



EMPLOYMENT TRIBUNALS

Claimant: Mr T Mitchell

Respondents: (1) Bed Factory Hotels Ltd
(2) Compass Hospitality (UK) Ltd

Heard at: London South Employment Tribunal (by remote video hearing)

On: 10-13 May 2021

Before: Employment Judge Ferguson

Members: Ms C Upshall
Ms J Cook

Representation

Claimant: In person

Respondents: Mr J Gunnion (solicitor)

JUDGMENT

It is the unanimous judgment of the Tribunal that:

The Claimant's complaints of sexual harassment and unfavourable treatment under s.26(2) and (3) of the Equality Act 2010 fail and are dismissed.

REASONS

INTRODUCTION

1. By a claim form presented on 24 November 2019, following a period of early conciliation from 1 to 28 October 2019, the claimant brought complaints of unfair dismissal and sexual harassment.
2. The unfair dismissal complaint was dismissed on withdrawal at a preliminary hearing on 16 June 2020. At that hearing the issues were agreed to be as follows:

Time limits / limitation issues

(i) Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred?

(ii) Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 2 July 2019 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.

Section 26(2) of the Equality Act 2010 Harassment of a sexual nature

(iii) Did the Respondent engage in unwanted conduct of a sexual nature that had the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant by the following acts:

- a. From 1st July 2019, Ms Rika Robertson putting her hands on the Claimant's shoulders and involving the Claimant in personal conversations;
- b. From 1st July 2019, Ms Rika Robertson sending the Claimant messages outside of working hours and inciting others to do the same;
- c. [Claimant to provide date] Ms Rika Robertson asking the Claimant for her and her son to lodge at his home.

(iv) Did these acts occur and were they acts of a sexual nature?

(v) If so, did these acts have the purpose or effect of creating the environment in paragraph (iii) above, having regard to: the perception of the Claimant; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.

Section 26(3) of the Equality Act 2010 Harassment – unfavourable treatment because of rejection of the conduct outlined in paragraph (iii) a.-c. above

(vi) Did the Respondent treat the Claimant unfavourably because of his rejection of the conduct outlined in paragraph 5 a-c above, by:

- a. After 5th August 2019, Ms Rika Robertson regularly shouting in the Claimant's face;
- b. Ms Rika Robertson failing to provide the Claimant with materials;
- c. Wasting the Claimant's time by instructing him to complete bizarre projects which took him away from working on serious safety issues which needed to be addressed;
- d. On 30th September 2019, Ms Rika Robertson summoning the Claimant to a meeting without notice and aggressively shouting at the Claimant and then dismissing him.

3. The parties confirmed at the start of the hearing that that list remained accurate. The Claimant said that the conversation at (iii)(c) took place on or around 5 July 2019.

4. We heard evidence from the Claimant. On behalf of the Respondents we heard from Jacob Godrey-Baker, Olga Manou, Rika Robertson, Renata Sucek and Mark Nesbitt. We also had a signed witness statement from Jackie Hylands who sadly died earlier this year. Finally, we had a signed witness statement from Jane Twine, who attended the video hearing at various times but was not available at the time she was due to be called and the Respondents decided to proceed without calling her.

FACTS

5. The First Respondent owns the Citrus Hotel in Eastbourne and the Second Respondent manages the hotel on its behalf. The Claimant commenced employment with the First Respondent as a maintenance engineer at the Citrus Hotel on 28 May 2019. He worked 25 hours a week, Monday, Wednesday and Friday. The general manager of the hotel is, and was throughout the Claimant's employment, Rika Robertson. There were a number of duty managers including Ashley Freeman, Olga Manou and Jane Twine. The Housekeeping Manager was Renata Sucek. There was also some management oversight from the Second Respondent. Scott Thorley was referred to during the evidence as the Area Manager and Mark Nesbitt, Vice President of Operations of the Second Respondent, was, we were told, Rika Robertson's line manager.
6. The Respondents argued that the Second Respondent should be removed from the proceedings. Given that the lines of responsibility seemed to go to the Second Respondent, and Mr Nesbitt had some day to day involvement in the Claimant's work, and he also heard the Claimant's appeal against dismissal, we do not consider it appropriate to dismiss the Second Respondent altogether from the proceedings. We have dismissed the claim in its entirety so there is no benefit in separately dismissing the claim against the Second Respondent. If we had upheld any of the complaints we would have required further submissions on the liability of each company and we may well have dismissed the claim against the Second Respondent.
7. The Respondents' witnesses allege that after a few weeks in the job the Claimant started to flirt with female colleagues and make sexual remarks about them, and about female guests at the hotel. They also allege that the Claimant would regularly discuss his personal life, dates that he went on and his sex life. The Claimant strongly denies this conduct. He says that the only discussion of dating was prompted by the fact that the hotel planned a speed dating event, and he also says he told Ms Robertson about a second date he was going on as a way of putting her off pursuing him.
8. It is unnecessary for us to make detailed findings about this, but we consider it unlikely that the Respondents' witnesses are all lying, as the Claimant suggests, and they have conspired to make untrue statements in order to discredit him. Two of the witnesses, Mr Godrey-Baker and Ms Sucek, attended the hearing voluntarily, despite no longer working for the First Respondent. Mr Godrey-Baker was employed by the First Respondent as "host and housekeeping member". He said that he was friends with Ms Manou and Mr Freeman, but he was not friends with Ms Robertson and had had no contact with her since leaving the First Respondent due to redundancy more than six months ago. Since it is Ms Robertson's conduct in issue in these proceedings, we consider it highly unlikely that he would voluntarily attend and give entirely fictitious evidence under oath in order to defend her, or indeed the Respondents in general.
9. Ms Sucek left the First Respondent in August last year and said she had had no contact with any of her former colleagues since then, except for a couple of chance meetings with Mr Freeman in the street. She said that she was friends with some of her colleagues at the time she worked there, but she was not friends with Ms Robertson outside work. In those circumstances we give considerable weight to her evidence. She gave detailed evidence during cross-examination of the type of

