detailed advice and information as to where support could be obtained to the Claimant and said finally:

"Please let me know of anything else. I am concerned that I have to ask and keep pushing to understand the issues. I want you to raise issues with me as soon as they arise so that I can help you. Please ask anyone from the team should you need support on anything operational."

57. The Tribunal found that Miss Roberts did provide managerial support to the Claimant during the course of her employment. Her one-to-one meetings were not recorded in writing, but it was implausible that in view of the tone and supportive nature of that response to the 27 April 2018 e-mail, that Miss Roberts would not on other occasions also provide similar support to the Claimant. This allegation was not proved.
58. None of the allegations of direct discrimination were well founded.

Race / Sex Related Harassment – section 26 Equality Act 2010

59. *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 40 - Employees and applicants: harassment

- (1) *An employer (A) must not, in relation to employment by A, harass a person (B) –*
- (a) *who is an employee of A’s;*
60. The complaint of harassment was said to relate to both sex and race.
61. **The first alleged act of harassment was the dismissal which became effective on 29 September 2018.** In her closing statement the Claimant summarised her position on this and said:

“The Second Respondent had conscious or sub-conscious motive to remove competition threat before moving to her new job as Supply Chain Manager in Battery Material Business Unit on 10 September. ... The Second Respondent had conscious or sub-conscious motive to scapegoat the Claimant for her mismanagement.

62. She then posed the question, “*Why was the unwanted conduct related to the Claimant’s protected characteristics?*” She said:

“The Claimant possesses competitive advantages of Chinese language skill and Far East sourcing experience to source cobalt and lithium from Chinese businesses. As China is the dominant player in global supply chain in cobalt and lithium raw materials, Chinese language skill and Far East sourcing experience was closely related to Chinese nationality and/or exploit the stereotype of East Asian female including Chinese female associated with submissiveness and service worker who appeared as an easy target for bullying. The Second Respondent’s perceived the Claimant’s character as a closed person, quiet, reserved and keeping herself to herself and/or psychology of female to female bullying. Queen bee syndrome.”

63. As found above, when looking at the allegation of automatically unfair dismissal, the Tribunal found that the full and true reason for the Claimant’s dismissal was set out in the detailed dismissal letter dated 30 August 2018. It is clear that the dismissal was unwanted conduct on the part of the Claimant but the Tribunal could find no evidence that it was related in any way to the Claimant’s sex or to her race.

64. **The next claim for harassment is that when the Claimant was informed of her dismissal she was then escorted to the First Respondent’s site entrance in broad daylight by Vicky Roberts and Sarah King.**

65. The Tribunal found that was not an uncommon, unreasonable or discriminatory practice where an employee is dismissed summarily, or with notice but where the notice is not to be served out at the workplace. It requires the employee to remain under supervision whilst under notice of dismissal.

66. The Claimant said in her closing statement that in so far as this particular event was concerned it was related to sex because it was unwanted conduct related to the Claimant’s protected characteristics exploiting Chinese hardworking work ethics and/or psychology of female to female bullying.

67. As far as race harassment was concerned she said:

“The Respondent downgraded and offended the Claimant by expecting the Claimant to act like a servant maid or clown who need to please the others to do their work. ... Exploit the stereotype of East Asian female including Chinese female associated with submissiveness and service worker who will simply follow what been told.”

68. It is clear that being escorted to the site entrance was unwanted conduct, but the motive of the Respondent was clear and that was to ensure she

remained under supervision until she had left the site. The Tribunal could find no evidence that it was related to the Claimant's sex or to her race.

69. **The next allegation of harassment is that the Claimant received undue criticism for failing to complete tasks in an acceptable time.** The Tribunal found this not proved. There was criticism for failing to complete tasks in an acceptable time but it was not undue. It was explained in the dismissal letter why the Claimant was failing in this respect and the fact that she had to be chased to complete tasks by Miss Roberts and by others. It was unwanted but it was not related to race or sex.
70. **The next allegation is that the Claimant was given unrealistic objectives by Vicky Roberts and was set up to fail.**
71. The Tribunal found this was not proved. There was very little evidence regarding objectives during the course of the hearing although in the Claimant's witness statement at paragraph 135, she refers to being set unrealistic targets:

"The manager promoted the image that the cost savings were primary objective. The objective assigned to me was unrealistic and caused stress. Other departments didn't support Purchasing Department to achieve objectives as it caused disruption to their workflow and misalignment of interests. ...

