



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Wood

**Respondent:** Refresco Drinks UK Limited

**Heard at:** Nottingham

**On:** 22 & 23 February 2021  
**Reserved decision:** 12 March 2021

**Before:** Employment Judge Victoria Butler  
Mr A Beveridge  
Mrs L Lowe

## Representation

**Claimant:** In person

**Respondent:** Ms T Vittorio, consultant

# RESERVED JUDGMENT

The unanimous decision of the Employment Tribunal is:

1. The Claimant's claim of victimisation is not well-founded and is dismissed.

# REASONS

## Background

1. The Claimant presented her claim to the Tribunal on 23 October 2019 following a period of early conciliation between 6 September 2019 and 14 October 2019. Her original complaints were of unfair dismissal, age discrimination and sex discrimination.
2. The case was previously subject to two closed preliminary hearings for case management purposes on 10 February 2020 and 6 May 2020. Thereafter, an open preliminary hearing was conducted by Employment

Judge Blackwell (“EJ Blackwell”) on 22 October 2020 at which the Claimant’s claims of sex and age discrimination were dismissed because they were presented out of time. EJ Blackwell determined that the only claim permitted to proceed was that of victimisation.

### **The issues**

3. The issues before us were identified and agreed by the Claimant at the hearing before EJ Blackwell as follows (pages 60 -61):

3.1 *“That Ms Woods line manager Trevor Cadden refused to release his interview transcript from the grievance procedure commenced by Ms Woods on 27 May and further that Mr Cadden had a conversation with Kam Singh and Steve Wishart, two of the other Purchasing Managers to instruct<sup>1</sup> them not to release their transcripts. Ms Woods refers to an email which is at number 123 of the bundle prepared for the preliminary hearing held on 22 October and is dated 25 July 2019 (**Detriment 1**).*

3.2 *That Trevor Cadden the Claimant’s Line Manager from June 2019 to August 2019 stopped including Ms Wood in team meetings, those being the weekly and monthly team meetings (**Detriment 2**).*

3.3 *That Mr Cadden from June 2019 to August 2019 stopped talking to Ms Wood in the Kegworth office. Only essential communication took place. There were no one to ones with Mr Cadden as had been the case before the grievance (**Detriment 3**).*

3.4 *Mr Cadden did not speak to me or ask me to reconsider. However, he did drive to Bridgwater on a 320-mile round trip to try and persuade a colleague (Hannah) who had not applied for a role in Purchasing to reconsider. I felt undervalued and unappreciated. This reinforced my opinion that I had no future in the business (**Detriment 4**).*

3.4 *On my last day in the Kegworth office Mr Cadden did not speak to me after 22 years of service. I left without a word of thank you or good wishes for the future from him. This had not been the case with other members of the team who had left the business. I felt undervalued and that all my hard work for the business over the years had not been appreciated. Generally Ms Wood alleges that her colleagues namely Graham Hall, Kim Singh, Steve Wishart and Hannah have witnessed the change in behaviour from Mr Cadden” (**Detriment 5**).*

### **The hearing**

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<sup>1</sup> NB: the Claimant’s case in her witness statement is that Mr Cadden tried to ‘influence’ Mr Singh and Mr Wishart not to release their transcripts, rather than ‘instruct’.

4. We heard the case on 22 and 23 February 2021 and made a reserved decision on 12 March 2021.
5. Prior to the hearing, the parties presented an agreed bundle and witness statements. On day two of the hearing, Ms Vittorio produced a supplementary bundle include transcripts from the Claimant's grievance investigation and the final grievance outcome letter.
6. References to page numbers in these Reasons are references to the page numbers in the agreed bundle.