conversations the Claimant would have with her, and in particular mentioned a time when he said if she were single and he were younger it would be nice to go on a date with her. We accept that happened, and we accept the other evidence in her witness statement, that the Claimant once made a crude remark about a female guest, and he would regularly talk about dating, the dating apps he was using and details of dates he had been on.

10. We also found that Ms Manou came across as a particularly frank and truthful witness. She recounted fluently the type of things that the Claimant would say to her about dating apps and dates that he had been on, as well as questions he asked her about her personal life. The Claimant argues that her evidence was not credible because she could not remember the names of the dating apps the Claimant showed him. We do not agree. We consider it entirely unsurprising that she would not remember that kind of detail from two years ago. We accept her evidence that the Claimant was flirty with women in the hotel, and would ask personal questions and talk about his own private life.
11. Jackie Hyland's witness statement is consistent with Ms Manou's and Ms Sucek's evidence. She also makes a specific allegation that the Claimant propositioned her for sex. Of course we take into account the sad circumstances of her inability to give evidence, but we also take account of the fact that the Claimant has not been able to cross-examine her. We do not make any findings in relation to the specific incidents she mentions in her statement, but we consider her statement to be supportive of the Claimant's general behaviour amongst staff.
12. Ms Twine's witness statement contains similar evidence, but we give it no real weight given she did not attend to give evidence and no explanation was given.
13. We accept that the Respondents' witnesses' recollection may not be wholly accurate and there may even be an element of exaggeration in respect of some of the comments the Claimant is alleged to have made, but we do not accept the Claimant's assertion that he never discussed such things at work. In contrast to Ms Manou and Ms Sucek, the Claimant often came across during his evidence as evasive, and had to be reminded to answer the question on several occasions. He insisted that all of Respondents' witnesses were lying about the type of conversations that took place at work. We find, on the balance of probabilities, that the Claimant was very open about his personal life at work, frequently talking to other staff about the fact that he was single and dates that he was going on and had been on. We also accept that he regularly made suggestive comments about women, both staff and guests.
14. The Claimant gave evidence during cross-examination about an incident in June 2019 when he was hanging a door and Ms Robertson shouted at him. He said at the end of his shift she asked him if he was "huffing" and offered him a beer, putting her arm around him as she did. The Claimant also alleged, giving details for the first time in his oral evidence, that there were two other incidents in June, one where Ms Robertson touched the back of his neck and he recoiled. She apparently said she was tucking the label into his collar. On another occasion he said she came up from behind him when he was fixing something under a sink and she commented that he could do with having his back waxed. Ms Robertson said she did not recall any specific occasions when she touched the Claimant but accepted that the two touching incidents he described may have happened. She did not remember the comment about waxing and said she seriously doubted she would have said that. The Claimant also asked Ms Robertson in cross-examination about a comment that the Claimant should wear shorts, which he had not given evidence about or mentioned at any time previously. Ms Robertson denied making any such comment.
15. Both Ms Manou and Ms Twine say in their statements that the Claimant would refer to Ms Robertson as "beautiful lady", which caused them to wonder whether he was

romantically interested in her. Ms Twine's statement also says that the Claimant asked her if Ms Robertson was single and made it obvious he was interested in her. For the reasons we have already given we place very little weight on that evidence, and on this particular issue we are prepared to accept the Claimant's evidence that he did not suggest to anyone that he wanted to date Ms Robertson. We find, however, that he referred to Ms Robertson as "beautiful lady" at least on one occasion to Ms Manou. Ms Manou says that when the Claimant said this she asked him if he was interested in Ms Robertson, but also said it was not a good idea to mix personal and professional lives. The date of this conversation is not clear on the evidence we heard, but we find it must have happened in the few days shortly before 5 July.

