Case No: 3303213/2020

EMPLOYMENT TRIBUNALS

Claimant: Ms Elaine Williams

Respondent: (1) Middlesex University
(2) Ana Rodriguez

Heard at: Watford Tribunal

On: 14, 15, 16 and 17 November 2022

Before: Judge Bartlett, Mr Jewell and Mr Maclean

Representation

Claimant: in person
First and Second Respondents: Mr Gill, of Counsel

JUDGMENT

1. The Claimant's claims for direct race, sex and /or age discrimination (s13 Equality Act 2010) are dismissed.

2. The Claimant's claims to have suffered harassment for reasons related to age, race and/or sex (s26 Equality Act 2010) are dismissed.

3. The Claimant's claims to have suffered victimisation (s27 Equality Act 2010) are dismissed.

4. The claimant's claim for breach of contract is dismissed.

Decision and Reasons

The Hearing

5. The hearing was originally scheduled for six days commencing on 14 November 2022. As a result of listing constraints, the hearing could only be heard in an initial 4 day block with the Tribunal to determine when and if further days should be listed. At the start of the hearing Judge Bartlett communicated this to the parties and said that a view would be taken about the other days in light of the progress that was made during the days we had.

6. During the course of the hearing it became clear that the evidence would finish on the 3rd or 4th day. It did in fact finish at 3 PM on the third day. Submissions were taken on the morning of the fourth day. Judgement was given on the fourth day with written reasons to follow.

Preliminary Matters

7. The witness evidence did not commence on the first day of the hearing. This is because of issues which arose with the bundle which can be summarised as follows:

    7.1. The claimant came to the hearing with a lever arch file of documents that she wanted the tribunal to include as part of the bundle. However, she had not made the respondent aware of this file until shortly before the start of the hearing;

    7.2. When asked, the claimant said that the file contained documents that the respondent had not seen and that she had sent all the documents to the respondent. These were conflicting accounts;

    7.3. The claimant was asked to identify the emails where she had sent the documents to the respondent to help the respondent determine if it had seen all the documents previously. The claimant referred to an email of 17 December 2021. In this email the claimant stated "*I request*…" and went on to request certain documents. Attached to the email was a 2 page table. Judge Bartlett repeatedly asked if that email contained other documents as well as the table and referred the claimant to the explicit request in the email. The claimant maintained that it did contain additional documents but she could not identify what they were. Judge Bartlett referred to another email dated 3 February 2022 which again contained a request for documents and it was not apparent that this disclosed documents. Mr Gill referred to another email and that the respondent was able to open 10 of the 29 documents. The other documents could not be opened due to an error code and the respondent informed the claimant of this and asked for them to be sent in a different format. It does not appear they were resent;

    7.4. The issue and delays arising from this file were because it seemed, but it

was unclear, that all the documents had not been disclosed to the respondent before the day of the hearing. This put the respondent in some difficulties as it did not know how to deal with documents if it had never seen them;

7.5. Initially the claimant referred to the index and did not give the respondents a copy of the file when trying to identify the documents the respondent had not seen. The claimant only gave the file to the respondent when asked by the Tribunal at 12:15;

7.6. After some hours of review on the first day Mr Gill concluded that he believed that most of the documents had been disclosed to the respondent. He had not reviewed the final section of the file;

7.7. Ms Williams was asked to identify which documents she expected to ask each witness about so that the respondent could review those with the witnesses. Ms Williams provided this information on the afternoon of the first day;

7.8. It was indicated that there was a section of documents relating to an Employment Tribunal claim brought by Ms Rashid against the respondent. We were not referred to them and we did not read them;

7.9. The first day concluded at 15:15 without being able to hear any witness evidence. It was agreed that the respondent would produce one copy of the file and bring that to the tribunal for use on the second day. In addition, a pdf copy would be sent to the Tribunal;

7.10. At the end of the first day the claimant asked why her medical records were in the bundle. The respondent replied that it was because the claimant had asked for them to be there and he had one question to ask the claimant about them in cross examination. The claimant said if her claim for disability discrimination had not been permitted to be added she did not understand why her medical records were in there. The claimant raised no further objection.