### **The evidence**

7. We heard evidence from:

For the Claimant:

- The Claimant
- Stephen Kilbane (former employee and the Claimant's partner)
- Graham Hall (former employee)

For the Respondent:

- Trevor Cadden, Head of Purchasing

8. We found the Claimant's evidence at times to be unreliable, albeit we do not believe there was any intent to mislead on her part. It appears to us that she is so overwhelmed with upset and anger towards Mr Cadden that her perspective on matters relating to her employment is clouded. For example, in her witness statement she explains that one of the findings in her grievance was that Mr Cadden had *deliberately* not submitted her appraisal comments to HR, which is incorrect. The finding was that Mr Cadden accepted her comments were not submitted to HR, but that it was an oversight. It was not found that the omission was deliberate, but the Claimant has somehow read this into the grievance outcome.
9. Mr Hall's evidence was also unreliable to the extent that it lacked necessary detail. For example, he says in his witness statement that "*it was clear from the conversation that I heard that Trevor was colluding with Steve and Cam not to release their individual transcripts...*". However, when pressed in cross-examination, he was unable to explain exactly what was said that would lead him to make that statement.
10. Mr Kilbane's evidence was truthful and uncontroversial and it was acknowledged that it was from his perspective as the Claimant's partner, rather than as a direct eye witness to events.

11. We found Mr Cadden to be entirely genuine and sincere and had no concerns about the reliability of his evidence.

### **The facts**

#### *Background*

12. The Respondent is a beverage bottling and distribution company with numerous sites throughout the United Kingdom. The Claimant commenced employment with Cott Beverages in April 1997, which was later acquired by the Respondent, Refresco Limited, in 2018. Thereafter, and unsurprisingly, there were significant changes, particularly at the senior management level, and a duplication of roles and activities across the two companies
13. The Claimant was employed as a Purchasing Manager reporting to her line manager Trevor Cadden, Head of Purchasing. She had a good working relationship with both him and the wider Purchasing team, until the latter months of her employment. The Claimant had worked in Mr Cadden's team for circa ten years and was predominantly based at the Respondent's Kegworth site.

#### *Site Supply Manager ("SSM") role*

14. In the autumn of 2018, the Respondent introduced a new SSM role at its Bondgate, Nelson, Wexham and Kegworth sites. The Claimant applied for the role at Bondgate on 1 February 2019. She attended two interviews but became frustrated with the duration of the recruitment process and withdrew her application on 5 April 2019.
15. The Claimant subsequently alleged that the recruitment process was discriminatory in a grievance dated 27 May 2019 (more below).

#### *The Claimant's appraisal*

16. On 12 March 2019, Mr Cadden conducted the Claimant's annual appraisal. The appraisal system provides five ratings as follows:

*Not acceptable (1)*  
*Moderate (2)*  
*Good (3)*  
*Very good (4)*  
*Excellent (5)*

17. In eight out of eleven competencies, Mr Cadden assessed the Claimant as

a '2' and the remaining three were graded at a '3'.

18. The Claimant disagreed with Mr Cadden's assessment of her performance and completed the section on 'Employee Comments' as follows:

*"I don't consider myself moderate in anything I do so feel all my scores should be a minimum of 3 and in some cases 4. Behaviour flexibility, performance orientation, working as a team and delegating definitely need to be a three....."* (pages 113 – 118).

*Weekly and monthly team meetings*

19. Traditionally, the Purchasing Team would have both weekly and monthly team meetings and the invites were in team members' diaries.

*Weekly meetings*

20. The weekly team meetings took place on Monday mornings. They were informal sessions with no agenda or minutes, attendance was not compulsory, and they were scheduled via Skype with effect from 4 February 2019 to facilitate attendance – page 92.
21. The meetings were in the Claimant's diary until she left the Respondent and she was not excluded from attending. Any meetings that she did not attend were of her own volition and no meetings took place without her knowledge.

*Monthly meetings*

22. The monthly team meetings were more formal and structured and the Claimant was tasked with taking minutes. Either she or Mr Cadden would book the meeting room each month.
23. Monthly team meetings took place in January, February, March, April and May 2019, all of which the Claimant not only attended, but also took minutes which she distributed to her colleagues (pages 108 – 109, 111 – 112, 124 – 125, 126 – 127 and 143 – 144).
24. No monthly meetings took place after May 2019 and the Claimant was aware that was the case – she was not excluded from any meetings, nor did any take place without her knowledge.

