EMPLOYMENT TRIBUNALS

Claimant: Ms A Myers
Respondent: Independent Inspections UK Limited

Heard at: Watford **On:** 8-10 August 2022
Before: Employment Judge R Lewis
Ms S Hamill
Mr I Middleton

Appearances
For the claimant: Mr C Ilangaratne, counsel
For the respondents: Mr A Rhodes, counsel

JUDGMENT having been sent to the parties on 30 August 2022 and reasons having been requested in accordance with Rule 62(3) of the Rules of Procedure 2013, the following reasons are provided:

REASONS

Procedural background

1. This was the hearing of a claim presented on 29 October 2020. Day A was 1 September 2020 and Day B was 1 October. The claimant was represented throughout by the same representatives. The respondent initially acted in person through its owner, Mr Yuille. Solicitors came on record on its behalf on 1 March 2022.

2. There had been two case management hearings. The first was before Employment Judge Manley on 15 July 2021, when the issues were defined, and the present hearing was listed. At the second preliminary hearing on 15 February 2022 Employment Judge Tobin determined that at the material time the claimant met the s.6 definition of disability. He was not asked give reasons in writing. He also set a timetable for case preparation.

3. At the start of this hearing the parties had exchanged witness statements. The claimant was the only witness on her own behalf. The respondent's witnesses were Mr Yuille, and Ms O Khmelenko. There was an agreed bundle of 93 pages. In addition, there was a chronology which we were told was partially agreed. Counsel for the respondent had prepared a draft list of issues.

4. In initial case management, it was confirmed that the case would proceed on a fully face to face basis. The allocation of time was to determine all issues, and the parties agreed that the tribunal would endeavour to give

judgment on the morning of the third day, with the afternoon reserved for remedy if required. However, it was agreed also that at the liability stage, the tribunal would determine the application of any Polkey reduction, and of any application for uplift. In the event, our deliberations led us to a provisional calculation of remedy, which was finalised in discussion with counsel, without need of a formal remedy hearing.

5. The issues were clarified after further discussion. It was not clear which of the background matters preceding dismissal were relied upon as evidence only or were pursued as freestanding claims of detriment. Clarification was required, not just to ensure focus at this hearing, but also because a number of the formulations recorded by Judge Manley were diffuse and general.

6. In the event, it was agreed with reference to the partially agreed chronology that the points in boxes 4, 5, 8, 9, and 12 to 15 constituted the matters relied on by the claimant as background evidence and as detriments. Even that formulation, achieved on the first morning of hearing, is not wholly satisfactory, because some of the events are narrative which require further explanation.

7. While it was a rare pleasure for the tribunal to work from a modest, concise bundle we heard the claim on the understanding that there had not been full disclosure by either side. We do not by this imply that either side attempted to mislead the tribunal. It was at least surprising that the claimant did not disclose a single document on mitigation, and that the respondent did not disclose a single document about operational developments in the years before the claimant's dismissal.

General approach

8. We preface our findings with points of general approach. In this case, as in many others, we heard evidence about a wide range of points, some of it in detail. If there are points raised by the parties which we do not deal with, or which we deal with, but not to the depth of detail to which the parties went, that is not oversight or omission. It is rather a reflection of the extent to which the point or issue truly assisted the tribunal.

9. That observation is made in many cases. It was particularly pertinent in this case, where the claimant and Mr Yuille had worked together as sole employer and sole employee for 30 years. Clearly they had enjoyed a good working and personal relationship for the great majority of that time, and we repeat the comment which we made after giving judgment: it is sad and regrettable to see any friendship end in acrimony, let alone in this tribunal.

10. We have tried to apply to the questions for our decision a fair standard of realism. We mean by that an acceptance that everyone who goes to work makes mistakes when they get there, and that not everything that is said or done in a workplace has been well said or well done. Unlike the parties, the tribunal enjoys the benefit of hindsight, as well as the luxury of not having to make the operational or managerial decisions which parties had to make during the events in question.