16. Ms Manou says after this she talked to Ms Twine about the Claimant and Ms Robertson and they both thought it would be a good thing to "bring them together". Ms Manou spoke to Ms Robertson to see if she was interested, and Ms Robertson said she was not sure. Ms Robertson confirmed in her evidence that a conversation along much the same lines took place.
17. It is not in dispute that on or around 5 July there was a conversation between the Claimant and Ms Robertson in which she said she was looking for somewhere to live in Eastbourne and she mentioned the possibility of her and her son moving in with the Claimant. She says this was because the Claimant mentioned that he lived alone in a big house, and it was just a throw-away remark, not meant seriously. The Claimant does not dispute that he had mentioned he lived alone in a three-bedroom house.
18. The Claimant says that the suggestion was repeated by Ashley Freeman on 8 July. Mr Freeman was not called as a witness and the Respondents did not challenge the Claimant's evidence on this issue. We accept that Mr Freeman raised the matter and suggested it would be a good idea for Ms Robertson to move in with the Claimant.
19. The Claimant says in his witness statement that he told Ms Robertson he did not want her to move in because he would lose his single person's discount for council tax, and that she countered this by saying she could pay in cash. In his oral evidence he said he also told her he did not want a woman living in his house while he was going through a divorce. In an email of 4 May 2021, treated by agreement as a supplementary witness statement, the Claimant said the suggestion of paying in cash came from Mr Freeman on 8 July. In his oral evidence the Claimant said that it was Mr Freeman, not Ms Robertson, who mentioned the cash, and he also claimed that that was what he meant in his original statement. We do not accept that reading of his statement. We find that the Claimant has given contradictory evidence about this, but it is unnecessary for us to make a finding about who raised the suggestion of paying cash. What matters is that the Claimant was resistant to the whole idea and it is not in dispute that there was no further mention of it after 8 July.
20. Some of the communication between Ms Robertson and the Claimant took place by WhatsApp. We have a print-out in the bundle of all the messages exchanged between them from 21 June to 9 Sept 2019. The messages are initially all work-related, but with a friendly tone including emojis, and mostly during working hours, but there are some occasional messages in the evening, for example asking the Claimant to bring documents in. On 2 July Ms Robertson texted the Claimant at 11.20am asking if he was in that day, and the Claimant responded at 5.49pm saying no, he was always off on Tuesdays. There is then a brief exchange that evening about his tasks for the following day.
21. On 5 July the Claimant accidentally sent a message to Ms Robertson intended for someone called Sue. The Claimant accepts that before this he had told Ms Robertson that he was going on a second date that evening. He says he did this in order to put her off pursuing him. After the text on 5 July mistakenly sent to Ms Robertson, the

Claimant texted her again saying sorry, that it was sent in error. The messages then continue:

Ms Robertson 17:52:31 Sorry sent in error ☐

18:03:33 Bwahahahahaha did you leave her some flowers? 😊

18:11:57 How's the date going ?

Claimant 18:17:09 Sue is whose house I 'm working on Not there to 8 😊

18:17:57 Mmmmm ok 😊

18:18:26 Are you busy getting ready ? Spitting and polishing ? ☐

18:19:12 Yep curling my hair

18:48:28 Well done ! Have fun 😊

07 July 2019

19:42:00 Is there any chance to borrow you for an hour please ? 🙏☐

10 July 2019

19:35:53 I forgot to ask you how your date went ?