8. On the afternoon of the 3rd day and in her submissions, the claimant asserted that she had been prejudiced because Mr Gill had reviewed and maybe even copied her skeleton argument but she had not seen his. This situation arose because the claimant's own bundle contained a copy of her skeleton in a loose plastic folder. Nobody else knew that it was there except the claimant. Mr Gill had this folder for an hour or two during the first day as detailed above, he was only given it around midday and we finished at 3pm. During the course of the afternoon Mr Gill handed the document in its folder back to the claimant and said he had not read it.

9. The claimant offered to hand the skeleton to the Tribunal on a number of occasions. Judge Bartlett said that she could but it may be better to hand it in during closing submissions so she could add to it if she wished. Judge Bartlett accepts that she may have misunderstood that the claimant may have wanted this document as her opening submissions. In any event the claimant submitted

it with her closing submissions on the morning of the 4th day. The first the claimant raised about potential prejudice was at 3pm on the 3rd day when she said Mr Gill had had a chance to read her skeleton. He stated that he had not and reminded her that he had given it back to her. She said that he had still had access to it for some hours and did not accept his statement. Judge Bartlett stated that professional representative's owe duties to the Tribunal and have professional codes of conduct with which they must comply. If a barrister, such as Mr Gill, lied about such a matter to the court, it would be very serious.

10. However, the claimant raised the issue again in her oral and written closing submissions. Mr Gill again denied that he had read it.

11. We consider that we are entitled to rely on Mr Gill's statement that he had not read the skeleton. There was nothing in the course of the hearing which indicated Mr Gill had read it, that he would have read it or that reading it would have given him an unfair advantage. We do not consider that there could be any perception of bias arising from this situation.

12. In closing submissions the claimant also raised an issue that she had been prejudiced because the respondent had copied her bundle and provided it to the tribunal. As a result she could not be sure that all the documents that should have been in there were and it did not contain no forged documents. During the lengthy discussions about the claimant's bundle on the first day, the claimant made it clear that she could not afford to copy the bundle and therefore somebody had to provide a copy of it. The respondent had the resources to copy it and was willing to do so. Further, the tribunal's instructions were that the respondent was to send an electronic copy of the file to the tribunal and to the claimant's email address. The respondent did this. The claimant did not say at any point that she had not received the electronic copy and she did not ask for a copy of the file that the respondent had in duplicate provided on the second day onwards. The claimant used the same email address to send her closing submissions to the Tribunal. The tribunal considers that the appellant would have been able to check the bundle if she so wished because she had the electronic copy. At no point did she raise an issue that any document had been omitted or added to her bundle until she made her closing written submissions which were not specific.

The Issues

13. The issues to be decided in this case are set out in the case management orders from 1 November 2021. Throughout the first day the parties were repeatedly reminded that it was these issues and these issues alone which would be considered at the hearing. This meant that if parties strayed into trying to widen the case or focusing cross examination on matters that were not in these issues the tribunal would intervene and remind them to focus on the issues.

14. In summary the issues are:

1. Time limits / limitation issues

Were all of the claimant's complaints presented within the time limits set out in section 123 of the Equality Act 2010 ("EQA")

Dealing with this issue may involve consideration of subsidiary issues including: when the treatment complained about occurred; whether there was an act and/or conduct extending over a period; whether time should be extended on a "just and equitable" basis; etc.

2. EQA, section 13: direct discrimination because of age

2.1. Did the respondents subject the claimant to the following treatment:

2.1.1. Second Respondent informed the Claimant that she had to attend a Whole School Meeting in the Quad (in September 2019) and left her alone in the office and did not offer to escort her;
2.1.2. Second Respondent did not invite the Claimant to sit with her and a colleague in the meeting
2.1.3. Second Respondent being absent at times throughout the Claimant's probation period.
2.1.4. First Respondent allowing Second Respondent to have phased return to work during the Claimant's probation period
2.1.5. Dismissing the Claimant

2.2. Was that treatment "less favourable treatment", i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

2.3. If so, was this because of the claimant's age? The Claimant's allegation being that she was treated less favourably than younger actual or hypothetical comparators)

2.4. If so, has the respondent shown that the treatment was a proportionate means of achieving a legitimate aim? The respondents deny discrimination and have not alleged a legitimate aim.

3. EQA, section 13: direct discrimination because of race

3.1. Did the respondents subject the claimant to the following treatment:

3.1.1. Second Respondent informed the Claimant that she had to attend a Whole School Meeting in the Quad (in September 2019) and left her alone in the office and did not offer to escort her;
3.1.2. Second Respondent did not invite the Claimant to sit with her and a colleague in the meeting.
3.1.3. Second Respondent being absent at times throughout the Claimant's probation period.
3.1.4. First Respondent allowing Second Respondent to have phased return to work during the Claimant's probation period
3.1.5. Dismissing the Claimant

3.2. Was that treatment “less favourable treatment”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on actual or hypothetical comparators.