11. Realism also involves accepting that when decisions are made at work,

they are very often decisions for which there is no single right answer. That is no more than the idea which underlies the well known phrase, "range of reasonable responses," and it is necessary to bear in mind that that range applies beyond the disciplinary context.

12. While the tribunal is not bound by rules of evidence, realism includes acceptance that memory of events at work may be faulty, that when colleagues and friends gossip at work, they do so informally, and that not everything said at work is literal truth or wholly reliable.

Legal framework

13. The legal framework can be shortly summarised. The primary claim was for unfair dismissal. The task of the tribunal is to decide first what was the reason for dismissal, meaning the factual matrix which led to the decision to dismiss. It must then, in light of that finding, decide whether a fair procedure has been followed, taking care not to substitute its own view for that of the employer, having regard to the size and administrative resources of the employer, and understanding that when the employer comes to make a decision, there are many situations where there is more than one right decision. If it awards compensation for the financial loss caused by dismissal, it may follow the Polkey principle, by asking what difference a fair procedure would have made, and reducing the award by a percentage, oir in relation to a period of time, or both.

14. In claims of direct discrimination, the question is whether the claimant suffered detriment or dismissal because of the protected characteristic(s), when compared with a person (with different characteristic(s)) who was in the same material circumstances, but did not suffer the detriment or dismissal. That means that there most be a finding of an objective causal link between the event and the characteristic(s). The characteristic need not be the only or main cause, but must be a relevant, or material, factor. It is not enough to make a mere assertion of detriment and characteristic: a claimant must show something more. If she does, the burden of proof shifts to the respondent to prove its reason for the treatment.

15. A claim under s.15 Equality Act requires the tribunal to find if something arising from disability was the cause of unfavourable treatment; if so, the respondent may defend the claim by 'justifying' the treatment, ie showing that it was a proportionate means of achieving a legitimate aim. This involves considering a balancing exercise between the discriminatory impact on the claimant and the business need relied on by the respondent in its justification. However, a respondent may also defend a s.15 claim by showing that it did not actually know, and shoulr not reasonably have known, of the disability.

16. In a claim of harassment, the complaint is that the respondent has, by unwanted conduct related to protected characteristic(s), created a hostile environment for the claimant; and that it is, in all the circumstances of the case, reasonable for the conduct to create that effect on the claimant. That requires analysis of a combination of subjective and objective elements.

Findings of fact

17. We first set the scene. Mr Yuille is an engineer by training with specialist experience of pressure vessels. He told us that in 1989 new regulations required pressure vessels to undergo regular inspection. He saw a gap in the market, and began working as a sole trader, carrying out inspections.

18. The claimant, who was born in February 1959, began work for him on 1 June 1990. The claimant throughout her employment worked three hours a day five days a week, mornings only. It was common ground that by the time her employment ended she was entitled to 25 days holiday per year plus Bank Holidays.

19. In time, the business picked up, and while we had no details, we accept Mr Yuille's evidence that in the course of the 1990s he began to retain engineers on a self-employed basis, who were tasked through his business with servicing and inspecting pressure vessels on a zero hours basis. The respondent, of which Mr Yuille is in effect owner, was incorporated in 2004. The claimant's employment transferred at some point from Mr Yuille personally to the present respondent company.

20. In 2008 Mr Yuille set up a separate company, Sterling Limited, which was to manufacture pressure vessels. We find that he was at all times conscious that these were two separate sides of the business, operating in separate companies: Sterling was a manufacturing company; Independent Inspection was an inspection and servicing company.

21. The business was based in Mr Yuille's home until 2015, when it moved to the Wenta Industrial Estate. In 2018, there was a change of geography, and Sterling Limited operated in a large unit, across a small sized car park from the respondent, whose office was staffed solely by the claimant. Mr Yuille worked in the Sterling office. Although there were two separate units, the claimant visited the Sterling office every day because it had a kitchen facility, and there were of course occasions when Mr Yuille visited the respondent's office where the claimant was working.