*One-to-one meetings*

25. The Claimant also had weekly one-to-one meetings scheduled with Mr Cadden on Thursday mornings at 9:30am. They were not compulsory and were simply time set aside by Mr Cadden for the Claimant in case she

wanted to discuss anything with him. The Claimant would use the time occasionally, but only when she needed it. If either Mr Cadden or the Claimant were unavailable on any given week, it was always possible to catch up at a later date.

26. The Claimant had access to her one-to-ones as usual during the period May to August 2019, but she chose not to use them.

*Redundancy consultation and dismissal*

27. In April 2019, the Respondent announced a re-structure affecting the Claimant's department. Collective consultation commenced on 29 April 2019 and two collective consultation meetings took place with the appropriate representatives, at which Mr Cadden was present.

28. The Claimant's role was identified as at risk and she requested voluntary redundancy. Her initial one-to-one consultation meeting was held on 9 May 2019 chaired by Ms Liz Thom, HR representative. Ms Thom asked the Claimant if she wanted to apply for a new role in the structure and she responded: "*why would refresco think I'd want to apply for the roles with how I've been treated?*". Ms Thom enquired specifically about the SSM role (which was still vacant) and the Claimant was noted as saying "*yes. I still have withdrawn but feel I'm being treated poorly feel been discriminated (sic)*" (pages 128 – 131).

29. The Claimant attended a second one-to-one consultation meeting on 16 May 2019. Ms Thom asked the Claimant again about applying for roles in the new structure and she was recorded as saying: "*reflecting after meeting with Fran and Andy still can't get my head around whether I want to work for an organisation where I feel discriminated. Not in a position today to say whether I want to apply for the roles or not*" (pages 132-136).

30. The Claimant attended her third and final consultation meeting on 3 June 2019 and Ms Thom enquired again if she would like to apply for the SSM role. The Claimant explained she did not believe she would be treated fairly if she did, the role would have been perfect for both her and the business, but she was not going to apply, and she had not "*even looked further down the list*". Ms Thom enquired if there was anything else the Respondent could do for her and the Claimant replied "*I don't think so Liz. The grievance will take its course*" (pages 145-149). The Claimant had made up her mind that she was not going to apply for any roles within the Respondent and was going to leave.

31. On 13 June 2019, Mr Cadden confirmed the Claimant's dismissal by reason of redundancy as follows:

*“We met with you on an individual basis to discuss your provisional selection for redundancy and to explore whether your redundancy could be avoided. In particular, we discussed the new structure and your interest in applying for any roles within it.*

*You chose not to apply for any positions, so regrettably your employment will terminate by reason of redundancy on 30 August 2019....”.*

32. The Claimant was given the right to appeal which she chose not to pursue (page 150).

*Ms Hannah Smith*

33. During the redundancy exercise, one of Mr Cadden’s more junior team members, Hannah Smith, resigned after applying for a role in the new structure (page 152). Ms Smith had been a high performer and was earmarked for promotion, so Mr Cadden drove to Bridgwater to seek to persuade her to accept an alternative role and stay.

34. Given that the Claimant had made it clear in her consultation period that she would not consider an alternative role within the Respondent, Mr Cadden had no cause to seek to persuade her to stay.

*The grievance*

35. On 27 May 2019, the Claimant submitted a grievance with regards to her application for the role of SSM (pages 138-142). She opened by saying:

*“Following on from our meetings on the 25<sup>th</sup> April and 16 May, in line with the grievance policy you sent me on the 25<sup>th</sup> April, please accept this as my letter to confirm my decision to raise a formal grievance on grounds of discrimination with regard to my application for the role of Site Supply Manager for the Bondgate site.*

*As per the policy I had previously raised this issue with my line manager. I spoke with Trevor Cadden on 9 April and made him aware I was meeting with you (Fran) to discuss the lack of engagement from Andy Roe and the and HR on the Site Supply Manager role and told Trevor I felt that Andy had discriminated against me because of my age and I then made Trevor aware I was meeting with Fran on the 25<sup>th</sup> April to discuss the issue” (page 138).*

36. Within the grievance she complains about the recruitment process followed, the delay and discrimination more generally, in particular ‘a sexist culture’ within the Respondent. She complained about being excluded from a

purchasing meeting in December 2017, project meetings more generally and accused a senior manager of “*lewd behaviour*”.