3.3. If so, was this because of the claimant’s race?

4. EQA, section 13: direct discrimination because of sex

4.1. Did the respondents subject the claimant to the following treatment:

4.1.1. Second Respondent highlighting and drawing attention to the fact that the Claimant was intermittently cold at work.

4.2. Was that treatment “less favourable treatment”, i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies on actual or hypothetical comparators.

4.3. If so, was this because of the claimant’s sex.

5. EQA, section 26: harassment related to (1) age or (2) race

5.1. Did the respondents engage in conduct as follows:

5.1.1. Second Respondent shouting out words like "is that okay"; “if you need any help", magnifying her voice condescendingly?

5.1.2. Second Respondent amplifying her voice in the open plan office for everyone to look at the Claimant (Alleged dates being as per para 13 of particulars of complaint)

5.2. If so, was that conduct unwanted?

5.3. If so, did it relate to either:
5.3.1. Age
5.3.2. Race

5.4. Did the conduct have the purpose or (taking into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6. EQA, section 26: harassment related to (1) age or (2) race or (3) sex.

6.1. Did the respondent engage in conduct as follows:

6.1.1. On or around 23 and 24 July 2019 and on or around 2 October 2019, Second Respondent loudly stated “Oh, Elaine cold again!" or “Elaine, back in the days”?

6.2. If so, was that conduct unwanted?

6.3. If so, did it relate any of
  6.3.1. Age
  6.3.2. Race
  6.3.3. Sex

6.4. Did the conduct have the purpose or (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

7. Equality Act, section 27: victimisation

7.1. Did the claimant do a protected act by making a written complaint of victimisation as alleged at para 27 of the Particulars of Complaint.

7.2. Did the respondent subject the claimant to any detriments as follows:
  7.2.1. Dismissing her

7.3. If so, was this because the claimant did a protected act and/or because the respondent believed the claimant had done, or might do, a protected act?

8. Breach of contract

8.1. To how much notice, if any, was the claimant entitled?

8.2. Did she receive any notice? If so, how much?

8.3. Is she entitled to any damages for failure to give notice?

Background

15. In very brief summary, the claimant was employed by the respondent as a work placement officer. It is not disputed that she started employment on 7 May 2019 and ended employment on 6 December 2019.

16. The respondent asserts that the claimant's fixed term contract expired and this resulted in the end of her employment. The claimant asserts that the end of her employment was discriminatory and disputes that she was on a fixed term contract.

17. The claimant claims that events that happened during the course of her employment were discriminatory and amounted to harassment and victimisation. The respondent denies that any form of discrimination, harassment or victimisation took place.

The Law and the Burden of Proof

Discrimination

18. S13 of the Equality 2010 sets out the test for Direct Discrimination:

"(1)A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others...

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

19. S.23 of the Equality Act 2010 sets out the law relating to comparators:

"(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case."

20. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL (a sex discrimination case), Lord Scott explained that this means that "*the comparator required for the purpose of the statutory definition of the discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class.*"

21. S26 of the Equality Act 2010 sets out the test for harassment:

"Harassment

(1)A person (A) harasses another (B) if—

(a)A engages in unwanted conduct related to a relevant protected characteristic, and
(b)the conduct has the purpose or effect of—
(i)violating B's dignity, or
(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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

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

(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."

22. S27 of the Equality Act 2010 sets out the test of victimisation:

"Victimisation

(1)A person (A) victimises another person (B) if A subjects B to a detriment because—
(a)B does a protected act, or
(b)A believes that B has done, or may do, a protected act.

(2)Each of the following is a protected act—
(a)bringing proceedings under this Act;
(b)giving evidence or information in connection with proceedings under this Act;
(c)doing any other thing for the purposes of or in connection with this Act;
(d)making an allegation (whether or not express) that A or another person has contravened this Act."

Burden of Proof for discrimination

23. S136 of the Equality Act 2010 sets out the burden of proof which applies to discrimination issues:

"(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

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

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

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

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

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

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

25. In Madarassy v Nomura International plc 2007 ICR 867, CA Lord Justice Mummery stated:

"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

The Hearing

26. The hearing took place in person except that one witness for the respondents, Mrs Malvankar, attended by CVP. This is because she had left the first respondent's employment some time ago and had commenced new employment.