22. In the summer of 2020 Sterling ceased to manufacture vessels. Mr Yuille and Ms Khmelenko assembled the production items which were in production, and sold the last of their stock by January 2021. Mr Yuille's evidence was that that was a permanent cessation, because of the cost of complying with new regulatory requirements for manufacture.

23. It was common ground that from 1990 until 2020 the present respondent employed only Mr Yuille and the claimant. Ms Khmelenko was for part of that time on a zero hours self-employed basis with Sterling, but never contracted to or with the respondent. The engineers, of whom there were never more than four at any one time, were each in a self-employed relationship, but only ever with Sterling. That pattern of working arrangements was completely consistent with Mr Yuille's case, that there was a clear division between the work of the two companies.

24. The setting was therefore one exceptional in the experience of this tribunal: an employment relationship of 30 years, between a one person employer and a sole employee, during 25 of which years the workplace was the employer's personal home, to which the claimant had keys and therefore unrestricted access during Mr Yuille's absences from home.

25. It was common ground that the respondent did not at any point issue to the claimant written terms and conditions of employment, and that there was no written agreement governing holiday. There was no dispute that Ms Khmelenko was issued with a contract of employment, and that there were self-employed arrangements in writing at times with her, and at all times with the engineers.

26. Mr Yuille stressed an important difference in the working arrangements for the two companies. The items manufactured by Sterling (mainly sterilising equipment, sold, for example to dentists, vets and other health practices) were sold to users through a network of about a dozen distributors. Sterling therefore dealt with only that modest number of outside customers.

27. By contrast, the respondent's business consisted of servicing and repairing sterilising equipment, both of Sterling's manufacture and other manufacturers. The respondent therefore dealt directly with a much larger number of customers, and had many long-term and repeat customers. It therefore needed a larger variety of support work on a much bigger scale. That included dealing with the customers' need or request for a service; allocation of work to engineers; creation and retention of records in relation to both the customer servicing and the engineering work; invoicing customers, and paying the engineers. The claimant's role involved the whole range of administrative support which that work required, as well as, in the early days, marketing the business through mailshots.

28. We find that Mr Yuille had an astute eye to the needs and possibilities of efficient working, and that certainly from when the business relocated to commercial premises in 2015, he was aware of the possibilities of changing work methods in a way which would be more efficient, ie ways which would involve less time, less work and be easier to manage.

29. A great deal of evidence at this hearing focussed on the steps taken by Mr Yuille to (his word) "streamline" the business, a process which he said began certainly by 2017 if not earlier. We do not follow Mr Yuille in using the word streamlining. It seems to us that modernisation is a more accurate word.

30. We heard evidence about some of the detail which this involved, the impact on the claimant's workload, and what became of tasks undertaken by the claimant which were changed as a result. Much evidence focussed on whether the claimant's workload fell over the years as a result. We find that objectively it did.

31. We accept Mr Rhodes' closing submission, which pointed to a number of steps taken over the years. Although this was an unusual case, the claimant was not unique in having had an office based working life which stretched from 1990 to 2020. It is a matter of common observation that office working has changed out of recognition in three decades, and that the impact of all forms of IT, new communications systems, and use of the internet, have dramatically changed the traditional paper based workplace.

32. We accept that across the years, the following steps took place by way of modernisation. These are examples, which are not given in order of priority, and the list is not exhaustive. (1) The respondent stopped its

paper marketing because the business had reached a volume at which further expansion was unsustainable. (2) The respondent eliminated a number of the tasks relating to finance by stopping credit card payments (and, after the claimant's dismissal, (3) stopping cheque payments), and by moving to a system of prepayment only. (4) Movement to prepayment by definition eliminated any work related to credit control and unpaid invoices. (5) The respondent eliminated direct dial phones and replaced them with an online menu of choices, reducing the volume of telephone working required. (6) It moved to a paperless system, eliminating paper filing, and shortly before the claimant's dismissal (7) it moved to communication by email only in place of traditional post, which eliminated the task of franking mail and taking envelopes to a post point.

33. We find that each of these was a reasonable legitimate management decision and, as a management decision, not a point on which the tribunal can legitimately express an opinion. It is not for us to decide whether any of these was a wise or correct decision.

