



EMPLOYMENT TRIBUNALS

Claimant: Miss S Begum
Respondent: Barts Health NHS Trust
Heard at: East London Hearing Centre
On: 22, 23 and 24 June 2021
Before: Employment Judge Gardiner
Members: Mrs B Saund
Mrs G Forrest

Representation

Claimant: Mr R Jones, counsel
Respondent: Mr T Kempster, counsel

Oral reasons were given at the conclusion of the case and **JUDGMENT** was sent to the parties on 29 June 2021. The Claimant, by email dated 4 July 2021, has requested written reasons.

REASONS

Introduction

1. Miss Sofina Begum was and still is employed by Barts Health NHS Trust in an administrative role, based at the Royal London Hospital in Whitechapel. She is of Indian Asian descent. In this employment tribunal claim, she brings a claim of direct race discrimination or alternatively of harassment related to her race. She claims that she was treated less favourably than those who were not of Indian Asian descent, including Black employees. The claim relates to the alleged actions of a colleague, Jane Batey, during 2018. The Claimant argues that the Respondent is liable for Ms Batey's discriminatory treatment.
2. At the time, the Claimant's role was that of Community Administration Coordinator. Ms Batey was a Senior Midwife. Although the Claimant and Ms Batey were based in the same office, they rarely worked together. The Claimant's role was to support the Tower and Bow Community midwifery teams. Ms Batey was part of a different team, the Gateway team.
3. The case was heard over two days, on 22 and 23 June 2021. The Tribunal deliberated on the morning of 24 June 2021 and gave its decision orally. Evidence was heard from the Claimant, from Ms Batey, from Emma Brace and from Anna

Davies. Emma Brace heard the Claimant's grievance into Ms Batey's conduct. Anna Davies was Ms Batey's line manager. She heard the appeal against the rejection of the Claimant's grievance. Reference was made to documents in an agreed bundle, comprising 208 pages. In addition, Ms Batey produced a plan of the office she had prepared shortly before she started giving evidence. This was copied and included at the back of the bundle. Both sides were represented by counsel, who had prepared chronologies of events and cast lists identifying relevant individuals and their roles.

4. The factual issues to be determined were set out in lettered subparagraphs from (a) to (i) at pages 43(a) and 43(b) of the bundle. It was accepted during closing submissions, that if the alleged comments which relate to the Claimant's colour or culture were made, this would amount to harassment relating to the Claimant's race. However, if we rejected the Claimant's evidence, preferring instead the evidence of Ms Batey, then the Claimant's case of harassment or direct discrimination would fail on the facts. As a result, the case essentially turns on our findings of fact. If we reject the Claimant's allegations, it is not necessary for us to set out the relevant legal principles for a case of race discrimination or harassment related to race; and to apply those principles to the facts.

Findings of fact

5. The Claimant started work for the Respondent in May 2003, although she began her current role within the Community Midwives Team in October 2013. From that point onwards, her workstation was located in the same open plan office as Ms Batey. Around 20 other members of staff were based in the same office, which was divided in two by a central partition wall. The workstations used by the Claimant and by Ms Batey were on the same side of the office, around two or three desks apart. The office was busy for the first couple of hours of the day, becoming quieter from mid-morning onwards, as midwives left the office to visit their patients in the community.
6. The Claimant and her colleague, Mary Yongo, of Black African ethnicity, sat together. They provided administrative support to the midwifery teams. Ms Yongo tended to support the Gateway team in which Ms Batey worked; the Claimant tended to support the Tower and Bow community teams. Part of the role carried out by the Claimant and by Ms Yongo involved filing midwifery notes completed by the midwives with the patients' health records.
7. The Claimant has no complaint about how Ms Batey treated her from October 2013 to November 2014. Their different roles meant they did not have particular need to communicate with each other, although they were working in close proximity to each other.
8. In February 2014, the Claimant submitted a grievance against another colleague, Lynn Bonsey. That grievance was followed by an employment tribunal claim issued by the Claimant in which the Claimant was critical of the conduct of other members of staff, including Ms Batey. Ms Batey prepared a witness statement to be used in those proceedings, in defence of her involvement in the disputed events. The case did not proceed to a hearing. As a result, Ms Batey did not give evidence in relation to that matter. The Claimant's complaint about Lynn Bonsey makes it clear that

from February 2014 onwards the Claimant knew of the Respondent's grievance procedure. She was prepared to use this procedure where she considered a colleague's conduct was wrong and needed to be brought to management's attention in a formal way.