27. The tribunal heard from the following witnesses:

    27.1. Ms Elaine Williams (witness for the claimant);
    27.2. Ms Ana Rodriguez
    27.3. Dr Deborah Jack;
    27.4. Mrs Malvankar;
    27.5. Mr Williams; and
    27.6. Mr McGuiness.

28. The claimant's witness statements included a written and electronically signed statement from Hanni Rashid. The claimant stated that this witness was prevented from giving evidence in these proceedings because of a compromise agreement she had signed with the respondent. This was strongly denied by the respondent. The claimant did not provide any evidence of this assertion and the tribunal were not satisfied that this was the accurate reason for the witnesses non-attendance.

29. The respondent submitted a witness statement from Mr Holton but stated that he would not be available to be called as a witness. The tribunal reminded both parties that if an individual did not appear to give oral evidence, and therefore submit themselves to cross-examination, this would greatly reduce the weight

that would be given to their evidence.

30. The claimant did not have any cross examination of Mr Williams or Mr McGuinness. She stated that all of her questions were about the grievance process or the grievance appeal process. Judge Bartlett had made it clear from the start of the hearing and throughout the hearing that these were not issues that the tribunal will decide as they did not form part of the claimant's case. Judge Bartlett had told the parties at the start of the hearing that she noted that a number of the respondent's witnesses (namely Mr Williams, Mr McGuinness and Mr Holton) covered evidence about the grievance and appeal which were not part of the issues in the case.

31. As noted above the claimant was repeatedly referred to the list of issues as being the issues that would be decided by the tribunal in this case. The claimant did not appear to have read or paid much attention to the list of issues and she repeatedly attempted to enlarge the claim during the course of the hearing. The Tribunal did not consider it was in the interests of the overriding objective for a claim to be altered during the course of proceedings particularly when many if not all of the matters raised by the claimant were not mentioned in her particulars and they significantly post dated the submission of the ET1.

Findings of fact

General findings about the Evidence

The Claimant

32. We found the claimant to be totally lacking in credibility. We found that the claimant has twisted mundane events that happened during her short period of employment to serve her own version of events. She used inflammatory language such as the claims that she suffered public abuse, sexual assault, accused witnesses of lying on oath repeatedly and accusing Mr Gill of reading her skeleton argument despite his assurances that he did not.

33. The reasons for our conclusions about the claimant's credibility are as follows:

    33.1. The claimant asserted that on 10 May 2019 Ms Rodriguez publicly abused her in the open plan office. The claimant did not identify anywhere what she alleged Ms Rodriguez said. On the claimant's evidence this event upset her so much that she demanded and received a private apology from Ms Rodriguez but she also demanded a public apology which Ms Rodriguez did not agree to provide. Further, the claimant raised this issue and her desire for a public apology again on 10 June 2019 and repeatedly said that she was giving Ms Rodriguez the opportunity to improve her conduct. In oral evidence she went further and said that it was the 10 May 2019 events which led her to conclude that she was treated differently by Ms Rodriguez due to her race and age. Mr Maclean asked the claimant what Ms Rodriguez said on 10 May 2019 and the claimant could not recall. Mr Maclean asked the claimant if she could recall the gist of what Ms Rodriguez said and she could not having despite saying that she had

written it down at the time. Given the significance the claimant attaches to these events, the Tribunal finds it wholly inconceivable that the claimant had effectively no recall whatsoever about what was said. We also record that the whole exchange was around the claimant not being aware that she should be using a generic departmental email address rather than her personal address;

33.2. The claimant asserted that colleagues in the department lied to the grievance investigation because they were friends with Ms Rodriguez or were dependent on her for their jobs. She was insulting about these colleagues stating that they would not be able to find another job without the first respondent to take them to retirement age. She could not conceive that just because one was friends with an individual one would not extend friendship to lying about events. We feel that this reflected badly on the claimant's own character and behaviour;