34. The claimant's case was, again to take overview, that in or about late 2019 or early 2020, Mr Yuille recognised that the future viability of Sterling Limited was in doubt. Her case was that he was concerned to secure employment for Ms Khmelenko. The reasons were in part his personal friendship with her (it was not disputed that Mr Yuille and Ms Khmelenko had been in a personal relationship for some years, but that had ended some years before these events). However, it was also the claimant's case that as she, the claimant, was disabled and Ms Khmelenko was not; and that as Ms Khmelenko was about 12 years younger than the claimant, Mr Yuille's reasoning was in part that it would be better business for work to be carried out by a healthier and younger person than by the claimant. It followed therefore, the claimant argued, that what might appear to be legitimate managements steps were in fact tainted by considerations of the claimant's age and / or disability. We do not accept any part of that reasoning.

35. We find that as the process of modernisation continued, and particularly in the course of 2020, Mr Yuille became aware that the claimant's responsibilities were being eroded, and that her tasks were diminishing. He could see that some tasks had ceased altogether (eg marketing, chasing invoices) and some had been taken over by automation and digitisation. We find that the possibility of the claimant's redundancy was in his mind by 2019 at the latest and possibly earlier. He agreed in evidence that there was never a point at which he raised this concern with the claimant before her dismissal. He gave a number of reasons, of which the main one was that he found it difficult to challenge or confront the claimant, not least because he found that she did not engage with issues, and instead repeatedly talked across him. The second was that he was aware of what he called her difficult circumstances (the tribunal did not make enquiry about what this referred to) and of the financial pressures which she would suffer from dismissal. He shrank, in other words, from the reality of making a friend and colleague of some 30 years redundant.

36. That was already the case before the lockdown, when the claimant was on furlough for three months (during which she was paid 100% of pay). The

lockdown gave Mr Yuille a period of respite from the pressures of maintaining the service and working in the business. It gave him time for reflection, but more importantly the opportunity to make practical changes, and a number of the modernisation changes referred to above took place during the lockdown or shortly afterwards. When the claimant commented that she returned to an office which had changed a great deal in three months, we accept that modernisation had accelerated in her absence.

37. The lockdown was from late March 2020 to late June 2020. The claimant returned to work on 25 June. She was admitted to hospital as an emergency in July and absent for about three weeks, and returned to work on 10 August. She was dismissed on 25 August.

38. There was some evidence that the claimant struggled on her return. On 13 August there was an exchange of messages with Mr Yuille (89). The claimant asked for formal training on new systems, impliedly asking for comprehensive training. Mr Yuille's reply, which left her dissatisfied, was that in principle he would deliver training on one topic at a time, but not in the manner requested by the claimant. We accept that that was a reasonable and legitimate response.

39. There was a curious disagreement between the parties at this hearing. There was no reference to it whatsoever in any of the documents. It was whether for one week in August, on dates not specified by the claimant, she took a further week of sick leave, necessitated by having returned to work too early, and possibly contrary to medical advice. In the absence of any reference to this event before this hearing, we find that it has not been proved that it took place.

40. There was plainly a conversation between the claimant and Mr Yuille shortly before the claimant finished work on Monday 24 August. That evening the claimant emailed Mr Yuille (63) setting out her concerns about change, asking for training, and expressing a fear that she was being planned to be made redundant. That was the first use that we saw of the word redundant or redundancy in the papers for this case. Mr Yuille said in evidence that he was very surprised that the claimant wrote to him, in part, he said, because it was the first email she had sent him in 30 years, and that they normally spoke by telephone or face to face.

41. In response, Mr Yuille asked for a meeting with the claimant the following morning. The meeting went badly. There was strength of feeling on both sides. What should have been a conversation about change and its impact on the claimant became personalised and heated. The claimant said that Mr Yuille was a bully, or that he had bullied her. The use of that word caused Mr Yuille to snap. As he saw it, not only was it unjustified, but he had been generous to the claimant in avoiding her redundancy for a period of time, and generous in paying her at full rate throughout furlough and during her sick leave. He dismissed her on the spot for redundancy. He paid what he thought (not correctly) were the sums due to her the following week.