37. The Claimant also complained about her performance grade, albeit does not allege discrimination in this regard, as follows:

*“Discussed Trevor scoring my performance level at a grade 2 on many elements of my appraisal. I believe that this is out of calibration from the rest of the business and does not reflect my true performance. Trevor told me that David Saint has told him that he needs to score 2s and 3s maximum. I am aware other areas of the business have scored 3s and 4s with the occasional 2. I got 8 scores of 2. Trevor scored me more 2s than my colleague Cam and I believe I operate at a higher level of performance and received more positive feedback from the wider UK business. I am the one that meets my objectives time and time again – and as previous appraisals have indicated I operate at a high standard. I believe the commentary on my appraisal reflects scores of 3 and 4, I have never been accused of not performing at a good performance level and have refused to sign the appraisal as it stands. I believe the appraisal is a deliberate ploy by Trevor to depict a lower level of performance than I have actually achieved”* (page 141).

38. The Respondent appointed an external HR provider to deal with the grievance and Ms Maggie Heely undertook an extensive and comprehensive investigation into the allegations.

39. Ms Healy interviewed Mr Cadden on 6 June 2019, 19 June 2019, 25 June 2019 as part of her investigations. She spoke with him about the Claimant’s exclusion from the meeting at the end of 2017, her appraisal on 12 March 2019, her exclusion from projects more generally and the senior manager’s behaviour. Mr Cadden responded to Ms Healy’s questions openly and honestly (pages 21–39, 82–93 and of the supplementary bundle).

40. As part of her investigation, Ms Healy interviewed the Claimant’s team members, including Mr Kam Singh and Mr Steve Wishart. At some stage thereafter, Mr Cadden, Mr Singh and Mr Wishart had a brief conversation about whether they were going to give authorisation to release the transcripts of their interviews to the Claimant. Mr Cadden said that he was not giving authority due to his concern about the impact it might have on his relationship with her, particularly given that he was her line manager and had spoken candidly about her performance. However, at no point did he influence, or attempt to influence, Mr Singh and Mr Wishart not to give their authority.

41. Following the interviews, Ms Healy produced an investigation report (pages



153–160) and confirmed the outcome of her deliberations to the Claimant by letter dated 3 July 2019. Ms Healy did not uphold the Claimant's complaints about discrimination, but she did uphold her complaint about her appraisal as follows:

*“During the investigation, Trevor Cadden agreed that one of your performance ratings (against ‘Performance Orientation’) was not justified by his comments and should be 3 (good) rather than 2 (partially meet expectations).*

*An analysis of the three Purchasing Managers paper appraisals confirms that an inconsistent approach was taken with the three managers being assessed against different competencies and a different number of competencies. None of the three appraisals had been signed.*

*Your ‘Overall Employee Comments’ which you added to the form after your appraisal discussion were not forwarded to the HR team. Trevor Cadden told me that this was an oversight rather than intentional.*

*Given that the appraisal process has been applied inconsistently across the three purchasing managers I believe the process has not been fair and I uphold your grievance on this point” (supplementary document).*

42. Mr Cadden was not advised of the grievance outcome and did not have sight of it until these proceedings. The Claimant appealed the outcome on 8 July 2019 and the appeal was dealt with by Leigh Freeman, external HR consultant.
43. During the appeal hearing on 25 July 2019, the Claimant agreed that there was no need to deal with her appraisal rating any further given that her original grievance in this regard had been upheld. However, she did complain that the transcripts from the investigation had not been disclosed to her as part of her grievance and e-mailed Ms Thom after the appeal hearing on 25 July 2019 as follows:

*“.....In addition to the extensive commentary in this morning’s appeal hearing please find below more information.*