9. In November 2014, the Claimant started a year-long period of maternity leave, returning to work in November 2015. On the Claimant's account, Ms Batey ignored her on her return to the office. From February 2016 onwards, she alleges that Ms Batey excluded her from office parties and other small engagements, deliberately isolating her. She says that from March 2016 onwards, Ms Batey started to behave in a very abrupt and disrespectful way. In her witness statement, the Claimant describes these comments as condescending remarks about her having coffee in the morning, saying "coffee again, you don't work hard enough" and "not everybody deserves a cuppa in the morning". She says that Ms Batey started to make condescending comments about her ethnic background and culture, such as remarking she could smell curry when she was walking past her. She explained to the Tribunal that it was when Ms Batey started making comments about her smelling of curry that she considered the treatment amounted to race discrimination.
10. The Claimant's evidence is that this treatment continued during 2016 and 2017. She did not raise her concerns with Ms Batey directly. She says she spoke to her line manager, Mr John Mills, about Ms Batey's conduct in September 2016, in October 2016 and again in September 2017.
11. On her account, in response to her September 2016 complaint, Mr Mills explored the option of the Claimant being redeployed, which the Claimant rejected. In October 2016, Mr Mills suggested that the Claimant rearrange her seating position so that she was not on the same side of the office as Ms Batey. The Claimant says she agreed with this solution, but it could not be progressed because it would cost money to move her telephone extension and there was no budget available for this to be done. The Tribunal notes that there was an email exchange between the Claimant and the Carillion Helpdesk. This email exchange does not directly corroborate the Claimant's version of events. It is not copied to Mr Mills, the manager who had apparently authorised the move; it does not refer to Mr Mills providing authority for the move to take place; and it does not explain why if the move was acceptable to Mr Mills, the associated cost could not be incurred and the request could not be progressed. Most fundamentally, it does not evidence the reason for making the request. We are therefore unable to make any findings as to the reason why this request to move locations was made by the Claimant.
12. The Claimant accepts she did not make any written complaint about the treatment she now alleges in these proceedings, nor did she lodge a grievance. She does not provide a convincing reason as to why she did not bring a formal grievance at any point, in circumstances where she says that Ms Batey's conduct continued notwithstanding her verbal complaints.
13. On 8 September 2017, Ms Batey wrote a detailed email to Ms Kelly Jupp. By that point, Mr Mills was about to go on a sabbatical and so the email was directed to Mr Mills' manager, Kelly Jupp. In the email, she recorded her concerns about certain

aspects of the Claimant's approach to her work. These concerns can be summarised as follows:

