EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss M Lewicka	**v**	**Hartwell Plc**

Heard at: Watford via CVP **On**: 12, 13, 14 and 15 April 2021

Before: Ms B Robinson, Mr T Chapman and Employment Judge

Appearances

For the Claimant: in person
For the Respondent: Mr Wright, of Counsel

JUDGMENT

1. The claimant has suffered:

   1.1. Victimisation;
   1.2. Indirect discrimination on the grounds of sex;
   1.3. Less favourable treatment as a part time worker.

2. The Tribunal had no jurisdiction to consider the claimant's complaints of direct sex discrimination or harassment because they are out of time and it was not just and equitable to extend time.

3. The claimant's claim that she suffered discrimination arising from disability fails.

4. The claimant has been unfairly dismissed.

5. The claimant is entitled to £7.08 as the basic award.

6. The claimant is awarded loss of earnings of £579.

7. The claimant is awarded £500 in respect of loss of statutory rights.

8. The claimant is awarded £22,000 in respect of injury to feelings.

REASONS

Background

1. The claimant was employed from 6 May 2014 as a telephone receptionist at the Watford dealership of the respondent. In 2016 the respondent started a contact centre and ultimately it was planned that all calls would be directed through the contact centre eventually leading to the redundancy of the telephone receptionist roles. In November 2016 the Watford dealership was closed for a rebuild and it did not ultimately open until April 2018. The claimant, like all other staff at the Watford site, transferred to the Hemel Hempstead site during the build period. At Hemel Hempstead the claimant carried out various tasks which included some telephone receptionist work and some work on the service reception. There is some dispute about what discussions took place about the claimant becoming a full-time service adviser when they returned to the Watford site.

2. On 9 March 2018 the claimant submitted a grievance relating to pay, working hours and the behaviour of Mr Mark Benson. The grievance process concluded on 28 March 2018 with a finding that Mr Mark Benson had committed gross misconduct and had been issued with a final written warning. The claimant was moved to the sales department. The claimant appealed the grievance's decision at the start of April 2018 and this was concluded on 23 April 2018. The claimant was permitted to work from home until the Watford dealership reopened which was a short period of time. On 8 November 2018 a redundancy process was started and the claimant was ultimately dismissed on 2 January 2019.

3. The claimant's ET1 was received by the tribunal on 24 April 2019. A preliminary hearing took place on 11 February 2020 however it was not possible to produce a list of issues or conclusively determine the scope of the claimant's claims at that hearing. A further preliminary hearing took place on 10 July 2020. This preliminary hearing addressed various matters and refused permission for the claimant to amend her claim in various respects. It also sought to but did not produce a final list of issues. Some consideration was given to time-limit issues however Judge Tynan did not make a final decision on the issues explicitly leaving it open for the final hearing to make a decision on time limits.

The hearing

4. The hearing proceeded via CVP. The only difficulty with communication or connection was that at one point Mr Chapman lost connection. He was able to reconnect promptly and evidence was restarted from the point at which he left the hearing. There were no other problems with communication or connection.

5. On the first morning of the hearing the tribunal took some time to read the documentation. There was also some discussion about the list of issues. The respondent had produced a list of issues and the claimant had produced written submissions which also had the appearance in some respects of a list of issues. Judge Bartlett went through the issues to clarify whether some claims were in fact disputed and whether all the claims were pursued. The respondent confirmed that it was not disputed that some of the alleged acts of direct sex discrimination and harassment had factual taken place. This was sensible given

that the grievance process had concluded that some of the alleged acts had taken place. The claimant confirmed that she was not pursuing a claim under section 18 EqA on the basis of discrimination on the grounds of pregnancy.

6. It was agreed that the respondent's list of issues would be largely used as a list of issues but the claimant's written submissions also provided some details on some of the claims which was needed to understand the claims. The claimant has brought a substantial number of claims under different legal headings. We will set out our findings in relation to these events not in the order set out in the list of issues.

7. Mr Bradley, Mr Wright and the claimant appeared as witness when they adopted their witness statements and were asked questions. The full detail of the questions and answers is set out in the record of proceedings. The witness evidence was concluded on the first day of the hearing. Submissions were heard on the morning of the second day. The tribunal deliberated on the second and third day and Judgment and remedy were given on the morning of the fourth day. The respondent requested written reasons.