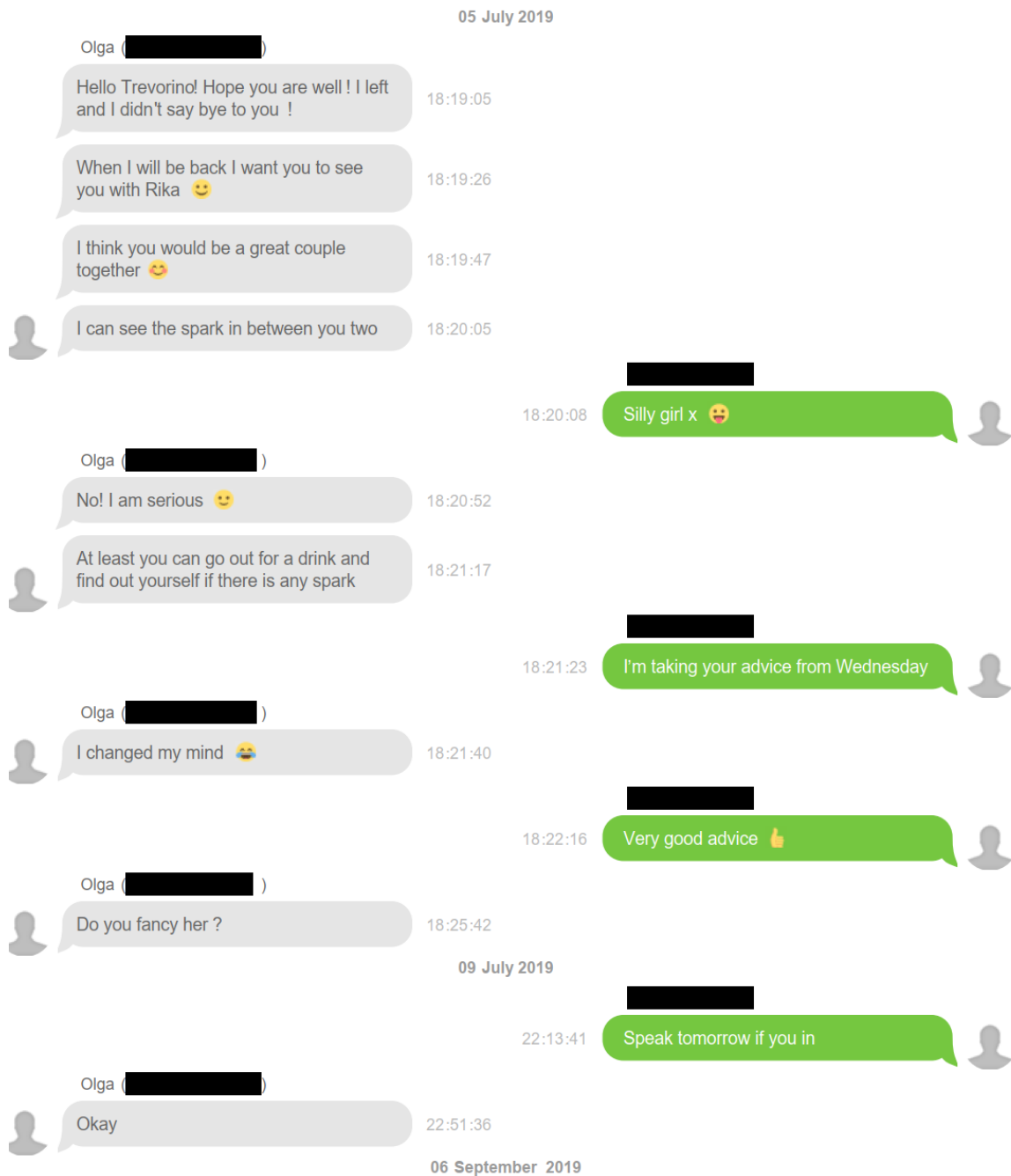
20:33:37 Fine thanks Rikka

20:43:56 Good

18 July 2019

22. Ms Robertson’s evidence about the message on 7 July was that she was trying to move a heavy shelf from the bar area and needed more manpower. The Claimant discovered the next morning that Ms Robertson and Mr Freeman had been up late that night drinking and in his witness statement he describes the message as “inviting to the hotel for drinking sessions”. The Claimant accepts that a large shelf had been moved when he arrived the next morning.

23. Also on 5 July, Ms Manou texted the Claimant. The exchange was as follows:



24. The Claimant said during the hearing that he believed Ms Manou and Ms Robertson were together on 5 July when they sent these messages because of the proximity of the timing of their texts to him. However, he accepted in his closing submissions that he was wrong about that because Ms Manou would have left the hotel earlier in the afternoon when her shift finished.

25. Ms Manou's evidence about these messages was as follows:

"Before I was due to go on holiday I text the Claimant (page 60 of bundle) stating that 'I hoped they would be together when I returned from holiday'. As we are a very small team and are very close I didn't think this was unusual given how the Claimant would often talk to me. The Claimant informed me that he had taken my advice and wouldn't be pursuing the matter. I couldn't really understand if he indeed didn't like Rika anymore or he was in a rush and he didn't respond to my message.

I returned from holiday about 15 days later and spoke to Jane to discover nothing had happened between them. Therefore, both Jane and I left the matter and didn't pursue it any further. I didn't hear anything else until after the Claimant was dismissed and threatened to bring a sexual discrimination claim."