33.3. The claimant asserted that she did not receive the emails reminding her of the expiry of her fixed term contract because she was off sick and without access to her work email. In oral evidence she made reference to having to have a fob to access them and she did not have a fob. In oral evidence Ms Rodriguez recalled an occasion when the claimant had worked from home and Doreen Dankyi had told her that the claimant could be contacted via email. The claimant also had a work laptop and that could be taken out of the office. We find that the claimant's evidence that she could not access her work email during her sickness absence in November 2019 was untrue. This is further supported by an email she sent work email address dated 29 November 2019, which is during the same sick leave period, in which she sends her grievance to Doreen Dankyi at the respondent;

33.4. The claimant said that she did not receive the letter dated 25 November reminding her about the end of her fixed term contract and she only became aware of the situation when her husband read the postal letter to her some days later. As a result of our findings above that she did have access to her work emails we do not accept this evidence. We accept that if the claimant was ill she may not have been checking her work email regularly and so might not have seen it immediately but the claimant's evidence went further and was that she could not access her work email at the time. The reality is that little turns on this issue because, as we have set out below, we find that the employment contract unequivocally stated that it was to end at the end of its fixed term and that no notice was required;

33.5. In cross-examination of a witness the claimant took the Tribunal to p296 which was an extract of Doreen Dankyi's interview with Mr Williams as part of the grievance process which said:

6. DD: No, but I had met her at a Black History Month event at the university (GW: presumably in October 2018) when she told me she was a social worker and expressed interest in the social work team at the university. At the event DD introduced her to an (unnamed) academic from the Social Work department.

The claimant had been asked earlier in cross-examination if she knew Doreen Dankyi before her employment with the first Respondent started and she had said no. Mr Jewell asked the claimant about this at the end of this witness' evidence and she said that she could not remember. She was again asked about this in submissions because her written skeleton argument contained a whole page stating that colleagues were colluding against her and used their comments about her knowing Doreen Dankyi before her employment as evidence of this collusion. The claimant then said that she did not rely on that part of the skeleton argument but she could not remember if she knew Doreen Dankyi before her employment with the first respondent had started. The claimant's initial and subsequent denials of knowing Doreen Dankyi before she started employment further undermined her credibility;

33.6. The claimant relied on Ms Rodriguez's friendship with Lorraine Day as evidence of Ms Rodriguez's discriminatory treatment of the claimant. However, Ms Day is a black women in her 50's. Ms Rodriguez's close working relationship with Ms Day, far from evidencing discriminatory behaviour, undermines the claimant's allegations;

33.7. The claimant's claims are an attempt to make a lot of seemingly routine work place events. We recognize that discrimination can and does take this form. However, we find that the claimant has demonstrated a complete lack of perspective and instead has embarked on a personal and relentless campaign regardless of the facts;

33.8. The claimant was evasive in her answers to questions, she changed her answers when pressed and she had lapses in memory about key events.

The Respondent's witnesses

34. The claimant's cross-examination of Ms Rodriguez started with questions about her qualifications. After a few questions the tribunal interjected and stated that this topic was not relevant. The claimant moved on to ask Ms Rodriguez if staff had ever complained about her and had she had ever receive HR complaints against her. Ms Rodriguez stated no and the claimant drew her attention to the grievance she had made against her and Hanni Rashid's grievance. The claimant said that Ms Rodriguez "tells lies, so you can't believe what she says, she tells lies". Ms Rodriguez did not accept that she had lied under oath and said that they were both grievances but she thought the question was about complaints to HR and she got muddled. She apologised and said he did not mean to mislead the tribunal. The claimant asserts that this undermined Ms Rodriguez's credibility.

35. At this point in proceedings the tribunal was already aware that Hanni Rashid had made some form of complaint against Ms Rodriguez and there had been some Employment Tribunal proceedings brought by Ms Rashid in relation to her employment with the first respondent. It had been referred to repeatedly by the claimant. Therefore, the existence of this situation had been aired before the tribunal. It could not be a case of Ms Rodriguez trying to prevent these

circumstance coming to the tribunal's awareness. Ms Rodriguez gave calm and rational evidence in circumstances which may have been difficult for her given that she considered that the claimant had bullied her at work. Overall, even taking into account the exchange we have just referred to, we found her to be a credible witness. She answered the questions in a straight forward manner, her evidence was consistent, her answers were clear and decisive. The claimant's cross examination came close to straying into personal attacks and Ms Rodriguez dealt with this in a dignified manner.

36. As a general observation we found the respondent's witnesses to be clear and decisive in their evidence. They referred to documents in the bundle and provided useful and coherent evidence which accorded with the content of the documents. They were comfortable saying when they could not answer questions for legitimate reasons. We found them credible and persuasive.

