



EMPLOYMENT TRIBUNALS

Claimant

Ms E de Mello

v

Respondent

Network Rail Infrastructure Limited

Heard at: Norwich (by CVP)

On: 12, 13 and 14 July 2021

Before: Employment Judge Postle

Members: Ms A Bray and Ms J Buck

Appearances

For the Claimant: Mr de Mello (Counsel)

For the Respondent: Miss Ferber (Counsel)

JUDGMENT

The claimant's claim under the Equality Act 2010 for the protected characteristic of sex particularly s.13 is not well founded and is dismissed.

REASONS

1. This is a claim under the Equality Act 2010 for the protected characteristic of sex. The claim originally advanced a number of claims for direct discrimination, s.13 particularly the claimant was excluded from training materials finalisation process in that materials were not shown to her and did not follow the format or content she had asked for in some important respects. In particular:
 - (1) The claimant was not provided with training materials well in advance and supplied with finalised training material at a very late stage and no opportunity for the claimant to make any changes to the contents;

- (2) The respondent failed to include material which the claimant suggested should be included and included material which the claimant stated should be excluded and which related to a separate risk assessment course; and
 - (3) John Knight was responsible for including content in the training pack and slides which should not have been included and failed to include content which should have been included.
2. In respect of those issues on the second day of the hearing Counsel for the claimant confirmed the above issues were being withdrawn as a result of Ms Locke's evidence.
3. That left two live issues and they were:
 - (1) John Knight ignored the claimant at a Manual Handling Pilot Training session on 1 March 2019 at York; and
 - (2) John Knight instigated or encouraged an unfounded complaint about the claimant to her manager by a member of staff at the York training school on or around 28 February 2019.
4. In this Tribunal we heard evidence from the claimant through a prepared witness statement together with a supplemental witness statement. The claimant called no further evidence.
5. For the respondent we heard evidence from Cassandra Locke (nee Williams) who was the Media, Learning and Development Specialist; Miss Amy Lloyd, Learning Design; John Knight, Training Portfolio Manager and Miss Dee Cartwright who at the time was the Workforce Centre Manager at York. All giving their evidence through prepared witness statements. The Tribunal had the benefit of a completely disproportionate bundle consisting of 1209 pages, the Tribunal estimated that only 50 pages excluding the pleadings were referred to Tribunal during the course of the hearing.

The Law

6. Section 13 Direct Discrimination:
 - “(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
7. Put quite simply, is there any evidence on the primary facts of less favourable treatment due to sex, if so the burden of proof at that stage shifts for the respondent then to give an explanation for that treatment and that it was not based on the claimant's gender.

8. In this case comparators have been put forward, the claimant's line manager Mr Carey and Mr Bellew one of the Training Managers delivering the training at York.

The Facts

Allegation 1 – John Knight ignored the claimant at a Manual Handling Pilot Training session on 1 March 2019 at York

9. The claimant has been employed by the respondent as a Senior Ergonomics Specialist since 18 August 2014. The claimant's employment is continuing.
10. The claimant's role involves advising the business on ergonomics, risks and design; assisting in risk assessments; developing tools, standards and running improvements projects. The claimant is currently focusing on Manual Handling and other Musculoskeletal tasks, working with engineers to develop equipment and improve processes.
11. The claimant was asked to lead a piece of work to develop a Pilot Training session relating to Manual Handling Training. John Knight, the Training Portfolio Manager who had prior experience in Manual Handling was asked to manage the project. The claimant and John Knight therefore provided the technical content for the training course, whilst Amy Lloyd the Learning Designer, Cass Williams the Media Learning and Development Specialist were involved in developing the training course itself. The Pilot Manual Handling Training session, which the claimant, John Knight, Amy Lloyd and Cass Williams worked on was delivered in York on 1 March 2019.
12. It is clear that following a conference call on the 8th February 2019 between the claimant, Mr Knight, Cass Williams and Amy Lloyd that there were tensions between Mr Knight and Ms de Mello over the content of the course to be run at York on the 1st March.
13. Prior to the course Mr Knight had not met the claimant in person, the claimant had met Cass Williams and Amy Lloyd in person.
14. It is clear from the evidence of Amy Lloyd and Cass Williams that the claimant arrived at the training centre after both of them. Cass Williams, Amy Lloyd and Mr Knight sat together near the back of the room. Amy Lloyd asked the claimant if she wanted to come and sit with them. The claimant chose to stand elsewhere.
15. It is clear towards the end of that training session when Mr Knight was about to leave the claimant came over to Mr Knight and asked if everything was ok. His response was that it was. Whereupon the claimant asked if everything was ok between them whereupon Mr Knight confirmed it was. Mr Knight then left the training.