- a. Firstly, she was concerned about the Claimant's timekeeping. She noted that the Claimant did not arrive in the office until about 9.20am, but often did not start work until about 10am.
 - b. Secondly, she was concerned about the Claimant's engagement with her work, and the impact on Ms Batey's team. She described how the Claimant was "often away from her computer", chatting to a friend from the breast-feeding team. She said "our team and all the colleagues in the office" found this "intrusive and distracting". She said that the Claimant had a "pile of community midwifery notes at the side of her desk which has not been reduced all week". She said the Claimant's office space was messy and "she often eats at her computer".
 - c. Thirdly, she was concerned about the way that the Claimant treated her colleagues. Ms Batey said the Claimant was "divisive in her friendships and relationship with staff – ignoring colleagues and upsetting one of our very hardworking and reliable Maternity Care Assistants who considered requesting a move from the community team".
14. These observations were gathered over the course of the previous month, given that Ms Batey had been office based during that period. Generally, Ms Batey spent much of her working hours away from the open plan office, working with clients. During August 2017 Ms Batey had been office based. In her evidence to the Tribunal, Ms Batey explained that the email reflected not just her personal view of the Claimant but was a widely held view amongst those sharing the same office. Others were reluctant to complain about the Claimant, so she took the initiative to raise these matters with the Claimant's manager. Ms Batey was concerned that in doing so, she may get into trouble, in that it might prompt a reaction from the Claimant. Her evidence is she had not raised these concerns with the Claimant verbally, considering it was not her place to do so, given she was not the Claimant's line manager.
15. No specific action was taken in response to Ms Batey's email. It was not seen by the Claimant at the time. There is no direct evidence to indicate when the Claimant became aware that Ms Batey had sent the email to one of her managers. The Claimant's position in these proceedings is that Ms Batey had raised similar concerns with her directly, as part of her ongoing campaign of bullying and harassment. This is a point to which we will return.
16. Ms Batey disputes the specific allegations made against her by the Claimant, both generally and specifically in relation to the period of 2016-2017. The Tribunal has not heard evidence from Mr Mills. He is no longer employed by the Respondent. As the Claimant did not record her concerns in writing in relation to this period, there is no independent verification of what the Claimant alleges in relation to how she was treated in 2016 and 2017, nor any corroboration that she did speak to Mr Mills as she now alleges.

17. There is also no evidence, apart from the Claimant's version of events, confirming that the Claimant complained to Mr Mills in September 2017 about comments made by Ms Batey. However, the Claimant's evidence is Mr Mills responded to the September 2017 complaint by suggesting the Claimant move to the Ante Natal Department for a short period to provide respite. The Claimant did move to the Ante Natal team on a temporary basis in the period from January 2018 to March 2018. This was not until around three months after this alleged complaint had been made. It is unclear whether the move was prompted by the complaint. The Ante Natal Clinic was close to the office from which Ms Batey was based, although was separated by three double doors.
18. Despite her evidence that Ms Batey's discriminatory treatment started in 2016, the Claimant does not make any complaint to the Employment Tribunal for which she seeks a remedy in relation to the period from 2016 to 2017. Her explanation for only complaining about events from 2018 onwards is that the treatment from Ms Batey intensified in 2018. This is why she seeks a remedy in relation to the treatment from 2018 onwards.
19. On occasions whilst the Claimant was working in the Ante Natal Clinic, Ms Batey's work would take her from her open plan office into the Ante Natal Clinic. She would visit the clinic about four or five times a week. There is a dispute on the evidence as to whether Ms Batey used these occasions as an opportunity to make critical and insensitive comments at the Claimant, as the Claimant alleges. No convincing reason has been advanced by the Claimant to explain why Ms Batey would go out of her way to make hostile and offensive comments to the Claimant whilst they were based in different offices. It is significant that when the Claimant finally lodged a formal grievance about Ms Batey's treatment in January 2019, she wrote about the transfer to the Antenatal Clinic Department in the following way:

"Approximately October 2017, John [Mills] suggested that I move to the Antenatal Clinic Department for a short period to give respite to the situation and also support another member of my colleague who was pregnant. I agreed to this arrangement despite of the unfairness, as I have the right to work in an environment free from bullying, harassment and victimisation."
20. No complaint was made in what she wrote about treatment she experienced whilst based in the Antenatal Clinic. The clear implication of the words used is that during this period, the Claimant was free from bullying, harassment and victimisation. Therefore, we reject the Claimant's evidence, as contained in the List of Issues, that Ms Batey made the following comments to the Claimant during the time she was based in the Antenatal Clinic – "Why are you not working?", "Your people don't work hard enough"; "I smell curry"; and "You are wasting NHS money, we need to give you more work". On these allegations, we prefer the evidence of Ms Batey.
21. The List of Issues makes further allegations in relation to the period from March to June 2018. These are as follows:
 - a. In April 2018 Ms Jane Batey excluded the Claimant from a tea party organised by her in the office;
 - b. [dealt with in paragraph 20 above]