The Law

8. S98 of the Employment Rights Act 1996 sets out the legal test which must be applied to determine whether or not a dismissal is fair:

"General.

(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a)the reason (or, if more than one, the principal reason) for the dismissal, and

(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2)A reason falls within this subsection if it—

(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b)relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3)In subsection (2)(a)—

(a)"capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b)"qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b)shall be determined in accordance with equity and the substantial merits of the case."

9. S13 of the Equality 2010 sets out the test for 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.

(2)If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim…

(5)If the protected characteristic is race, less favourable treatment includes segregating B from others…"

10. S27 Eq sets out the test for victimisation*:*

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

11. S26 EqA sets put the test for harassment:

" *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.

(2)A also harasses B if—
(a)A engages in unwanted conduct of a sexual nature, and
(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—
(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
(b)the conduct has the purpose or effect referred to in subsection (1)(b), and
(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct."

12. s19 EqA sets out the test for indirect discrimination:

"Indirect discrimination
(1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a)A applies, or would apply, it to persons with whom B does not share the characteristic,
(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c)it puts, or would put, B at that disadvantage, and
(d)A cannot show it to be a proportionate means of achieving a legitimate aim."

13. S15 sets out the test for discrimination on the grounds of disability:

"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."

14. S5 and 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 sets out the following:

"Less favourable treatment of part-time workers

5.—(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—

(a)as regards the terms of his contract; or
(b)by being subjected to any other detriment by any act, or deliberate failure to act, of his employer….

Unfair dismissal and the right not to be subjected to detriment

7.—(1) An employee who is dismissed shall be regarded as unfairly dismissed for the purposes of Part X of the 1996 Act if the reason (or, if more than one, the principal reason) for the dismissal is a reason specified in paragraph (3).

(2) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on a ground specified in paragraph (3).

(3) The reasons or, as the case may be, grounds are—

(a)that the worker has—
(i)brought proceedings against the employer under these Regulations;
(ii)requested from his employer a written statement of reasons under regulation 6;
(iii)given evidence or information in connection with such proceedings brought by any worker;
(iv)otherwise done anything under these Regulations in relation to the employer or any other person;
(v)alleged that the employer had infringed these Regulations; or
(vi)refused (or proposed to refuse) to forgo a right conferred on him by these Regulations, or
(b)that the employer believes or suspects that the worker has done or intends to do any of the things mentioned in sub-paragraph (a)…"

Burden of Proof

15. s136 of the Equality Act 2010 sets out the burden of proof which applies to discrimination cases:

"(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."

16. In *Igen Ltd v Wong the Court of Appeal approved the guidance given in Barton v Investec Securities Ltd [2003] IRLR 332* concerning the burden of proof in discrimination cases which is that:

"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail….

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive."

Findings of fact

17. We make the following general findings of fact. Other findings of fact relevant to specific legal claims are set out in the sections of this judgement dealing with those claims.

18. Mr Bradley's statement at para 22 states:

> 22. Nick Wright investigated the grievance and as part of that he interviewed me on 23 March 2018 (p.104-105). I answered all his questions honestly, and at the end I told him that I was suspicious of the Claimant's motives in bringing the complaint. I really felt that she was trying to force the Respondent's hand into allowing her to become a part-time Service Advisor at Watford, even though this did not really meet the needs of the business. I I was not convinced that she had actually ever intended to be full-time, but was aware I guess that we would not have agreed to let her re-train if she had said this from the outset and instead would have been made redundant from her Telephone Receptionist role. I obviously did not know what had happened between her and Mark Benson, but I really felt that anything serious or that she found offensive she would have told me about at the time, and instead she was over egging the pudding to suit her needs.

19. This is part of a witness statement which Mr Bradley wrote as his evidence in this case which is to defend allegations of vicitimisation and discrimination amongst others. We would expect that he carefully considered what he wrote. Despite this the paragraph questions the claimant's motives, seeks to undermine the seriousness of the discrminatory conduct of Mr Benson and questions the genuine nature of the claimant's complaint. There is an element of bitterness in the paragraph. The questioning of the truthfulness and seriousness of the claims against Mr Benson is surprising given the findings of the respondent's grievance investigation which found that Mr Benson had committed a number of acts of sexual harassment but only those witnessed by third parties and the conclusion that he had committed gross misconduct.

