



EMPLOYMENT TRIBUNALS

Claimant: Mr B Marren

Respondent: Joda Freight Ltd

HELD by CVP

ON: 30 & 31 March 2021

BEFORE: Employment Judge Shulman

**Members: Ms H Brown
Dr D Bright**

REPRESENTATION:

Claimant: In person

Respondent: Ms T Patala, Solicitor

JUDGMENT

The Judgment of the Employment Tribunal is that the claim of sex discrimination is hereby dismissed.

REASONS

1. Claim

1.1. Sex discrimination.

2. Issues

2.1. The issues in this case are recorded in a preliminary hearing on 9 November 2020.

3. The law

3.1. This is a case of direct discrimination – sex, and the provision relating to direct discrimination is set out at section 13(1) Equality Act 2010 (EA). It says: “*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.*” Sex is a protected characteristic.

- 3.2. The law is well settled in cases of direct discrimination. An employer directly discriminates against a person if it treats that person less favourably than it treats or would treat others and the difference in treatment is because of a protected characteristic.
- 3.3. It is for the claimant to prove facts from which the Tribunal can conclude, in the absence of any other explanation, that an employer has committed an act of direct discrimination, and then the Tribunal is obliged to uphold the claim unless the respondent can show it did not discriminate (see section 136 EA).

4. Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

- 4.1. The claimant was employed by the respondent as a caretaker/cleaner from 16 December 2019 until he was dismissed on or about 28 August 2020.
- 4.2. In January 2020 the claimant was cleaning the room of Mr D Wareing, a director of the respondent, when the claimant informed Mr Wareing that there was a story about Kath Field (who we shall call Kath in this Judgment), who worked in the accounts department of the respondent, whereby the claimant thought that Kath would make problems for the claimant in his employment with the respondent. The claimant said he was the reason why Kath was divorced from her husband and that the claimant used to work with or for her husband and that he had something to do with Kath's husband losing her job. Mr Wareing paid little attention to this story.
- 4.3. In March 2020 the claimant said more or less the same thing to Mr Neil Tullet, who was his line manager. For the record the claimant told us that Kath never told the claimant that she Kath had a grudge against him, the claimant.
- 4.4. The claimant went on furlough on or about 2 April 2020 and returned to work on or about 18 May 2020.
- 4.5. On 29 June 2020 the respondent sought to introduce cleaning check list sheets for the communal areas in the respondent organisation and the claimant was instructed to complete these forms evidencing cleaning and in fact the claimant did complete these forms on both 30 June 2020 and 1 July 2020.
- 4.6. On 1 July 2020 Mr Tullet received a complaint about the poor standard of cleaning in the kitchen from Mr M Weindelmeyer, a director of the respondent, which was supported by photographs of signed cleaning sheet.
- 4.7. On the same day Mr Tullet spoke to the claimant about the standard of cleaning. It was at this point that the claimant alleged that Kath had sent in these photographs and the claimant refused to sign the sheets and indeed never signed another sheet until his dismissal, which was connected to that conduct. The claimant said to the Tribunal that he could not prove that Kath took the photographs. He admitted to us that he did not see her doing so.