*Graham Hall told me on 11/07 that Steve Wishart had told him that he, Kam and Trevor were not giving authority to release their transcripts. This indicates that the team were discussing the details amongst themselves (and with my line manager who is accused of being party to discrimination against myself)” (page 168).*

44.. Ms Freeman confirmed in her appeal outcome on this point that:

*“...some individuals questioned as part of the grievance investigation have not agreed to you receiving copies of the transcripts from their meetings, these are Cam Singh, Trevor Cadden and Steve Wishart and you questioned why they would do this. The company have to gain consent from these individuals to release their interview transcripts, some expressed concern that they did not want these releasing until you leave the company as they did not want to cause any ill feeling while they still have to work with you. I will ask the company to request the consent from these individuals for the transcripts to be released to you once you leave the company....*

*You believe that because you have not been given the above 4 transcripts this has had an impact on your ability to understand the outcome of your grievance. Having reviewed all the transcripts and additional information as detailed in the contents section at the beginning of this letter, I cannot find any information that would change the outcome of the grievance, and Maggie refers to the information found in the investigation meetings in her outcome letter and investigation report, therefore this has been considered when providing the outcome. I would recommend that you receive a copy of the Investigation Report written by Maggie as this provides further information in regards to the grievance investigation.” (pages 172-179).*

45. The appeal was not upheld, and Mr Cadden was not advised of the findings.

46. It was never made explicitly clear to Mr Cadden that the Claimant had raised a grievance against him in particular, nor was he aware that this was the case until she issued proceedings. Further, there was no allegation of discrimination against him and he had no reason to think that there was.

*The Claimant’s interactions with Mr Cadden during her notice period*

47. In the period running up to the Claimant’s departure from the Respondent, Mr Cadden was heavily involved with matters relating to the restructure and spent little time at the Kegworth office. When he was at the Kegworth office, he was often unavailable due to being in meetings relating to the restructure, but he was always professional with the Claimant in any interactions they did have.

48. The Claimant’s main objective in her notice period was to undertake a handover with Mr Wishart so her substantive interactions were with him,

not Mr Cadden.

49. During the Claimant's last week of employment, Mr Cadden was only present in the Kegworth office on 29 August 2019. He had a shorter working day because he was using public transport to get to and from work and was engaged in meetings and calls throughout. Accordingly, he did not see the Claimant at all that day. Mr Cadden failed to find the time to wish the Claimant the best on leaving, nor did he telephone her to express the same. Mr Cadden was conscious that the Claimant appeared unhappy generally and believed she would not welcome a conversation with him.
50. The Claimant was distressed that Mr Cadden had failed to wish her well after twenty-two years with the Respondent.

### **The law**

51. Section 27 EQA provides:

*“(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.*

*(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

*(4) This section applies only where the person subjected to a detriment is an individual.*

*(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule*

52. The burden of proof is on the Claimant to prove that she has suffered detrimental treatment and that the effective cause of that treatment was because she had done a protected act. It need not be the sole reason, but must be one of the reasons and, must be a real reason for the treatment.

53. The cause of detrimental treatment in these circumstances does not have to be consciously motivated. It can be a subconscious element or factor but, there must be a link between the doing of the protected act and the detrimental treatment which is complained of.
54. We had regard to the following cases: *Beneviste v. Kingston University* UKEAT/0393/05; *JJ Food Service Limited v Mohamud* UKEAT/0310/15; *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11 and *Barclays bank v Kapur (No.2)* [1995] IRLR 87.

### **Submissions**

#### *Respondent*

55. In summary, the Respondent submitted that the Claimant's case is she was victimised because she raised a complaint about Mr Cadden in her grievance and, because the complaint about him was not one of discrimination, it cannot amount to a protected act.
56. In respect of the detriments:
57. Detriment 1 - the Claimant has not provided any evidence that Mr Cadden coerced Mr Singh or Mr Wishart into not disclosing their grievance statements; it did not make a difference in any event; and, the Claimant's perception that she was subjected to a detriment is not reasonable.
58. Detriment 2 - the meetings that took place were in the Claimant's diary; she was not excluded from any meetings; and, her belief that she was and consequently suffered a detriment is not reasonable.
59. Detriment 3 - the Claimant has not provided any evidence that Mr Cadden stopped talking to her; he was simply preoccupied with the restructure; and, the Claimant suffered no detriment.
60. Detriment 4 – the Claimant's circumstances were different to Ms Smith because she had made it clear that she was not going to apply for any roles in the restructure. Accordingly, she did not suffer a detriment.
61. Detriment 5 – any failure on Mr Cadden's part was again because of his preoccupation with the restructure and the Claimant suffered no detriment.