20. The claimant commenced work as a part time service advisor at Watford when it reopened in April/May 2018. There was one full time service Advisor and another service advisor, Mr Alex Whitaker, was redeployed from Hemel Hempsted to Watford as a full time Service Advisor. It is unclear exactly when this redeployment took place as no party provided the dates however we would assume it was around the re-opening dates. Mr Bradley's evidence was that Mr Whitaker had asked for a transfer. However we find this situation problematic for the following reasons:

    20.1 Mr Bradley's statement at paragraph 24 sets out Wright, the Claimant returned as a part time Service Advisor. I ended up having to employ a 2nd full time Service Advisor, giving me 2.5 Service Advisors as I could not operate with only 1 full time person and it was not feasible to have 2 part-time people as it did not give sufficient continuity for customers.

    20.2 We consider that that statement sets out that Mr Bradley had decided with a closed mind that he wanted full time Service Advisors not that there was a business need for 2.5 Service Advisors;

    20.3 Mr Whitaker was not redeployed on a temporary basis whilst business needs were assessed;

    20.4 Mr Bradley did not make an open minded assessment of whether the role of Service Advisor could be carried out on any basis other than full time. There is no evidence that he explored if and how the role could be carried out on a part time basis and has instead relied on assumptions. The respondent relied on the need for contiuity of service to customers, making reference to the Customer Satisfaction Index. However the only evidence we were referred to was the statements in Mr Bradley and Mr Wright's witness statement. This is insufficient.

Indirect sex discrimination s19 EqA

21. The PCP identified was requiring all service advisers to work or be the available to work full-time. It was not disputed that this was a PCP.

22. The disadvantage identified was that the claimant as a single woman with child care commitments, was at a particular disadvantage because (a) she was

unable to combine those commitments with working full time and / or (b) she was unable to make suitable child care arrangements and / or (c) afford to pay for any such arrangements.

23. Mr Wright urged the tribunal to approach the claimant's claim with caution as she did not provide any statistical evidence to support her assertion. We recognise the merit in this approach however the tribunal is comfortable reaching a conclusion without specific statistical evidence by relying on its own general knowledge and experience which includes knowledge of documents in the public domain such as the Office for National Statistics 'Families in the labour market 2019' report which identifies that 3 in 10 mothers compared with 1 in 20 fathers had reduced their working hours because of childcare reasons. This is the approach endorsed in *Chief Constable of West Midlands Police v Blackburn and anor 2008 ICR 505, EAT* The tribunal recognises that there have been significant changes in the labour market but it does not consider that the burden of childcare has shifted to an equal balance between men and women and the effect on women's ability to participate in the workforce is still significant. We conclude that a significantly greater proportion of women work part time due to childcare commitments.

24. The tribunal finds that the claimant as a single woman with child care commitments has suffered a disadvantage from the respondent's requirement that Service Advisors work full-time namely she was selected for redundancy and dismissed.

25. The respondent relies on the legitimate aim of providing continuity of contact or service with customers and the aim of maintaining customer satisfaction as measured by the customer satisfaction index which is assessed by Ford and had financial implications. The respondents position is that this could only be achieved by full-time rather than part-time Service Advisers.

26. We find that the maintenance of customer satisfaction is a legitimate aim however the PCP requiring Service Advisers to work full-time without exception is not proportionate to achieving this aim. The only evidence before the tribunal about the need for continuity of service to customers and the importance of this to customers was that set out in Mr Bradley and Mr Wright's witness statements. Further, the statements about this matter in both their witness statements are vague and lacking in specific detail. The tribunal was not referred to any customer service surveys, any research that was undertaken with customers about their experiences of part-time or full-time service advisers or any evidence to support the assertion that full-time positions were needed. Mr Bradley's evidence was that he had always had full-time service advisers and he had worked in the business since 1995. We find that Mr Bradley has a preference for full-time service advisers and he has closed his mind to the possibility of part-time Service Advisers without testing his assumptions or considering processes that could be put in place to ensure continuity of service to customers. It seems to the tribunal that processes such as handover briefings or papers to give just one example could be put in place to ensure continuity of service. Further, the evidence before us is that between the period of late April 2018 until her dismissal the claimant was carrying out the Service Adviser role

on a part-time basis and there is no evidence that this was unsatisfactory to customers or had a detrimental effect on their satisfaction.