- 4.8. After 1 July 2020 Mr Tullet had probably four more conversations with the claimant to discuss the claimant's reluctance to sign the sheets but the claimant would not move, because of his view that the complaints had come from Kath, not Mr Weindelmeyer. The claimant said that if he was forced to sign the sheets he would leave the employment of the respondent. The claimant alleges that on or about 20 July 2020 he told Mr Wareing about the issue and that Mr Wareing said he should leave it with him. Mr Wareing told us that such a discussion never took place. We prefer the evidence of Mr Wareing.
- 4.9. The result was an informal meeting between the claimant, Mr Tullet and a Ms Robyn Lee of human resources. In that meeting the claimant again alleged that the complaint came from Kath and for the first time the claimant alleged that Kath should have been approached by the respondent for bullying in the workplace.
- 4.10. So far as the bullying issue was concerned Ms Lee asked if the claimant had issued a grievance and the claimant said he had not.
- 4.11. Ms Lee pointed out to the claimant that if no grievance had been raised his complaint would not be dealt with formally.
- 4.12. Unconnected with the alleged bullying the claimant was suspended for his conduct, to be investigated particularly relating to the claimant's continued refusal to sign the sheets. This was confirmed in writing to him on the same date as he was suspended.
- 4.13. On 10 August 2020 Ms Lee sent an email to the claimant attaching the company handbook and inviting the claimant to raise his grievance in writing with a director. The Tribunal examined the respondent's grievance procedure, which is to be found in the handbook, with the claimant and he was unable to give any reasonable explanation as to why he did not follow the grievance procedure then or at any time. We find as a fact that any person alleging bullying ought reasonably to invoke the grievance procedure. The Tribunal also examined with the claimant the bullying and harassment policy of the respondent, found in the employment handbook, and the claimant showed disinterest to the Tribunal in the terms of that bullying and harassment policy.
- 4.14. In connection with the claimant's alleged conduct Mr L Ryan was appointed to conduct an investigation. He was the stock and systems manager of the respondent.
- 4.15. The claimant was invited to an investigatory meeting on 11 August 2020 but that was re-arranged for 18 August 2020. In that meeting the claimant said he thought that Kath was bullying him and that he would not appease her by signing the sheets. Mr Ryan told the claimant that the investigation was nothing to do with the issue relating to Kath. He said it was about the claimant's refusal to sign the sheets. During the meeting the claimant's alleged grievance relating to bullying was raised. Not only had a grievance not been lodged but at that stage the claimant had not even read the grievance procedure in the handbook. Mr Ryan lodged his report on 18 August 2020 and another director, Mr J Collett, convened a disciplinary meeting. Because it was for an issue unrelated to this claim of sex discrimination and because it took place in the absence of the claimant so nothing more could be said by the claimant about his complaint we find it

unnecessary to find facts in relation to the disciplinary process, save that the claimant was dismissed for gross misconduct being gross insubordination for the claimant's repeated refusal to carry out a reasonable request from the claimant's direct line manager. The claimant did not appeal despite having the right to do so and being invited to do so.

- 4.16. An allegation of sex discrimination was never mentioned during the period of the claimant's employment. Furthermore in the absence of a formal grievance, and even if such a grievance alleged the respondent treating the claimant less favourably than someone else, we find as a fact that there were no circumstances in which the respondent could make or reach such a reasonable conclusion in this case.

5. Determination of the issues

(After listening to the factual and legal submissions made by and on behalf of the respective parties):

- 5.1. The claimant is alleging that he was treated less favourably than a woman would have been treated in the circumstances. That is probably a woman doing a job not materially different from his own. The claimant has not offered a comparator, so we have to decide whether the claimant was treated worse than someone else would have been treated. The claimant's complaint seems to be that the respondent failed to take his complaint about bullying by Kath seriously and that a woman's complaint in the same position would have been taken seriously. Behind the alleged maltreatment by the respondent was an allegation of bullying by Kath. The difficulty for the claimant is that he never particularised the bullying nor did he tie it to alleged discrimination. It is indeed unclear that the respondent treated the claimant less favourably than anyone else and in those circumstances the claimant does not get near to the issue of the protected characteristic as required by section 13(1) EA, namely sex.
- 5.2. The claimant has failed to prove facts from which the Tribunal can conclude in the absence of any other explanation that the respondent committed an act of discrimination. The claimant was to a large extent the author of his own misfortune as he refused to spell out to his employers what he was talking about by lodging a formal grievance and that was substantially the case before us.
- 5.3. In all the circumstances the claim of sex discrimination is dismissed.

Employment Judge Shulman

Date: 8 April 2021

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