26. Ms Twine's statement is in similar terms:

"Olga was then away on holiday and nothing seemed to materialised between Rika and the Claimant. Olga and i did not discuss the matter further with the Claimant and I witnessed no interactions of a sexual nature between them."

27. Ms Robertson's evidence was that she was informed Ms Manou had texted the Claimant but she had not seen what was sent. She said, "I never felt that there was anything wrong with what I was told about the texts that were sent and the Claimant never raised that he was uncomfortable or concerned having received the messages. The staff in general are all very friendly and it was not unusual for staff to talk about their private lives and I was not aware that anyone was concerned." In cross-examination she said she was told about the text messages after Ms Manou returned from holiday. This was in a conversation with both Ms Manou and Ms Twine. She said they told her that Ms Manou had a conversation with the Claimant about dating her. Ms Robertson said, "Apparently the conversation just died down, so I didn't think there was any harm done."

28. It is not in dispute that there was no further discussion about this with the Claimant.

29. It is not clear to what extent, following the oral evidence, the Claimant still maintains that Ms Manou sent him the text messages on 5 July at Ms Robertson's behest. Both Ms Manou and Ms Twine say that it was entirely their idea; they were trying to play cupid. There is no basis for us to find that they are lying about that. It was mere speculation on the Claimant's part that Ms Robertson encouraged the messages. On the balance of probabilities we find that she did not. She may have been open to the idea of going on a date with the Claimant, but we do not find it was her idea to pursue the matter, and once it was clear the Claimant was not interested no-one took it any further.

30. The Claimant says that Ms Robertson's attitude towards him changed after this because he had rejected her "advances" and her request to live in his house.

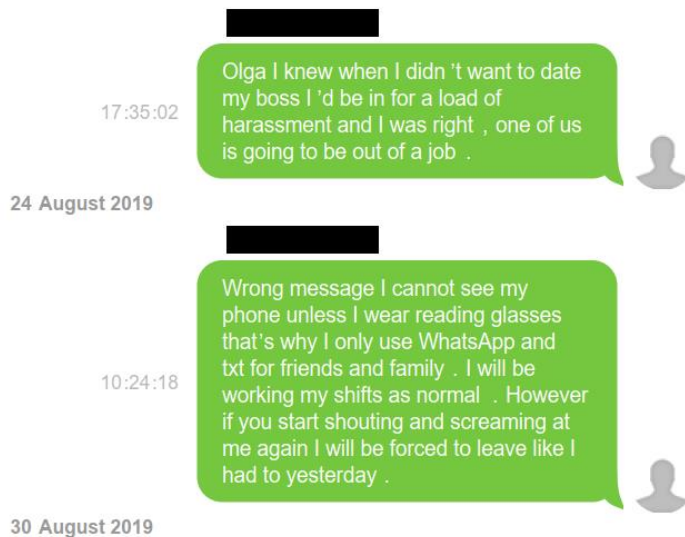
31. There are several text messages in the bundle between the Claimant and Ms Robertson after this date, up until mid-August 2019, which are similarly friendly on both sides and almost all related to work. The Claimant has not given any evidence of incidents in July or early August which would suggest any change of attitude from Ms Robertson to the Claimant or that there was any personal animosity.

32. The Claimant gave evidence about the First Respondent trying to set up a speed dating event in the hotel. He says Ms Robertson pressured him to attend, but in the end the event did not take place on either of the two dates planned. Ms Robertson's evidence about this was that she encouraged all staff who were single to attend, in order to make a success of it, but that she was not intending to participate herself.

33. There was an incident between the Claimant and Ms Robertson on Friday 23 August. Ms Manou made a contemporaneous note of what happened and there is no significant dispute about the facts. On that day the Claimant was doing a job in the bar area, hanging umbrellas above the bar, at Ms Robertson's request. Ms Robertson became aware that the Claimant had not attended another job, which had been listed in the maintenance log since Saturday 17 August, to do with a leaking toilet in one of the rooms. The Claimant was asked, via Ms Manou, to attend to the leak, so he left

the umbrella job to do so. On investigation he decided a plumber needed to be called. He says he asked Ms Manou to call the plumber but she did not do so straight away. By the time she did, no-one could attend until the following Tuesday, which meant the room would be out of order for the weekend. Ms Robertson was annoyed about this and challenged the Claimant about why he had not investigated the leak earlier in the week. He said he does not work Saturdays so would not have known about the entry in the book. He also said he had to clean the basement so did not get the chance to check. Ms Robertson raised her voice at the Claimant, asking why he can't do his job without blaming others.