#### *The Claimant*

62. The Claimant confirmed that the protected act she relies on is her grievance dated 27 May 2019 in its entirety, not simply her complaint within it about Mr Cadden.

63. She explained that she loved working for the Respondent, and it had been a huge part of her life. She worked hard and put her heart and soul into the job and is shocked at how she was treated. She repeated the factual basis for her claim and submitted that the only explanation for her treatment was the fact that she raised the grievance.
64. Finally, she submitted that even if Mr Cadden did not consciously change his behaviour towards her, there was clearly an unconscious change in his behaviour.

### **Conclusions**

#### *Protected act*

65. The Claimant raised a formal grievance on 27 May 2019 in which she made clear allegations of age discrimination in relation to the SSM recruitment process, and sex discrimination in the context of a more general 'sexist culture' and being excluded from a meeting in 2017. She also complained about Mr Cadden's appraisal of her performance, albeit did not allege that it amounted to discrimination.
66. Ms Vittorio submitted that the Claimant's case is that she was victimised solely because she complained about Mr Cadden. She did not allege discrimination in respect of his treatment and, consequently, her complaint about him is not a protected act.
67. We reject this submission. The Claimant does not assert that she simply relies on her complaint about Mr Cadden as the protected act – she relies on the grievance in its entirety which contains unambiguous allegations of discrimination. It matters not for the purposes of s.27 EQA that the allegations contained in the protected act are not against the alleged perpetrator of the detrimental treatment - all that s.27 requires is that the Claimant does a protected act. As such, we are entirely satisfied that the Claimant's grievance dated 27 May 2019 was a protected act.
68. The Respondent does not advance any argument that the allegations in the Claimant's grievance were false/made in bad faith.

#### *Detrimental treatment?*

69. A detriment is anything that the Claimant might reasonably consider changed her position for the worse or put her at a disadvantage. The test for detriment is whether a reasonable worker would or might take the view that the act or omission had in some way disadvantaged them in the circumstances in which they had to work. An unjustified or unreasonable sense of grievance cannot amount to a detriment.
70. We deliberated the Claimant's perception of her treatment and whether that perception was objectively reasonable.

Detriment 1

71. The Claimant alleges that she suffered a detriment because Mr Cadden refused to release his interview transcript and *instructed* Mr Singh and Mr Wishart not to release theirs. This in turn had an impact on her ability to understand the outcome of her grievance and formulate her appeal.
72. The Claimant relies on her e-mail dated 25 July 2019 to Ms Thom at paragraph 43 above in support of this allegation. However, this e-mail is simply hearsay and repeats what the Claimant was told by Mr Hall. Mr Hall was pressed on exactly what was said by Mr Cadden to '*influence*' Mr Singh and Mr Wishart in cross examination, but he was unable to provide the necessary detail.
73. Mr Cadden accepts that he had a brief conversation with them about disclosing their statements, but he simply confirmed that he was not disclosing his because he was mindful of the impact releasing it might have on the Claimant, particularly given that she was still employed and he was her line manager. We accept Mr Cadden's evidence that he in no way attempted to influence Mr Singh and Mr Wishart not to disclose their statements – he simply explained to Mr Singh and Mr Wishart why he was not disclosing his.
74. The Claimant clearly believed that she had been put at a disadvantage by not receiving the transcripts as she raises this in her grievance appeal, but she does not explain with any clarity what difference they would have made to her in any event. Her evidence was it would have been useful to understand what was said, but she did not know how it would change the outcome. In considering the Claimant's perception of matters we were mindful of the following:
- i. there is no suggestion by the Claimant that she was told she would receive the transcripts;
  - ii. the ACAS Code of Practice does not oblige the Respondent to disclose them;
  - iii. the Respondent undertook a thorough investigation and provided a comprehensive outcome which the Claimant would have no difficulty understanding so it is debatable that having the transcripts would have made any difference to her understanding in any event;
  - iv. The grievance against Mr Cadden was upheld; and
  - v. Neither Mr Singh or Mr Wishart were alleged perpetrators in the grievance so their evidence would have been restricted to that of witnesses.