Victimisation s27 EqA

27. It was not in dispute that the claimant had carried out a protected act in the form of her grievance made on or about 9 March 2018.

28. We remind ourselves that the essential question in determining the reason for the claimant's treatment is always the same: what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment?

29. The claimant asserted that she suffered 7 detriments. We will set out the alleged detriment and our findings of fact on these in turn.

30. From May 2018, excluding her from the company lunch held on the last Friday in each month?

31. The claimant's evidence was that when she was at the Hemel site managers went around the employees asking them for their lunch order whether that was pizza, fish and chips or something else. The claimant was asked even though her working hours finished at 1 PM. When she moved to Watford other employees were asked but she was not asked if she wanted to order food or participate. Mr Bradley's evidence was that these were informal lunches, there was no specific date, they were ad hoc and were may be around once or twice a year. He was not at the Watford site all the time so he could not say how often they happen. He referred to them as pizza Fridays.

32. We prefer the claimant's evidence on this matter. We accept that the lunches may have been ad hoc and they were informal. However the claimant gave clear evidence that at Hemel a manager went around the site taking lunch orders and that she was included. However when she moved to Watford she was not asked if she wanted to order or participate whereas other colleagues were. We do not accept Mr Bradley's evidence that all employees took lunch between 1pm and 2pm and because the claimant finished work at 1pm she was excluded. She could have been asked if she wanted to join in and her evidence that some lunch breaks were staggered was more convincing given the public facing nature of some of the roles. We find that the lunches were a regular occurrence, Mr Bradley called them "pizza Friday" which suggests regularity. We accept the claimant's evidence that they happened roughly monthly. The claimant moved to Watford within weeks of the conclusion of her grievance and in the absence of any other explanation for this situation we find that her exclusion was victimisation which continued until around the time of her dismissal.

33. During May - August 2018, pressurising her to record sickness absence as annual leave? And On 15 May 2018, not paying C when absent following a surgical procedure?

34. We find that these are not acts of victimisation. Mr Bradley gave clear evidence that numerous named employees were treated in a similar manner and we accept this evidence. Therefore there was no connection between the alleged detriment and the protected disclosure.

35. In May 2018, being informed that the claimant's rate of pay had been cut?

36. Mr Bradley gave detailed evidence about how the claimant had been overpaid and how this occurred. We accept his evidence and find that her pay was not cut instead she had been overpaid for a period of time then this overpayment was stopped. The claimant could not identify that her pay had been increased and this had been communicated to her. Instead she had assumed her pay had been increased until she was informed otherwise.

37. In March-April 2018 not being spoken to by Karen Futcher and Bridget Watson (both employees of R)?

38. The respondent has not provided evidence to dispute the claimant's claim. In light of the circumstances in which have found some acts of victimisation and the failure of the respondent to provide evidence from the two individuals that they did not act in this way, we find that this situation occurred. We find that it was detrimental and that it was as a result of the protected disclosure and was therefore an act of victimisation.

39. On many occasions, did Bridget Watson put the phone down on her if the claimant answered the call?

40. Again the respondent has not provided evidence to dispute the claimant's claim. In light of the circumstances in which we have found some acts of victimisation and the failure of the respondent to provide evidence from the individual that they did not act this way. We find that it was detrimental and that it was as a result of the protected disclosure and was therefore an act of victimisation.

41. The claimant's dismissal

42. We find that the dismissal was motivated by the claimant carrying out part time work not the protected act.

43. We do not consider that the protected act was any part of the reason for the claimant's dismissal. The respondent had the opportunity to dismiss the claimant around March 2018 when all the telephone receptionist roles across the dealerships were made redundant and if the protected act was a driver for the claimant's dismissal it could have taken that opportunity to dismiss her under the guise of redundancy. Further, at that time Mr Bradley anticipated that the claimant would move to Watford as a full time Service Advisor. His evidence was that he had anticipated this since November 2016. We accept this evidence of Mr Bradley, it is entirely consistent with his closed mind that Service Advisor roles must be carried out on a full time basis. In addition the claimant and Mr Bradley accepted that over the years there had been some discussions between the parties about the claimant moving to full time Service Advisor role.