<u>Unfair dismissal</u>

42. The first question for the tribunal is what was the reason for dismissal. We

must take care in that decision to distinguish between the reason and the trigger. We find that the reason was the redundancy which had long been in Mr Yuille's mind. We find that the trigger for making the claimant redundant at that moment was her use of the word bully. Redundancy is a potentially fair reason for dismissal.

43. Section 139(2) Employment Rights Act 1996 defines redundancy as arising where the needs for employees to carry out work of a particular kind have ceased or diminished. Emphasis falls on the word employees, not on the word work. If the volume of work remains constant, but it is redistributed in such a way that it can be carried out by fewer people, redundancy occurs, even though the redundant employees may claim (and very often do) that their tasks are still being carried out by remaining employees. If all the work of 10 people is rearranged so that it is carried out by 7, 3 are redundant, whether or not the tasks which they did are still carried out by those who remain. We find that a redundancy situation existed at time of the claimant's dismissal, and that redundancy was the reason for her dismissal.

44. We do not accept that a fair process was followed. We do not accept Mr Yuille's evidence that he had conversations with the claimant about her future, or Mr Rhodes' submission that this was an informal workplace and a very small one. We do not underestimate the difficulty which would have arisen from the sudden introduction of an element of formality into the working relationship. We find that at the very least fairness demanded: a period of delay after 25 August, to allow emotions to cool; a written explanation to the claimant that her employment was at risk and why; an opportunity for the claimant to put forward arguments against redundancy, which might include arguments for alternative employment; and a meeting at which the claimant had the statutory right of accompaniment. In our experience many small employers instruct an outsider to assist or conduct a meeting of this type. After a meeting fairness would require some written explanation of the reasoning process and of the decision which might follow. We find that the absence of anything approaching any of these steps renders the dismissal unfair.

<u>Remedy for unfair dismissal</u>

45. We go on to find that if the above steps had been followed, there was nothing that the claimant could say to save her employment. The process of modernisation had been in place for years and could only continue. There was no other role for the claimant in the business. We find that there is a chance of 100% that after proper process the claimant would have been fairly dismissed in any event. We ask how long it would take to reach that stage, and allowing for fair process initiated on 25 August, we set the period as six weeks for which period the compensatory award is made. Any claim for a basic award was extinguished by payment of statutory redundancy pay.

46. We heard submissions on loss of statutory rights; Mr Rhodes submitted that given the claimant's modest level of earnings, the figure should be £300 rather than the £500 claimed in the schedule of loss. It seems to us that £500 was the appropriate figure in the circumstances.

47. Although the schedule of loss claimed uplift for failure to follow the Acas

Code, that application was contingent on our not finding that the reason for dismissal was redundancy. There was no applicable Acas Code in a redundancy dismissal, and therefore no uplift.

48. Mr Ilangaratne invited us to interpret the claimant's email of 24 August (63) as a grievance, and to find that unreasonable failure to follow any grievance process gave rise to a further entitlement to uplift. We disagree. We do not accept that the email of 24 August was a grievance, because although the writer was aggrieved, the email did not ask for any further process except training and time for training.

Other financial claims

49. The claimant's claim for holiday pay was that she had taken no holiday in 2020, which was agreed; and that her holiday pay year ran from 1 January. Her evidence was that at some point she had agreed orally with Mr Yuille that her holiday year would change from 1 June (ie the anniversary of her start date in 1990) to 1 January. There was no agreement in writing to this effect and no evidence in the bundle that it had ever been implemented in practice. We therefore find that there was no written agreement which set the holiday year in accordance with Regulation 13(3) Working Time Regulations 1998. Therefore we find that the holiday year in question ran from 1 June 2020 without carry over from any previous year. Our calculation was that the claimant in that period accrued 6 days holiday, ie the pro rata equivalent for just of 12 weeks employment. There were no Bank Holidays in the period.