The Claimant's employment contract

37. The claimant asserted that her employment contract with the first respondent was not a fixed term contract. There were several elements to the claimant's claim. However, every version of the contract stated at clause 1 that it was a fixed term contract, it contained the start and end dates and it had a notice section at paragraph 18.1 which said that if it was a fixed term contract it would expire without the need for notice. The written words in the contract were repeatedly raised with the claimant, she was asked to look at them on a number of occasions and Judge Bartlett read them out to her. The claimant maintained that despite the clear and unambiguous wording that she thought it was a permanent contract. Later she appeared to say she thought that at the time of the contract but she still maintained her argument that it was not a fixed term contract. It is virtually impossible to read the contract as the claimant alleges it should be read. The claimant worked in an office environment and is familiar with the written word. Further, we find that during her employment the claimant did believe it was a fixed term contract as there are references in her communications about the fixed term nature of it. For example, in her grievance of 28 November 2019 to Doreen Dankyi she wrote "*The Head of Unit (Doreen Dankyi) has already verbally agreed that if my probation was successfully completed to extend my temporary contract after December 2019 until the permanent position was available*".

38. The claimant made a lot of there being more than one version of her contract of employment. It is not disputed that there is a version which the claimant signed on 19 April 2019. There is another contract which the respondents allege was signed by the claimant on 15 May 2019. The only difference in the contracts is that the claimant's start and end date are varied by one day. The claimant accepts that this variation was correct and there is an email from the claimant in May 2019 asking for an amended contract to be sent to her showing the revised dates. The claimant accepted there was no other difference in wording in the contracts.

39. Despite this the claimant claims that she did not sign the May 2019 contract, that her alleged signature is a forgery and that it was sent to her around 25

November 2019. The respondent has provided an electronic document record which records that the claimant's email address opened the revised contract 3 times and signed it electronically on 15 May 2019. The claimant asserts that all of this is forged. We do not accept this. We recognize that the signature on the May contract does is not clear. However, we do not accept that the first respondent which is a very large, bureaucratic organization with a centralized HR function, has engaged in document fraud which would involve the collaboration of more than one employee, and all employees except Ms Rodriguez, had nothing to gain or any interest in doing so. Somehow, someone would have had to go in and forge the electronic document trail and we find this suggestion untenable. In any event the claimant's claims are irrelevant because the documents were the same in all respects except to the agreed variation of start and end dates.

40. We find that the claimant's position in relation to the fixed term nature of this contract is not only untenable but it also undermines her credibility to make an unsupported argument that is contrary to natural reading of a document which is not written in complex language.

Allegations relating to the claims of direct discrimination because of age and/or race.

41. In relation to the specific factual allegations made by the claimant in the list of issues we make the following findings:

    41.1. The claimant received an email inviting her to the whole school meeting in September 2019 like the hundreds of employees who were invited to that meeting. We accept Ms Rodriguez's evidence that she said in the open plan office that she was going over to the meeting and it was open to the claimant and any other employee to go over with Ms Rodriguez if they chose to or make their own way there. We do not accept that the claimant specifically asked Ms Rodriguez if she could go with her and Ms Rodriguez effectively ran off without her. This is how the claimant put the situation to Ms Rodriguez but this is not how she had put it in her ET1 or her witness statement. We consider that this is another instance of the claimant making up the facts to suit her own agenda.

    41.2. It is not disputed that Ms Rodriguez did not invite the claimant to sit with her and a colleague at the whole school meeting.

    41.3. It is not disputed that Ms Rodriguez was absent at times due to sickness during the claimant's probation period.

    41.4. It is not disputed that the first respondent allowed Ms Rodriguez to have a phased return to work during the claimant's probation period.

    41.5. The claimant has repeatedly stated that she was not on a fixed term contract and there was some permanency to her employment. We reject this assertion and find it untenable. The claimant made much of more than one contract being issued to her during the course of her employment and

that a contract was issued to her in November 2019 for nefarious reasons to make out that her employment was fixed term when it had not been previously. Judge Bartlett asked the claimant to identify any difference in words between the contract that the claimant accepts she signed on 17 April 2019 and the contract which is dated at the signature block 19 May but which the claimant maintains was only sent to her in November 2019. The claimant said that there was not a difference in the wording except that it said her start date was the 7 rather than 6 May. The respondent did not dispute that this change had been made and the claimant accepted that 6 May 2019 was a bank holiday and therefore her employment started on 7 May 2019. All of the employment contracts relating to the claimant that were in the bundles from both the respondent and the claimant unambiguously stated that the claimant's employment was a fixed term contract. It used those words. It identified the start date and the end date. It provided the reason for the fixed term nature of the employment which was an impending business reorganization. The only thing that the claimant appears to have relied on to say that her employment was not fixed term is that at some unidentified point she had received a job specification that stated had the job title as a permanent position. We find that there is no possible way to read the employment contracts as creating anything other than a fixed term employment in respect of the claimant.