- c. Between March and June 2018, Ms Batey made condescending remarks about the Claimant:
 - i. Why are you not working?
 - ii. Breakfast is not allowed at the desk.
 - iii. You are stinking up the office; there is a curry smell.
 - iv. Why are you having coffee again? You don't work hard enough for that.
 - d. In around May 2018, Ms Batey said to the Claimant "turn the lights off, you're wasting NHS money, we need to save NHS money".
 - e. Between May and September 2018, Ms Batey made other abrupt and disrespectful comments to the Claimant:
 - i. Your people do not work hard;
 - ii. You do not work
 - iii. I can't hear myself think; whose phone is this [referring to the Claimant's phone]?
 - f. Between May and June 2018, on a daily basis, Ms Batey slammed down patient note on the Claimant's desk and made critical remarks about the Claimant's desk, saying that it looked like a jungle and that the state of the desk was a hazard.
22. The Claimant made no specific complaint to her line manager about these matters at the time. Apart from a general reference in her email of 28 June 2018 to Ms Batey "constantly belittling us, she is bullying and harassing [us]", she made no specific complaint until 8 January 2019. When she did raise a formal grievance on 8 January 2019, her grievance makes no reference to these allegations she now advances as set out in the List of Issues. She has not provided a convincing explanation for why she omitted any reference to these matters in her grievance. She has not called witness evidence from anyone to support her version of events, such as Ms Yongo; nor has she explained why this was not possible. Accordingly, we prefer the evidence of Ms Batey and reject these allegations advanced by the Claimant.
23. Around 18 June 2018, Anna Davies was appointed Gateway Team Manager. Up until that point, there had been problems in the working relationship between the various midwifery teams and their administrative support. We accept Ms Batey's characterisation of the cause of the problems as caused by a lack of dedicated administrative support. This was a source of frustration to Ms Batey.
24. On 28 June 2018, a significant quantity of patient files were found, in some cases dating back a year. These files had not been processed and their contents had not been added to patient records. This created an additional workload for the administrative support team, in which the Claimant and Ms Yongo were working.
25. On that date, Ms Batey took the files to the area of the office where the Claimant and Ms Yongo were working and placed them on their desk. As she did so, Ms Batey made a comment along the lines of "Here are love notes from Natasha". Natasha was another one of the midwives. Ms Batey's comment was meant as a

light-hearted remark, using a phrase that was often used in the office to describe documents containing additional tasks allocated by management. Both the Claimant and Ms Yongo took offence at the additional workload and the way it had been given to them by Ms Batey. They went to Mr Mills to complain and followed it up with an email sent on the same day. The email was sent from the Claimant's email address but copied to Ms Yongo. It was in the following terms:

“Dear John

Apologies for the unexpected turn up at your office earlier on today.

Mary and I came to you very upset. This morning at approximately 10:45am Jane has approached us to handle the loose papers for filing. She dumped the loose papers on our desk with the remark “sweet notes from Natasha” this is derogatory and disgusting behaviour from a fellow colleague.

This is not the first time we have received comments and this type of behaviour from Jane. Jane is causing us to feel intimidated and uncomfortable in our office constantly belittling us, she is bullying and harassing.

We have previously advised you and Jane the process in moving forward, with this type of practise (loose papers).

The trust has policies in place as guidelines so that we may follow how to retain and maintain patient confidentiality. We are working to the best of our capabilities and are supportive to our tea. We do not appreciate, to be made, to feel like this.

Furthermore, these loose papers are almost a year old dated back to 2017. This is unacceptable by trust standards.