50. The bundle contained a payslip showing that the claimant had been paid a sum based on 6 days gross pay (72). That being so the claim for holiday pay must fail as it has been satisfied. There was a discrepancy between the schedule of loss and the payslip, which appeared explicable by the calculation of deductions on the payslip. We record having told the parties that if that is the area of dispute, it is a matter for HMRC and the parties as to whether deductions for tax and national insurance have been correctly calculated, but not a matter for this tribunal.

51. We made the maximum award of 4 weeks for the failure to issue a contract because even though the respondent was a one man business, Mr Yuille had had 30 years to do so. He was very familiar with the idea of regulatory paper work, and had issued, amongst many other documents, the engineers' self-employed agreements and Ms Khemelenko's contracts. A pleaded claim for two days arrears of pay was withdrawn by counsel on the second day of the hearing.

Age and disability discrimination

Direct discrimination in dismissal

52. For the purposes of these claims, the claimant compared herself with Ms Khmelenko. Ms Khmelenko was never employed by the respondent; her sole contractual engagement was with Sterling; she has at different times been self-employed or employed. She has not undertaken the claimant's administrative and clerical work, and the claimant has not done the manufacturing work which Ms Khmelenko did. We do not find that she is a

valid comparator with the claimant. We find that she does not meet the requirements of s.23 Equality Act 2010, because each of the points in the previous two sentences is a material difference between the circumstances of the claimant and her.

53. The claimant's case was that Mr Yuille and Ms Khmelenko could see that the business of Sterling was falling in 2020, hence Ms Khmelenko's work would fall away, hence the need to create tasks for her, hence the need to take responsibilities and tasks away from the claimant. But the evidence of Mr Yuille and Ms Khmelenko, which we accept, was that even though Sterling ceased manufacture in the summer of 2020, Ms Khmelenko was still involved in completing the assembly of sterilisers, and in the sale of the remaining stockpile, and that that work continued for the remainder of 2020. After that, Ms Khmelenko has been involved in the continuing residual business of Sterling, which has been service and repairs, and we accept her evidence that that has taken up her working hours.

54. Part of the claimant's case rested on matters of evidence which she could not be in a position to prove. They included allegations about conversations between Mr Yuille and Ms Khmelenko to which the claimant was not party, and about which she had not been told, and which we find did not take place. Like many redundant claimants she faced the difficulty of basing her case on events which she alleged took place after she left the workplace, and therefore of which she had no first-hand knowledge, and we accept the denials of Mr Yuille and Ms Khmelenko that they took place.

55. Our overarching finding is that the direct discrimination claims were based on a premise which we find was simply not the case. The premise was that the events which we heard about were a scheme on the part of Mr Yuille to engineer the claimant's departure from his companies so as to maintain a job for Ms Khmelenko, who was about 12 years younger than the claimant, and not a person with a disability. We do not agree that that scheme has been proved to exist.

56. In our judgment, the <u>sole</u> reason for the claimant's dismissal was redundancy arising out of modernisation of the respondent's operations. Mr Yuille had no reason to compare her, or to 'pool' her with Ms Khmelenko, and we find that he did not do so. We find that neither the claimant's age, nor her health or disability, played any part whatsoever in the decision to dismiss her.

<u>S.15 claims</u>

56. The s.15 claims had at heart the same premise as the direct discrimination claims which we have already rejected, namely that the decision to dismiss the claimant was personal, in that a material part of the reason for dismissal was some factor personal to the claimant. In light of our finding in the previous paragraph, any s.15 claim must logically fail. We find that the decision to dismiss was made entirely for economic and organisational reasons arising out of the modernisation of the business.

57. However, in dealing with claims under s.15, for 'something arising,' we turn first to the question of knowledge of disability. As stated above Judge Tobin had found that the claimant met the s.6 definition of a person with disability,

but he was not asked to give reasons in writing, and our bundle did not include the impact statement or medical evidence which were before him.