34. The Claimant was upset at being shouted at and left before the end of his shift. He then sent a text to Ms Robertson complaining about her behaviour. Ms Robertson set up a grievance hearing on 28 August and provided the Claimant with an email address for Mr Nesbitt so that he could raise a formal grievance. The Claimant neither sent a formal grievance to Ms Nesbitt nor attended the meeting.
35. During the text message exchange on 23 August the Claimant sent Ms Robertson a message apparently intended for Ms Manou. The next day he texted to say it was a mistake:



36. It is not in dispute that around this time the Claimant had a meeting with Ms Sucek and Mr Nesbitt which included discussion about how to prioritise the Claimant's tasks. It was agreed that Ms Sucek would meet with the Claimant each morning he was in to provide a list of tasks, but both she and the Claimant said in oral evidence that in fact only around three meetings took place.
37. There was a further incident on 11 September when Ms Robertson spoke to the Claimant about not following the correct procedures for ordering materials. The Claimant says Ms Robertson raised her voice again.
38. On 18 September the breakfast cook, SL, made a complaint against the Claimant. She said the Claimant was eating breakfast in the dining room while guests were there and she queried with him whether he was allowed to do that. She said "He got up came to the kitchen door and shouted in my face if you speak to me use my name."
39. Ms Sucek was present and gave a statement at Ms Robertson's request. She said:

"Trevor sat at a breakfast table and began to eat. [SL] noticed this and asked him 'Excuse me, is this a new rule? That staff can sit with guests in the dining room

eating.’ He jumped up with the plate in his hand. He headed towards [SL] getting his face very close to hers. He started shouting back ‘If you want to talk to me I have a name, Trevor’.”

Ms Sucek’s statement also said the Claimant was “aggressive and raising his voice”, whereas SL “remained calm”.

40. A guest posted an online review on 21 September mentioning this incident. It said “The maintenance man was very rude to the cook” and that he was “shouting at the cook in front of guests”.
41. The Claimant was on leave from 23 September. When he returned on 30 September Ms Robertson asked him to attend a meeting. She said at the start of the meeting there were lots of things not being done that should have been. She then raised a number of different issues:
 - 41.1. Some lights in a corridor where the Claimant had not changed the bulbs despite having been asked to do so. The Claimant first said he had changed the bulbs, but when Ms Robertson challenged him about this he then said he had not because there were not enough. He also suggested that an electrician was needed.
 - 41.2. The lights in the kitchen, which had also not been fixed. The Claimant said he investigated and discovered they did not have light fittings. He accepted he had not told anyone about this except Jacob Baker, who was helping him on the day and had no management responsibility.
 - 41.3. There was something to do with curtains and holes in the ceiling of a room, where again the Claimant had not reported the issue,
 - 41.4. An issue with window locks, which Ms Robertson said had not been done when they should have been.
 - 41.5. The Claimant had been seen making a personal telephone call for more than 30 minutes during working hours.
42. Ms Robertson then raised the 18 September incident. The Claimant claimed SL was shouting at him, and then made a separate allegation that she would feed the seagulls. Ms Robertson became frustrated by this, saying the Claimant was trying to change the subject.
43. It was a somewhat heated meeting. We have heard a covert recording made by the Claimant and it is clear that Ms Robertson was very frustrated by the Claimant, and especially by his refusal to take responsibility for any of the issues she raised. After discussion of all these issues she told him she was terminating his contract and would pay him a week in lieu of notice. The Claimant immediately alleged that Ms Robertson had been harassing him and said it was sexual harassment. He also complained about the procedure and the fact he had not been warned it was a disciplinary meeting.
44. The Claimant was sent a letter of dismissal dated 30 September 2019 saying the reason for dismissal was his conduct on 18 September and his performance at work.
45. The Claimant appealed against this decision, again alleging sexual harassment. He did not attend the appeal meeting. Ms Nesbitt proceeded in the Claimant’s absence and upheld the decision to dismiss. He said there was no evidence to support the Claimant’s assertion that he had been sexually harassed, victimised or bullied.

THE LAW

46. Section 26 of the Equality Act 2010 (“EQA”) provides:

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.

(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.

(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.

47. In Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT, Underhill J, then President of the EAT, gave guidance on the elements of harassment as defined under the Race Relations Act 1976 (“RRA”), which was in slightly different terms to s.26 EQA. Underhill LJ revised that guidance as it applies to s.26 in Pemberton v Inwood [2018] ICR 1291, CA, as follows:

“In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of subsection (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of subsection (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances—subsection (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant’s dignity or creating an adverse environment for him or her, then it should not be found to have done so.” (para 88)

48. Although s.26(4)(c) only requires the Tribunal to “have regard” to the reasonableness question, whereas under the RRA it was expressed to be a requirement of liability, his view was that the wording of s.26(4) was not intended to, and did not, make any substantive difference.