41.6. Further, we concluded that the claimant's employment ended at the end of the fixed term because it was a fixed term contract. The claimant has submitted that there were other reasons for the termination which were related to her race, sex and age. We find that there is absolutely nothing whatsoever to support this which is nothing more than an assertion by the claimant. We find that her contract ended because it was a fixed term and the first respondent had budgetary constraints and did not wish to engage anybody other than short-term temps through the agency Adecco. Dr Jack also raised concerns about the claimant's performance and that she had difficulties in her working relationships including with Ms Rodriguez. We accept Dr Jack's evidence and find that there are multiple reasons why the respondent may have wished to terminate the claimant's employment but that the predominant reason was the expiry of its fixed term and the desire not to engage any employees in light of the imminent restructuring. We recognise that the restructuring was in fact considerably delayed, which is quite commonplace in large public sector and semi-public sector organisations, and we find nothing about this indicates that there was any taint of discrimination.

42. In light of the findings above, we find that the claimant cannot discharge the prima facie burden of proof which lies on her.

Allegations relating to the claims of direct discrimination because of sex

43. In relation to the specific factual allegations made by the claimant in the list of issues we make the following findings:

43.1. We find that Ms Rodriguez did not highlight and/or draw attention to the fact that the claimant was intermittently cold at work. It was not disputed

that the claimant worked in an open plan office in which 20 or 21 employees worked. A considerable part of the claimant's employment was during the summer of 2019 which was a hot summer. Ms Rodriguez said that there was general discussion amongst the employees about the temperature because some employees were hot and some employees were cold. The office had both fans and heaters to try to deal with the situation. We find that Ms Rodriguez's evidence referred to a common experience of working in offices where different people have different preferences and air-conditioning varies according to where one is sat. Further, Ms Day, in her interview with Mr Williams as part of the claimant's grievance investigation, referred to the claimant joking about a puffer jacket. We recognise that sometimes individuals feel obliged to join in with talk they find offensive. We do not consider that that is what happened here. We do not accept that Ms Rodriguez either led the chat or made specific adverse comments in relation to the claimant.

44. We do not find that the comments are on the face of it discriminatory. Ms Rodriguez herself is a woman as is the claimant which, though not fatal to the claimant's claim of sex discrimination, does make it a little harder. The claimant asserts that it was because of the menopause that she felt cold and that this contributed to the sexually discriminatory element. We do not find that the comments were anything more than general chat within the office about the office environment.

45. In light of the findings above, we find that the claimant cannot discharge the prima facie burden of proof which lies on her.

Allegations relating to the claims of harassment related to age or race

46. In relation to the specific factual allegations made by the claimant in the list of issues we make the following findings:

    46.1. We find that the respondent said words like "is that okay" and "if you need any help" but we do not accept that she either shouted out the words or magnified her voice condescendingly.

    46.2. We do not find that Ms Rodriguez amplified her voice in the open plan office for everyone to look at the claimant. We accept Ms Rodriguez's evidence that she would not behave like that.

    46.3. Throughout the case the claimant has tried to present herself as a victim of Ms Rodriguez's behaviour. We found all of those claims entirely without merit. Instead, we prefer Ms Rodriguez evidence which is that the claimant was attempting to bully her and the claimant was anything but a victim. Numerous witnesses from the respondent identified that there were difficulties with personal relationships in the team in which the claimant and Ms Rodriguez worked. Ms Rodriguez sent contemporaneous emails to Dr Jack concerning how she felt about the situation. We find this is evidence about some problems she had with the claimant and Doreen Dankyi. Dr Jack provided evidence that the situation was bad throughout the team and not just around the claimant or Ms Rodriguez and that Ms Rodriguez had

raised an informal grievance against her line manager. This accorded with Ms Rodriguez's evidence. In addition, the respondent carried out a neutral management enquiry to try to deal with the situation in the Department. There is much evidence about this in the respondent's bundle. The claimant's evidence to that enquiry was only one small part of it and we would reject any submission that the NME was focused on Ms Rodriguez's behaviour. On the limited information available to the Tribunal, it appeared that problems were linked to the behaviour of Ms Rodriguez's immediate line manager Ms Doreen Dankyi.