Direct Sex Discrim s13 EqA and Harassment s26 EqA

44. We find that all the alleged acts of direct sex discrimination and harassment are out of time. The last act occurred on 13 March 2018 this predates the submission of the ET1 by over 12 months. We have found that the dismissal was discriminatory however we find that the individuals involved in the dismissal and the acts of victimisation are different to the perpetrator of the direct discrimination and harassment (Mr Benson). There is too long an elapse of time, the individuals involved are different and the acts are of a different nature for all the acts to form a continuing course of conduct. We found that the only indirect sex discrimination related to the dismissal and this was 9 months after the last alleged act of direct discrimination. We recognise that we have found that the victimisation detriments have continued largely throughout 2018 however as these were not carried out by Mr Benson and are quite different in nature we find that there were not a continuing act.

45. We have considered whether or not it is just and equitable to extend time under s123 of the EqA and we find that it is not. We adopt Judge Tynan's findings from the preliminary hearing that the claimant was taking advice from the CAB, she had said that she had over 20 meetings, and she had decided for reasons personal to her not to bring a claim at this time. He also found that her health was not a material factor in her conduct. When this is combined with the elapse of time from the date of the events to the submission of the ET1 we consider that it is not just and equitable to extend time in all the circumstances. We recognise that this may different to Judge Tynan's conclusions however we have had the benefit of hearing all the evidence in this case and reaching substantive conclusions on the claims including the nature of the acts, who carried them out and in what circumstances.

Discrimination arising from disability s15 EqA

46. For the purposes of these allegations we are prepared to accept that the something arising in consequence of the claimant's disability is, as the claimant contends, the need to attend medical appointments and/or take time off work.

47. We do not accept that the claimant suffered unfavourable treatment because in relation to all the alleged unfavourable treatment the claimant has failed to discharge the prima facie burden of proof. She has made an assertion but nothing more and in the circumstances of the case we find that this is insufficient.

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

48. We find that the claimant was employed on a contract comparable to full time workers in the same employment, namely 2 full time Service Advisors who worked at the Watford dealership.

49. In considering these issues we must carry out a 4 stage assessment, namely: First, what is the treatment complained of? Secondly, is that treatment less favourable than that of a comparable full time worker? Thirdly, is the less

favourable treatment on the ground that the worker was a part time worker? Fourthly, if so, is it justified?

50. We have also given consideration to **Hendrickson Europe Ltd v Christine Pipe 2003 WL 1822905** which sets out that:

"19. It must be right that in interpreting the Regulations so as to give effect to their providing proper protection for part time workers like Mrs Pipe, an Employment Tribunal has to see what happened in its full context. Thus in this case "the treatment" incorporated the continued pressure on her to work full time, that she would have to work full time if she wished to remain in employment, the selection for redundancy process devised by the employers as it applied to Mrs Pipe (which meant that her dismissal became inevitable), and finally her dismissal."

51. The claimant alleges that the following were acts of less favourable treatment:

52. C was paid less than other employees on comparable full time contracts from 2017

53. C was told on 14-07-17 that if she did not accept a 'full time position' things would get awkward'

54. C was placed at risk of redundancy on 08-11-18

55. She was selected for / given notice of redundancy on 05-12-18

56. She was not offered alternative work between 08-11-18 and 02-02-19

57. She was dismissed on 02-01-19

58. We find that the claimant has failed to establish that the difference in pay was less favourable treatment on the ground that she was a part time worker. We accept the respondent's evidence that Mr Whitaker was more experienced and has a significant background in the motor industry which included a degree in motorsports engineering. His experience in the industry and role were the reasons for the pay difference. The claimant did not identify that any other comparators were paid more.

59. C was told on 14 July 2017 that if she did not accept a full time position things would get awkward.

60. This allegation is over 12 months before the other allegations and we find that it is not a continuing act. We find that it is out of time and we repeat our findings in relation to this issue.

61. The remaining allegations are in essence one allegation and that is that she was dismissed because she was a part time worker. We consider this allegation next.