Regards

Sofina/Mary”

26. The focus of the email was on the files and the inefficient filing practices which had led to papers almost a year old being handed to them for processing. We find that the cause of the complaint from the Claimant was twofold – the additional volume of work added to her duties and the way that it had been given to her by Ms Batey. We find this was a throwaway remark, made in an attempt to lighten the disappointment Ms Batey expected that providing these extra notes would cause the administrative staff. A reasonable person in the Claimant's position would also have regarded Ms Batey's comments as an attempt to lighten the inevitable disappointment at this increased workload, rather than as an intimidating, hostile, degrading, humiliating or offensive comment. In her evidence, Ms Batey explained that she regarded the inefficient way in which patient files were processed at this time as “oppressive”. We find it was the additional workload created by the inefficiency that was potentially oppressive, rather than Ms Batey's comment.

27. The email implies that both the Claimant and Ms Yongo have been treated in the same manner, which she characterised as “bullying and harassment”. It draws no distinction between Ms Batey’s treatment of each of them. This is significant, given that the Claimant’s case in these proceedings is that she was treated less favourably by Ms Batey than she treated Ms Yongo. The email undermines the credibility of the Claimant’s case.
28. The wording of the email is also inconsistent with the Claimant’s evidence in other respects. It makes no reference to previous verbal complaints from the Claimant about Ms Batey’s behaviour, as might have been expected if they had been raised. Rather, in being worded “This is not the first time we have received comments and this type of behaviour”, coupled with the absence of any reference to previous complaints, the email reads as if this is the first time that the Claimant has chosen to complain about previous treatment from Ms Batey. The use of the phrase “this is not the first time” is also at odds with the Claimant’s contention in these proceedings that Ms Batey’s behaviour had been continuing for two and a half years by this point.
29. Following this email, the Claimant and Ms Yongo met with Mr Mills to discuss their concerns. He spoke to Mrs Davies about the issues raised. His email that afternoon records that Mrs Davies agreed to address both the issues of the patient notes and the issue of respect. We find that whilst Mr Mills did speak to Mrs Davies, the focus of his comments was on the administrative issues in relation to filing, rather than on the conduct of Ms Batey in particular. He may have mentioned Ms Batey in passing but did not do so in a way that registered as an issue that Mrs Davies needed to investigate or monitor.
30. In relation to the incident on 28 June 2018, we accept Ms Batey’s evidence. We find that the Claimant’s email was prompted by her frustration and that of Ms Yongo about the increased workload represented by the files brought by Ms Batey, and what they regarded as the flippant and insensitive way in which this was done. Therefore we reject the Claimant’s complaint of direct discrimination or harassment in relation to issue (g), namely “On 28 June 2018, Ms Batey made inappropriate remarks about the Claimant’s patient files, saying “these are love notes from Natasha” in an unfriendly tone. Natasha Solomon was Ms Batey’s work colleague”.
31. In his email of 28 June 2018, Mr Mills asked the Claimant to monitor the situation with Ms Batey and keep him informed. Despite this, there is no evidence from the Claimant that she ever made any further complaint to Mr Mills about Ms Batey.
32. Mr Mills ended the email saying “Anna asked me to encourage you to approach her directly if you ever have similar concerns”. It is agreed that the Claimant never chose to take this route to raise any concerns she had about Ms Batey’s ongoing conduct. No good reason has been provided as to why that was not done, if (as the Claimant alleges in the List of Issues) the treatment continued over the period from May to September 2018.