47. As we have found that the second respondent did not magnify her voice, shout or amplify her voice and considering the words said we find that it cannot be said that the conduct could reasonably be said to have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. There is an objective element to this test and we find that the claimant cannot establish that the words and situation could have the effect required by law.

48. For completeness we record that though the second respondent accepted she said those the words we do not find that they related to the claimant's age or race in any way.

Allegations relating to the claims of harassment related to age or race or sex

49. In relation to the specific factual allegations made by the claimant in the list of issues we make the following findings:

    49.1. We find that Ms Rodriguez did state "Oh, Elaine cold again" or "Elaine, back in the day". However, we do not find that this was stated loudly. Ms Rodriguez admitted that this is the way that she speaks and she does use the phrase "back in the day". We record that Ms Rodriguez was only seven years younger than the claimant. We consider that they are of the same generation with no material difference in their age. We note that the claimant defined her age as 55+ which would exclude Ms Rodriguez but we think that that is a partial and inappropriate age group to choose which unduly favours the claimant.

    49.2. We have set out above that we find that Ms Rodriguez did engage in chat in the office about people's temperature and we are prepared to accept that that did include the claimant's temperature. However, we have concluded that it was nothing more than general office chat and it was not focused on the claimant.

50. We find that the conduct was unrelated to age, race or sex. We found that the comments were made in a normal voice as part of general conversation and therefore they cannot reasonably have had the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Allegations relating to victimization

51. The claimant asserts that a written document she handed to Ms Malvankar on 31 October 2019 as part of the neutral management enquiry was a protected act.

52. We find that the document contains no reference to discrimination of any form or any allegation that can be construed as a breach of the Equality Act 2010. It cannot be a protected act and this claim must fail.

53. Even if we had accepted that the claimant had made a protected act, we find that her dismissal did not have any connection to the written document of 31 October 2019 or her grievance on 29 November 2019. This is because we have found that Dr Jack, who was ultimately responsible for deciding that the claimant's fixed term contract should end on its original expiry date, was not aware of the complaint when she issued the emails reminding the claimant about the termination date of her employment. Ms Rodriguez's evidence was that she only became aware of the claimant's grievance in June it 2020 which was considerably after the end of the claimant's employment. Further, the claimant's grievance was made on 29 November 2019 which was after the emails were sent to the claimant reminding her of the end of her contract. We have set out above that we consider that the claimant had access to her work emails before she made the grievance on 29 November 2019 despite being off sick and that because she sent her grievance via her work email on 29 November 2019 that she had read the email from 25 November 2019 reminding her of the termination of her contract. It is clear in this timeline that the claimant's grievance could have not resulted in the detriment alleged.

Allegations relating to breach of contract

54. The claimant cannot establish that the respondent breached her contract by failing to pay notice pay. This is because every version of the contract that exists in relation to the claimant unambiguously specifies that it was a fixed term contract and that it was due to end on either 5 or 6 December 2019. It is not disputed that the claimant was paid up to and including 6 December 2019.

55. Further the contract states:

> **18. Termination of Contract**
>
> 18.1 Your employment can be terminated by giving the University one month's notice in writing, or by the University giving you one month's notice in writing (except in the case of a fixed term contract which will expire on the date shown without notice unless either party needs to terminate the contract early in which case notice will be given).

56. The above is a term of the contract and it makes it clear that the claimant is not entitled to any notice and as such her claim must fail.

Conclusions

57. The Claimant's claims for direct race, sex and /or age discrimination (s13 Equality Act 2010) are dismissed.

58. The Claimant's claims to have suffered harassment for reasons related to age, race and/or sex (s26 Equality Act 2010) are dismissed.

59. The Claimant's claims to have suffered victimisation (s27 Equality Act) are dismissed.

60. The claimant's claim for breach of contract is dismissed.

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Employment Judge Bartlett

Date__21 November 2022__

JUDGMENT SENT TO THE PARTIES ON

17/12/2022

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FOR THE TRIBUNAL OFFICE