CONCLUSIONS

Sexual harassment: s.26(2) EQA

49. We deal first with the primary allegations of sexual harassment under s.26(2) EQA.

(a) From 1st July 2019, Ms Rika Robertson putting her hands on the Claimant’s shoulders and involving the Claimant in personal conversations

50. The only evidence of any touching was the two incidents the Claimant described, both of which took place in June 2019. One involving Ms Robertson putting her arm around the Claimant and the other when she touched his neck and said she was tucking in his label. Even on the Claimant’s account the touching was very brief. It may have been unwanted, but there is nothing about the circumstances or the type of touching that could lead us to conclude there was anything sexual about it. Nor do we consider it would be reasonable for this type of conduct, two isolated instances of very brief non-sexual touching, to have the effect of violating the Claimant’s dignity or creating the proscribed environment in s.26 EQA.

51. As for “involving the Claimant in personal conversations”, it is not clear what this refers to. We deal with the text messages below under allegation (b). The Claimant has not complained of Ms Robertson involving him in any other personal conversations. There were the two comments he mentioned during his oral evidence or in cross-examination, namely the waxing comment and the shorts comment, but these had never been mentioned before and do not form part of his claim. As for the suggestion that the Claimant was told he had to attend the speed dating event, again this was not mentioned in his claim form or the list of issues so it does not form part of his claim. In any event, Ms Robertson was clear in her evidence that she never intended to participate and we accept that. Even if Ms Robertson put pressure on the Claimant to attend the event, we do not consider this was conduct that crossed the threshold for harassment. She made it clear she wanted staff to attend to make the event a success and there was no basis for the Claimant to read anything else into it.

(b) From 1st July 2019, Ms Rika Robertson sending the Claimant messages outside of working hours and inciting others to do the same

52. This complaint as we understand it is really about the messages sent on and shortly after 5 July, and relates to the content of them more than the time that they were sent.

53. We have already found that Ms Robertson did not incite Ms Manou to send the messages on 5 July. Those messages cannot therefore constitute sexual harassment by Ms Robertson, which is what the Claimant complains of.

54. Even if Claimant’s case were accepted at its highest, that Ms Robertson spoke with Ms Manou and Ms Twine, said she was interested in the Claimant and asked Ms Manou to try to set them up, we would still find that the conduct did not reach the threshold for harassment. It was a single text message exchange between the Claimant and Ms Manou, and once it became clear the Claimant was not interested, it was not taken any further. It might have been slightly awkward for the Claimant, but there is nowhere near enough evidence to find that it violated his dignity or created a hostile or other proscribed environment for him. We note that conversations on WhatsApp continued in a similarly friendly way between the Claimant and Ms

Robertson afterwards.

55. Further, even if the conduct did have the proscribed effect, it was not reasonable for it to have done so and therefore cannot constitute harassment (Dhaliwal; Pemberton). The texts from Ms Robertson asking the Claimant about his date were prompted by the Claimant telling her he was going on date. Given his openness about his personal life at work, there was nothing unusual or intrusive about this.
56. As for the texts from Ms Manou, we have found that the Claimant had referred to Ms Robertson as “beautiful lady” and there had been a discussion about whether it was wise to mix professional and personal lives. The texts were a continuation of that discussion and the Claimant did not indicate at any stage that they were unwanted or that he was upset by them. In fact the exchange ended with him saying he wanted to talk to Ms Manou, presumably on the same subject. Given that the Claimant had been so public about being single and regularly made suggestive comments about female staff and guests, we do not consider it reasonable for these texts to have “violated his dignity” or created the proscribed effect in s.26 EQA.
57. As for the text on 7 July 2019, the Claimant does not dispute that when he arrived the next day the heavy shelf had been moved. We therefore accept that Ms Robertson’s explanation for texting the Claimant was truthful. We can see why the Claimant may have wondered whether, in light of the texts from Ms Manou two days beforehand, Ms Robertson might have had an ulterior motive for him coming to the hotel on a Sunday evening, but he did not reply to the message and things appear to have continued as normal the following week. We do not accept it had the effect of violating his dignity or creating the proscribed environment, or alternatively it was not reasonable for it to have had that effect.
58. To the extent that the Claimant separately complains about texts being sent outside working hours, we note that he would sometimes instigate such exchanges in the evening. We conclude there is no basis to find that this conduct was unwanted, let alone that it had the proscribed effect under s.26.