My target was £100K per annual. It was unrealistic because my predecessor, Graham L. had same level of cost saving target but had a wider area of responsibilities to find the cost savings from. ..."

72. There was no evidence that the Claimant had been set up to fail. There was no evidence that any objectives were unrealistic or excessive. There was nothing upon which to find or infer that any setting of objectives was motivated by race or gender.
73. **The next allegation of harassment was that the Claimant was unduly criticised whilst expressing different thoughts in that the Claimant recalculated an order for refractory bricks from Derrick Maher and was told that she should not have done so on 2 August 2018.** This related to an e-mail exchange at page 230 of the bundle where Mr Maher, a senior officer who was two levels above the Claimant, on 2 August 2018 e-mailed her to say:

"Open reservations PO needed by Friday 3 August 2018

Please raise this order this afternoon and let me know when it is done."

74. In her response shortly afterwards, the Claimant replied:

“Hello, I’m in the middle of figuring out what quantity we actually need. I understand RHI’s frustration that JM has not ordered enough to as verbally estimated from procurement perspective I consider the costs wasted storage capacity lean manufacturing bricking plan availability form other sources along with delivery. Please allow me to sort it today.”

75. Miss Roberts saw that as effectively a failure to comply with a very clear instruction from a senior officer of the 1st Respondent to raise the order that day.
76. There is no doubt from that exchange that the Claimant did question Mr Maher’s instructions. It was not undue criticism, it was justified. Miss Roberts said that it was that event which was the straw that broke the camel’s back. It was the trigger for the performance review, although that performance review covered a much wider range of performance attitude and conduct as was set out in the dismissal letter. It was not ungrounded criticism.
77. Finally, there were two allegations regarding attitude.
78. **First, it was alleged that Miss Roberts used an ungrounded allegation of poor attitude and behaviour towards internal stakeholders to criticise performance and then expressed her discontent with the Claimant’s email communication. Second, the performance review meeting outcome letter issued on 30 September 2018 from Miss Roberts contained undue criticism of the Claimant in relation to her manner of speech and not adapting it to suit the audience.**
79. The Tribunal found that those allegations were not proved. The criticisms were not ungrounded or undue. They were based upon documentary evidence which Miss Roberts produced to the Claimant during the 24 August 2018 meeting. Documentary evidence was put before the Tribunal to show the basis for her decisions in respect of those matters. Importantly, there was no evidence upon which the Tribunal could find or infer any racial or gender motive. There was a documented non-discriminatory basis for the criticisms.
80. The claims of sex and race related harassment fail.

Victimisation - section 27 Equality Act 2010

81. *Section 27 – 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 about 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.*

82. For the complaint of victimisation the Claimant relied on two matters. First of all she said that before the adjournment of the performance review meeting on 24 August 2018, she verbally complained that she was picked on and treated unfavorably.

83. The Respondent submitted that did not qualify as a protected act. The Tribunal came to a different conclusion. During the course of the hearing (page 285) that is the first page of the 24 August 1998 hearing, in the middle of that page Mr Thornton, on behalf of the Claimant, referred to overdue training and said that the Claimant was being singled out. Mr Thornton said:

“Don’t want to pursue it, my belief this is a cultural thing - Asiatic people are to the point. Don’t say please and thank you. They are direct. Cultural thing, can seem rude. Be more diverse and accepting of different cultures. ... Based on my dealings I’m offended on her behalf. Not treating her the same way. Not you. Company needs diversity training.”

84. And then on page 298 the Claimant herself said this at the end of the page:

“I also feel treated differently to other employees and other team members. Unfavourably treated, allegations against me not substantiated, some things others did could be tolerated. Being put in situations with severe consequences, feel unfair.”