16. It is clear Mr Knight's function throughout the day was to support Amy Lloyd and Cass Williams, and that his priority was clearly the delivery of the training course. He was also in and out of the training centre dealing with other priorities and no doubt spoke to the trainers during the course of the day.
17. On the facts it is clear that there were opportunities on either side of Mr Knight and the claimant to perhaps speak earlier in the day. That was unfortunate and a missed opportunity by both the claimant and Mr Knight. However, Mr Knight was the Project Manager, it is clear his primary function throughout the training day was to support Amy Lloyd and Cass Williams, and had other competing priorities throughout the day. It is clear that Mr Knight spoke to males during the day particularly those involved in the delivery of the training, that would not be unusual. But that was not due in the Tribunal's mind to any gender bias.
18. The Tribunal therefore concludes there are simply no primary facts showing any less favourable treatment requiring the burden of proof to shift and therefore this claim is not well founded.

Allegation 2 – John Knight instigated or encouraged an unfounded complaint against the claimant to her manager by a Receptionist at the training centre on or around 28 February 2019

19. It is clear the claimant emailed Amy Lloyd on the morning of 28 February asking about parking arrangements at the training centre. A copy of that email exchange is at pages 560-561. Miss Lloyd subsequently emailed Dee Cartwright the Development Centre Manager at York on the claimant's behalf enquiring about parking options. Miss Cartwright asked Miss Lloyd if the claimant was a blue badge holder so Miss Lloyd forwarded Miss Cartwright's email to the claimant for her comment. Again a copy of that email exchange is at pages 563-564.
20. Whilst travelling on the train to York Miss Lloyd received a phone call from Miss Cartwright regarding an issue between the claimant and a receptionist at the training centre about disabled parking spaces. Miss Cartwright thought that Miss Lloyd was managing the pilot training session and she in turn spoke with Mr Knight who was managing the training. Miss Lloyd understood from Miss Cartwright that the receptionist at the training centre had been upset in the way the claimant had spoken to her.
21. What is clear is the receptionist who apparently was not an employee of the respondent had been the subject of some form of rudeness from the claimant when she received a telephone from the claimant about a disabled parking space at the training centre. That is clear and evidenced from the receptionist's email of 1 March at 12:07 in which she says, "Cheers Dee can't be doing with rude people like that". That had followed an email from Dee Cartwright who had informed the receptionist that the incident had been past to the claimant's line manager.

22. Following the issue being raised by a Mitie employee Mr Howard at the training centre who had spoken to the claimant following the call to the receptionist, Miss Cartwright spoke to Mr Knight following a direction from Miss Lloyd. The reason for this was Mr Knight was ultimately in charge of the training on the 1 March. Mr Knight not unreasonably requested details to be put in writing of what had happened between the claimant and the receptionist and that he would in turn speak to the claimant's line manager Mr Carey. It is clear that Mr Knight wanted the matter resolved as quickly as possible and informally given the respondent's relationship with the training centre staff. Ultimately the claimant apologised to the receptionist on the basis that if she had been rude or upset the receptionist which the claimant still maintained had not happened.
23. The Tribunal's conclusion is there is absolutely no evidence that Mr Knight instigated or encouraged an unfounded complaint, clearly the receptionist was upset (page 1207), a clear complaint from Mr Howard on behalf of the receptionist, it is clear Mr Knight simply passed the matter to the claimant's line manager for consideration and wanted the matter dealt with quickly and informally which ultimately it was.
24. Clearly this an unfounded allegation, there are no primary facts of less favourable treatment requiring the burden of proof to shift. The claim is therefore not well founded. However equally and in any event if a male had spoken to the receptionist in an abrupt, rude or unnecessary manner it is clear what followed would have been exactly the same path, there is clearly no gender bias.

Employment Judge Postle

Date:29/7/2021.

Sent to the parties on: ..18/8/21...

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For the Tribunal Office