75. We appreciate that the Claimant perceives that she suffered a detriment, but, given the above, we are satisfied that her perception was not objectively reasonable. Accordingly, detriment 1 does not amount to a detriment for the purposes of s.27 EQA

Detriment 2

*Weekly meetings*

76. The Respondent has produced evidence to confirm that the weekly team meetings were in the Claimant's diary until after she left. These meetings were not compulsory, and it was the Claimant's choice whether to attend or not. She gave evidence that she would dial into these meetings and no-one else was there. Her belief was that the meetings were carrying on in some form behind her back, but when asked if she had any evidence of this she replied 'no'.

77. Mr Cadden denied excluding the Claimant from the meetings and suggested that she may not have attended as frequently after her role was announced as redundant because her main objective was to undertake a handover with Mr Wishart. This seems a likely explanation for her non-attendance, if she did indeed not attend. In the absence of any evidence from the Claimant about exactly which of these meetings she was excluded from, we cannot take our findings any further than that. However, we accept Mr Cadden's evidence entirely that she was not excluded from the meetings and, further, they were not taking place behind her back.

*Monthly meetings*

78. In respect of the monthly meetings, we accept Mr Cadden's evidence that the last scheduled meeting was in May 2019 which the Claimant attended and, thereafter, no further monthly meetings were scheduled - which was corroborated by Mr Hall. The Claimant would have known this that was the case given she would often book the meeting room and take minutes.

79. Accordingly, we are satisfied she was not excluded from these meetings and was aware that they simply did not take place.

80. In light of our conclusion that the Claimant was not excluded from either the weekly or monthly team meetings, it follows that she was not subjected to a detriment. Even if the Claimant perceived this to be the case, that perception was not objectively reasonable.

Detriment 3

81. The Claimant alleges that after she raised her grievance Mr Cadden stopped talking to her in the Kegworth office and that only essential communication took place. Further, one-to-ones did not take place. We note in the first instance that the alleged detriment is contradictory – on the one hand she says there was no communication, but on the other only

'essential' communication took place.

82. Mr Cadden gave evidence that most of his time between May and August 2019 was spent dealing with the restructure and, even when he was in the Kegworth office, he was often in meetings and unavailable. He did not have as much contact with his entire team during this period, not just the Claimant. Further, the Claimant's focus from mid-June 2019 was the handover to Mr Wishart so she had less need to liaise with Mr Cadden directly. He continued to interact with her from time to time as necessary and such interactions were cordial and professional.
83. In respect of the one-to-ones, they were in the Claimant's diary and Mr Cadden gave evidence that the Claimant chose not to use them. He said that prior to the redundancy process the Claimant would only use them occasionally so it was not a regular catch-up in any event. The one-to-ones were simply time set aside in Mr Cadden's diary in case the Claimant needed to discuss anything with him.
84. Again, the Claimant has advanced no credible evidence to substantiate her allegations that Mr Cadden stopped talking to her or holding one-to-ones. She was unable to articulate when she says she was ignored by Mr Cadden or when she attempted to have a one-to-one and he was not available (or did not catch up with her a later date). Further, she accepted in evidence that Mr Cadden was busy with the restructure, but that she was able to speak to him about matters regarding her handover - inconsistent with the allegation that he stopped speaking to her and corroborative of Mr Cadden's evidence.
85. Overall, we found Mr Cadden's evidence on detriment 3 entirely credible and are satisfied that he did not stop talking to the Claimant or engaging with her for her one-to-ones. He was preoccupied with the restructure but would speak with the Claimant as needs arose. He did not cancel the one-to-ones, rather the Claimant chose not to use them. Given that the onus was on the Claimant to make use of the time, but she chose not to, she did not suffer a detriment and her perception that she did is not an objectively reasonable one.