(c) On or around 5 July 2019 Ms Rika Robertson asking the Claimant for her and her son to lodge at his home

59. The idea of Ms Robertson moving into the Claimant’s house was mentioned on two occasions, once by Ms Robertson on 5 July and once by Ms Freeman on 8 July. The Claimant declined and there was no further discussion about it. The Claimant accepts that Ms Robertson never put forward any financial proposal – indeed at one stage during cross-examination that appeared to be his principal complaint about the way the subject was broached. That is consistent with it having been a throw-away remark, not intended as a serious proposition. Further, there is nothing, even on the Claimant’s case, that could lead us to conclude the comment was sexual in nature. The closest he came to suggesting any sexual link in cross-examination of Ms Robertson when he asked if she thought she would get a favourable rate if they were in a relationship. There is no basis for us to conclude that that was her intention, and nor do we find that was a reasonable interpretation of her comment in the circumstances.
60. We conclude, therefore, that even if this conduct was unwanted, it comes nowhere close to the threshold for sexual harassment.

Unfavourable treatment: s.26(3) EQA

61. All of the complaints under s.26(3) EQA must fail because we have rejected the complaints of primary sexual harassment, which are a necessary element under s.26(3). For completeness, however, we also find that there is no causal link between

the conduct complained of and the fact that the Claimant had rejected the suggestion of Ms Robertson moving in with him or the idea of dating her.

(a) After 5th August 2019, Ms Rika Robertson regularly shouting in the Claimant's face

62. It is not in dispute that Ms Robertson raised her voice to the Claimant on 23 August and we have heard the recording of 30 September meeting in which she was, in the words of the Respondents' solicitor, stern with him. The Claimant also says that she raised her voice on 11 September. In his own evidence, however, he also described an incident in June 2019 where she shouted at him. This is inconsistent with the contention that she changed her behaviour after 5 July and suggests, on the contrary, that that was simply the way she tended to react. Further, we accept that she was genuinely frustrated by the performance issues she was raising in August and September 2019. There were obvious reasons why she would be annoyed by the Claimant not having attended to a leak that had been noted in the maintenance log nearly a week beforehand. There is no basis on which we could find that she was motivated by any sense of rejection by the Claimant from the events of early July. On the facts we have found, Ms Robertson was not particularly invested in the idea of going on a date with the Claimant; it was Ms Manou trying to act as cupid. We therefore do not consider there is any basis to find Ms Robertson was likely to have changed her behaviour towards the Claimant after it became clear he was not interested.

63. Similar considerations apply to the other two alleged shouting incidents. On 11 September Ms Robertson had to speak to the Claimant about a performance issues, and on 30 September there were numerous performance concerns and a serious conduct issue relating to the incident on 18 September. It is far more likely that those were the reasons for any shouting by Ms Robertson than that she was unfairly targeting the Claimant because of any feelings of rejection.

(b) Ms Rika Robertson failing to provide the Claimant with materials

64. The Claimant accepted in cross-examination that this had nothing to do with the alleged sexual harassment because it applied from the beginning of his employment. We treat the complaint as withdrawn.

(c) Wasting the Claimant's time by instructing him to complete bizarre projects which took him away from working on serious safety issues which needed to be addressed

65. In his oral evidence the Claimant clarified that only one of the jobs he was referring to, namely the umbrella job, was a request from Ms Robertson. The others had been requested by other managers.

66. For the same reasons already given, we do not consider there is any basis to find Ms Robertson changed her behaviour towards the Claimant after 5 July or was motivated by those events in allocating the job to him.

(d) On 30th September 2019, Ms Rika Robertson summoning the Claimant to a meeting without notice and aggressively shouting at the Claimant and then dismissing him

67. We find there was ample justification for Ms Robertson to call the meeting on 30 September, given the complaint from SL and in particular the negative review which had been posted on a public website. The Claimant's behaviour during the meeting was consistent with his behaviour during the hearing; he was evasive and tended to avoid answering questions about his own failings by making other complaints and allegations. It is unsurprising that Ms Robertson became frustrated by this and we accept that that was the reason she decided to dismiss him. She knew that he did not have sufficient service to bring a claim for unfair dismissal and therefore she did not

need to go through all the steps of the disciplinary procedure. We have not reached any findings as to whether the concerns raised by Ms Robertson in the meeting were well-founded, or whether as the Claimant now suggests, there were health and safety related reasons why some of the work was not done. We simply find that Ms Robertson was genuinely concerned about the Claimant's performance and conduct, as well as being frustrated by his behaviour in the meeting. That was the reason for her decision to dismiss him. It had nothing to do with any rejection of her by the Claimant nearly three months earlier.

68. For those reasons we conclude that all of the Claimant's complaints fail and are dismissed.

Employment Judge Ferguson

Date: 13 May 2021