33. Following the incident on 28 June 2018, the Claimant continue working for a further five weeks, before starting a period of sickness absence on 2 August 2018. The cause of the absence was discussed at a meeting on 25 September 2018. No direct trigger was identified, and the Claimant said that stress was not a trigger. There is reference to “stressful interactions with a colleague in the months leading up to the sickness absence”. We find that this is a reference to Ms Batey. The record goes on to note that there had been no further issues since the Claimant had spoken to Mr Mills.
34. In her witness statement, at paragraph 20, the Claimant alleges that in October 2018 Ms Batey came over to the Claimant’s desk and made the remark that her desk “is a jungle, where’s the gorilla?”, justifying her comment in response to the Claimant’s objection on the basis that “everyone knows I have a dry sense of humour”. This differs from the issue in the List of Issues at (f), which alleges that between May and June 2018 Ms Batey made a comment about the Claimant’s desk looking like a jungle. There is no allegation in the List of Issues that Ms Batey said “Where’s the gorilla?”. In her grievance dated 8 January 2019, the Claimant dates a comment made by Ms Batey about her desk looking like a jungle to around October 2018. Again, no reference is made there to any comment about a gorilla. No attempt was made by the Claimant’s counsel to amend the List of Issues to reflect the discrepancy between the Claimant’s evidence and the issues we were asked to decide. Accordingly, and because we prefer the evidence of Ms Batey, we reject the contention at issue (f) that there was a comment made between May and June 2018 that the Claimant’s desk looked like a jungle.
35. During the week commencing 10 December 2018, Ms Batey was on annual leave. Her caseload was covered by one of her colleagues, Lily Osbourne. On 17 December 2018, Ms Batey returned to work. She had a discussion with Ms Osbourne in the open plan office about the cases she had been covering during Ms Batey’s absence. This included a particular patient, MK. On 11 December 2017, Ms Osbourne had attended a case conference with MK and a social worker. Ms Osbourne was concerned about the attitude displayed by MK’s social worker and had decided to lodge a complaint. The basis of the complaint included concerns that the social worker was not addressing the concerns that had been raised, and that MK was not getting the support she needed at this vital stage in her pregnancy. Ms Osbourne was particularly concerned about a comment made by the social worker during the case conference. This was that MK should move back to India. She repeated this comment to Ms Batey during the conversation in the open plan office. This aspect of the conversation was overheard by the Claimant.
36. The Claimant’s evidence differs as to what was said in her presence in the office. She says she was working alone, given that the office was quieter than usual. She alleges that Ms Batey came across to her desk and made the remark “brown girl” and then looked at her before adding “Indians should go back to their country”. At that point, on the Claimant’s account, Ms Batey sat on her side of the desk and continued to look at her. The Claimant’s evidence is that she reported the incident

on the same day to Mirrella Rambuyon, the temporary team leader. She says she was advised by her family that she should lodge a formal grievance.

37. On 18 December 2018, the Claimant alleges that Ms Batey undermined her authority by speaking to Ms Yongo about the work that the Claimant had been carrying out for the Gateway Team during Ms Yongo's annual leave. This is issue (i) – "On 18 December 2018, Ms Batey undermined the Claimant by conducting a return to work meeting for a member of staff, Mary Yongo, by way of handover on Ms Yongo's return from leave". We accept that Ms Batey may well have spoken to Ms Yongo about the Claimant's work during Ms Yongo's absence. We do not find that this undermined the Claimant or was in any way inappropriate. Ms Batey and Ms Yongo tended to arrive in the office earlier than the Claimant. It would have been appropriate for the two of them not just to discuss Ms Yongo's leave, but also what had happened during her absence. The Claimant has not identified any policy or procedure that required the Claimant rather than Ms Batey to update Ms Yongo as to what the Claimant had been doing during Ms Yongo's absence. Therefore we reject the Claimant's allegation (i).
38. On 19 December 2018, the Claimant emailed Rofiquol Islam asking for clarification as to who she and Mary Yongo were managed by. This email is inconsistent with the Claimant's evidence that she reported the incident on 17 December 2018 to Mirella Rabuyon on the same day, given it appears from the email she did not know until the response from Mr Islam on 20 December 2018 that Mirella was her line manager.
39. The content of this email is also inconsistent with her reporting the incident to anyone on the same day. The incident on 17 December 2018 does not appear to be at the forefront of her mind when writing the email. The primary focus of the email is the suggestion that both she and Mary were being monitored by Ms Batey, as shown by the sentence "I would also like some clarification if you have been an arrangement/knowledge between yourself and Jane Batey to monitor us". She added, she had been experiencing "separate isolated acts of harassment from Jane Batey and continuous derogatory comments which were unwarranted". She did not specifically refer to the incident on 17 December 2018.
40. Mr Islam responded that the Claimant's manager was Mirrella Rambuyon but offered to meet with the Claimant himself to discuss her concerns. It is unclear whether there was such a meeting, but we find on balance that a meeting between the Claimant and Mr Islam probably did take place, given that Mr Islam was copied into the Claimant's email to Ms Batey sent at 12:56 on 21 December 2018.
41. The email asked a series of questions complaining about the treatment she had received from Ms Batey. It appears she had become aware that Ms Batey was unhappy about her eating breakfast at her desk and having a coffee in the office; receiving calls on her mobile phone; and having an untidy desk. She said Ms Batey had chosen her "to be [her] sole focus subject to persecute and intimidate her by isolating and monitoring". She said that Ms Batey had tried to sabotage her