#### Detriment 4

86. The Claimant complains that Mr Cadden drove a 320-mile round trip to Bridgwater to try and persuade Ms Smith to reconsider her resignation but did not try and persuade her to stay. This left her feeling undervalued and unappreciated and reinforced her opinion that she had no future with the Respondent.
87. Notably, Ms Smith's circumstances were entirely different to those of the Claimant. Ms Smith applied for a role in the new structure but resigned when she secured alternative employment elsewhere. Mr Cadden considered her to be a high performer who he wanted to retain so made the journey to speak with her in person.



88. The Claimant on the other hand had not applied for any roles and made it abundantly clear during the redundancy exercise that she was not interested in staying with the Respondent. Accordingly, Mr Cadden had no cause to speak to her or ask her to reconsider. This was a reasonable position for him to take.
89. Given that the Claimant had made up her mind that she did not want to stay at the Respondent, she has not suffered any disadvantage in Mr Cadden not seeking to persuade her to stay. She does not say what difference it would have made in any event.
90. We do not doubt the Claimant's felt undervalued and unappreciated but, given the material difference in her circumstances to those of Ms Smith and the fact that the Claimant was set on leaving, that view was not reasonable. Accordingly, we are satisfied that she did not suffer a detriment.

#### Detriment 5

91. The final detriment is Mr Cadden's failure speak to the Claimant on her last day in the Kegworth office leaving her feeling undervalued and unappreciated. In support, she says that Mr Hall, Mr Singh, Mr Wishart and Ms Smith had witnessed the change in behaviour from Mr Cadden.
92. Mr Cadden agrees that on Thursday 29 August 2019 he was in the Kegworth office, although not on the Claimant's final working day which was 30 August 2019. He also agrees that he did not take the time to speak with her before leaving because he did not see her consequent of being engaged in meetings and working a shorter day. Additionally, he did not telephone her because he did not think she would welcome a call.
93. The failure on his part to thank the Claimant for her service or wish her well for the future has clearly upset and angered her. However, we balance her perception alongside Mr Cadden's evidence that he did not see the Claimant at all that day, and further, she seemed so unhappy generally that he did not think she would welcome a call from him.
94. Mr Cadden appreciates now that taking the time to have that conversation with the Claimant would have been '*a nice thing to do*' and we have no doubt that he would do things differently if he had appreciated the upset his omission would cause. However, considering the situation objectively, we do not accept that Mr Cadden's omission placed the Claimant at any disadvantage and she did not, therefore, suffer a detriment.

#### *Conclusions*

95. We are satisfied that the Claimant has not suffered the alleged detriments so it follows that her claim of victimisation must fail.
96. However, for completeness, even if we had found that the treatment

complained of by the Claimant amounted to detriments, we are satisfied that any such treatment was not in any way because she had done a protected act, for the following reasons:

97. Firstly, the Claimant has not proffered any evidence to remotely suggest that Mr Cadden subjected her to a detriment because she raised a grievance. The fact that she raised a grievance is insufficient alone to satisfy the burden of proof.
98. Secondly, Mr Cadden was naively unaware of the extent of the grievance or that he was, in part, the subject of it.
99. Thirdly, we are entirely satisfied that Mr Cadden's reduced interaction and engagement with the Claimant was a natural consequence of his intense involvement with the restructure the Claimant's focus on handing over to Mr Wishart rather than any conscious or unconscious change in behaviour towards her because she had raised a grievance.

*Judgment*

100. To conclude, the unanimous decision of the Employment Tribunal is that the Claimant's claim of victimisation is not well-founded and is, therefore, dismissed.

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Employment Judge Victoria Butler

Date: 14 May 2021

JUDGMENT SENT TO THE PARTIES ON

Date 18 May 2021

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FOR THE TRIBUNAL OFFICE

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