62. We find that the claimant has suffered less favourable treatment than a comparable full time worker because the claimant alone was pooled, selected for redundancy and made redundant. The respondent's own evidence is that

this occurred because she was a part time worker and if she agreed to work full time she would be placed in a different pool and may 'bump' other employees. No full time workers received this treatment and it is clearly less favourable.

63. We find that the less favourable treatment was on the ground that the claimant was a part time worker. As set out above Mr Bradley and Mr Wright's evidence was that the respondent had decided that there could not be part time Service Advisors. The redundancy announcement sets out "*We have considered the feasibility of operating the Service Reception with 1 full time Service Advisor and 2 Part time Service Advisors (am and pm) but have concluded that this would not provide the required continuity of service to our customers*." We find that the claimant was dismissed simply because she worked part time and would not agree to work full time.

64. We find that the less favourable treatment cannot be justified because aside from assertions (see our findings on this issue in this judgement) there is no evidence to support the statement that full time Service Advisors are required to ensure customer satisfaction at appropriate levels.

Unfair Dismissal s94 and s98 ERA

65. As set out above we have found that the claimant's dismissal was indirect sex discrimination. We find that the respondent has not established that s139(b)(i) ERA is satisfied. This is because there has been no diminishing of the requirements of that business for employees to carry out work of a particular kind. Even if there was a reduction in the need of the business for the equivalent of from 2.5 full time roles to 2 full time roles this does not lead to a reduction in the requirement for employees as the roles can be carried out by the same number of employees but with part time working.

66. Even if we were wrong in the above analysis and the respondent had been able to establish a fair reason for dismissal namely redundancy, we find that the dismissal was unfair under s98(4) ERA because we have found that there were two acts of discrimination in respect of the claimant related to her dismissal: the indirect sex discrimination and the less favourable treatment of her as a part time worker. Further, we find that the selection process for the redundancy was unfair because the claimant and the only part time employee was the only person placed in the redundancy pool. This was because the respondent had decided before the start of the redundancy process that it would not consider part time Service Advisor positions. It only considered the claimant for redundancy and did not give consideration to alternatives to redundancy such as part time roles. We have repeatedly set out criticisms of the respondent's fixed mindset that would not accommodate part time service Advisors and that this was discriminatory.

Conclusions

67. The claimant has suffered:

    67.1 Victimisation;
    67.2 Indirect discrimination on the grounds of sex;

67.3 Less favourable treatment as a part time worker.

68. The claimant has been unfairly dismissed.

Remedy

69. The claimant was paid a redundancy payment of £796.92 and claims a basic award of £804. Off setting the redundancy payment the claimant is entitled to £7.08 as the basic award.

70. In relation to the loss of earnings award for unfair dismissal we award the claimant 3 weeks loss of earnings at a total of £579. This is the amount claimed by the claimant and we consider that it is an accurate and reasonable representation of her loss.

71. The claimant confirmed at the hearing that she did not claim any loss in respect of pension..

72. We award £500 for loss of statutory rights.

73. We note the following in relation to the injury to feelings:

73.1 The background to this claim is that the claimant suffered sexual discrimination by her manager Mr Mark Benson over a period of approximately 6 months. We have not considered these claims because we have found them to be out of time. However the respondent concluded in an internal grievance process that a number of events occurred and sanctioned Mr Benson with a final written warning having found that he committed gross misconduct. As a result of the claimant's grievance about this sexual discrimination we have found, as set out above, that she suffered 3 acts of victimisation and that her dismissal was discriminatory. We have also found that the respondent was in breach of the Part time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

73.2 The claimant's evidence was that she now suffers from eczema, IBS and migraines as a result of these events. This was unchallenged and we are prepared to accept her evidence particularly as we saw the claimant give evidence.

73.3 To summarise the claimant suffered 3 acts of victimisation over a period from May 2018 to her dismissal on 2 January 2019 and her dismissal was discriminatory. We find that these facts make the case serious. We find that the middle band is appropriate and award £22,000.

74. We have decided not to make an uplift to the award because the respondent carried out a redundancy process and addressed the claimant's appeal. There is no breach of the ACAS code.

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Employment Judge Bartlett

Date: 15 April 2021……..

Sent to the parties on: 26 April 2021

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For the Tribunal Office