85. The Tribunal found that taken together, that would qualify as a protected act under section 27(2)d.

86. The second alleged protected act is at page 333. The Respondent accepted that the complaint of discrimination in the grievance presented on 26 September 2018 was a protected act. Under the heading of discrimination the Claimant provides detail but the paragraph starts:

“I’m the only Chinese national and East Asian female in the Purchasing Department. The mistreatment is so strikingly noticeable in comparison and overly and covertly linked to my positive characteristics.”

87. The Claimant says that the acts of victimisation, as a result of having made the protected acts, were as follows.

88. **First of all, that the Claimant was dismissed, was placed on garden leave and was escorted to the site entrance.**
89. As found above, the dismissal was not on grounds of race. Nor was it on the grounds that she had done a protected act. The Claimant was escorted to the site entrance, that is a fact, but it was not because of her race or sex and not because she had done a protected act. There was no causal link between those matters and the protected acts. The dismissal was because of concerns about performance, reliability and attitude. It had nothing to do with the protected acts.
90. **Another allegation of a detriment was that the 1st Respondent told her that she would not receive payment in lieu of accrued holiday and that all accrued leave must be taken during the garden leave period.**
91. As stated above, the holiday pay was in fact paid. There was no further detail of that but there was no causal link between the protected acts and being told she would not receive pay for accrued holiday and that accrued leave must be taken during the garden leave period. It is not uncommon for employees who are dismissed with notice to be required to take untaken leave during the notice period. There was no causal link with any protected act.
92. **Finally, there was an alleged detriment that there was a failure to handle the dismissal appeal properly and that the Claimant did not receive the outcome letter in relation to the appeal against her dismissal.**
93. It is clear that the outcome letter was correctly addressed to the Claimant although there was no reason to doubt her evidence that she did not, in fact, receive it. Items do get lost in the post. The Tribunal was satisfied that the outcome letter was sent and there was nothing more that the Respondent could do other than to send it to the Claimant's address.
94. So far as failing to handle the dismissal appeal properly, that is a vague and wide-ranging complaint. There was an appeal chaired by Mr Knowles. The Tribunal concluded that he could have done more by looking at the background evidence which Miss Roberts used in support of her dismissal. Mr Knowles confirmed that he knew about the grievance in his outcome letter and he also confirmed that in his witness statement. He had the notes of the meeting and also had the dismissal letter and the Claimant's appeal, all of which contained details about those matters. So, he knew about the grievance but, as before, we could find no evidence upon which we could find or infer that he found the appeal to be unsuccessful because the Claimant had made protected acts. There was no evidence whatsoever that he was influenced by those protected acts and no link between his decision on the appeal and the protected acts.

Summary

- 95. In summary, the Tribunal has not found any of the Claimant's claims proved. The fairness, or lack of it, of any treatment of the Claimant cannot, by itself, without more, amount to discrimination. There was no evidence of any animosity towards the Claimant's race or sex by the 1st or 2nd Respondent. Indeed, the 2nd Respondent recruited the Claimant and was fully aware of her race and gender. At no point, apart from in terms of her own speculation, did the Claimant take the Tribunal to any evidence which would support her race and sex claims.
- 96. There were no actual comparators in this case except in relation to the matter of short notice working from home requests and the requests for external training but, in respect of those two matters, there were material differences between the circumstances of the people involved and the Claimant's circumstances.
- 97. It was undisputed that the 1st Respondent had an ethnically diverse workforce and there was no evidence of any other discrimination claims or allegations against either the 1st or the 2nd Respondent.
- 98. There was no evidence whatsoever upon which the Tribunal could find or infer any racial or gender motive for any of the treatment alleged. And there were plausible and documented non-discriminatory reasons shown for the conduct of the Respondents towards the Claimant.
- 99. It follows that all claims fail and are dismissed.

I confirm that this is the unanimous Judgment in the case of Miss W Yang v Johnson Matthey and Miss Vikki Roberts case no. 3300406/2019 and that I have dated and signed by electronic signature.

Employment Judge Vowles
Date: 31 December 2020

Sent to the parties on:

7th January 2021

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T Henry-Yeo

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For the Tribunals Office