relationship with her managers by attempting to ruin her reputation at work by going behind her back to report distorted “actions” to senior members of staff. She added that Ms Batey had never attempted to address any of these subjects that Ms Batey felt were unacceptable directly with her. The Claimant said that she thought that Ms Batey was discriminating against her. She went on to ask the questions “Is it because I am a Muslim?” “Is it because I am a trade union activist?” “Is it because you simply do not like me?”. She did not allege that it was because the Claimant was Asian, as she does in these proceedings.

42. We find it is highly significant that the Claimant specifically stated that Ms Batey had never attempted to address any of these subjects that she felt were unacceptable “directly with me”. It undermines the Claimant’s case in these proceedings that Ms Batey was constantly picking on her for the way she was behaving in the office.
43. The email asks the following question about the incident on 17 December 2018 “Is it because I am a “brown girl” and I should return to my country as you stated on Monday 17 December 2018 “that Indians should go back to their country””. It is significant that this reference to the incident on 17 December 2018 was not put at the centre of the complaint made four days later. Rather it is one point made amongst many. We find that this email was not prompted by the incident on 17 December 2018. It was prompted by the Claimant discovering that Ms Batey had previously complained to managers about her. There has been no evidence explaining how she discovered this. Given the chronological sequence, the most likely source of such information would have been a discussion with either Mr Islam or with Ms Rambuyon. This is the only plausible explanation for her comment about Ms Batey “going behind my back to report distorted “actions””.
44. It is also consistent with the angry response shown by the Claimant towards Ms Batey, ten months later, on 25 October 2019, when she received Ms Batey’s September 2017 email as part of a subject access request. We find that the email sent on 21 December 2018 was retaliation for discovering that Ms Batey had complained about her.
45. We reject the Claimant’s allegation about what took place on 17 December 2018, in issue (h), namely “On 17 December 2018, Ms Batey came to the Claimant’s desk, called her “brown girl” and said “Indians should go back to their country””. It is highly improbable that Ms Batey would go over to the Claimant’s desk and make the comment that Indians should go home and use the phrase “brown girl”, on the very morning she had been told that a complaint had been made by the midwife covering for her against a social worker in part for making a similar comment about a patient. There is no plausible reason why such a comment would be made, particularly in an open plan office. It is also inconsistent with the impressive way in which Ms Batey has explained her dealings with the Claimant when giving evidence to the Tribunal.

Grievance

46. The bundle of documents contains several pages which relate to the grievance process which followed the lodging of the grievance. We do not need to deal with what took place during the grievance process, given that we have rejected the factual allegations on which the Claimant's case was based. However, we were surprised that the Respondent chose to limit the terms of reference of the grievance to the incident on 17 December 2018, in circumstances where this was only one of many incidents which the Claimant was raising in the grievance.

Conclusion

47. For the reasons we have rejected each of the factual allegations advanced by the Claimant. As a result, it is accepted by the Claimant that her complaints of race discrimination and harassment cannot succeed. Therefore, the Claimant's case must be dismissed.

**Employment Judge Gardiner
Date: 22 July 2021**