58. We find, and it was not really disputed, that from about August 2019 the claimant began to suffer earache, which appeared to spread to cause pain in her head and neck. She saw her GP, and received medication. She underwent tests. That broadly remained the position until she was hospitalised in July 2020 with a blood infection. She was discharged after about three days for recovery at home, and returned to work on 10 August. We do not accept that she had another week off on sick leave between then and 25 August.

59. The claimant's evidence was that Mr Yuille repeatedly enquired about her health. We accept that in the course of ordinary good morning greetings, Mr Yuille often asked the claimant the basic courtesy question, "How are you." We do not interpret that courtesy as an enquiry about health. It was not intrusive, or inappropriate, or related in some improper way to disability. We accept that the claimant gave the conventional non-committal replies, depending on how she felt.

60. It was common ground that the claimant took no time off work for sick leave between the onset of her earache and her hospitalisation 11 months or so later. It was common ground that she did not ask for any arrangement to be made to accommodate her health.

61. All that Mr Yuille therefore knew is what is set out in the preceding paragraphs. He knew of an impairment. He did not know that it was likely to last a year. He did not know that it had a substantial adverse effect on day to day activities.

62. Could it be said that he should have made further enquiry? The exceptional circumstance of this working relationship makes that a difficult question, because he had no reason whatsoever to doubt the claimant's ability to speak for herself, or to tell him about any health problem which she encountered. He and the claimant regarded each other as friends of over 25 years.

63. The guidance on the questions for the tribunal are set out at paragraphs 40 to 41 of Seccombe v Reed EAT-2019-000478, where HHJ Tayler helpfully summarises the guidance. In our judgment, Mr Yuille did not have actual knowledge of disability. He did not have knowledge of the factual elements of disability. It was an unusual situation but he could not be expected reasonably to undertake further or detailed enquiries. It follows that any claim under s.15 must fail because the statutory defence of lack of knowledge under s.15(2) is made out.

Other points

64. We turn finally to the framework of the chronology discussed on the first day of the hearing, and set out our findings on the specific points as follows. We refer to those portions of the chronology which we numbered as points 4 to 15. We give findings on each, without analysis of whether each presented as background or freestanding claim, or of any limitation issues.

65. As to point 4, we accept that after about February 2020 and possibly before, Mr Yuille logged onto the office system and could observe what the claimant was doing. The claimant alleged that he was "watching" her. If that word implies looking at a screen continuously, in the same way that the phrase "watching television" does we reject it. That was not what happened.

66. We accept that when he was logged on, he could see what the claimant was doing. We accept that he did that with a view to finding out what activities she was undertaking online. That seems to us in the circumstances a reasonable and legitimate management task. It was wholly unrelated to the claimant's age or disability.

67. As to point 5: strictly this is not a freestanding claim of discrimination, but a background assertion to lay the groundwork for the claimant's contention that preparations were being made for Ms Khmelenko to take over her work. We accept that in the course of ordinary office conversation or gossip Ms Khmelenko may well have speculated about the future of Sterling Limited, particularly as there were uncertainties about its future as a manufacturer. That is the common currency of workplace chat. The point goes no further than that.

68. As to points 6 and 7, there was no dispute of these, save our reservations about use of the word streamline.

69. Points 8 and 9 concerned two office events which had the sound of every day minor irritations. On the first one, the office one day received two cheques. Mr Yuille gave them to the claimant. He could not identify who the customer was from the cheques and he asked her to find out. The claimant spoke to Mr Yuille later that morning and told him that she had found out who the customers were and Mr Yuille said that he had already found out. The claimant's case was that Mr Yuille knew, right at the start of the day when he asked her to undertake the task, who the two customers were, and that he had asked her to undertake a pointless and unnecessary task for no legitimate reason, and possibly for malicious reasons. We reject that contention. It seems to us wholly at odds with Mr Yuille as a witness, and with his attempts to achieve more efficient working. In a world of perfection, he could be criticised for having failed to tell the claimant that he had himself identified the customers and having failed to tell her to stop trying to find the answer herself. There was no evidence whatsoever that age or disability played any part in this small event.

70. The other point related to a five star Google review from a customer (86). The customer identified the claimant by name for having provided an excellent service. Mr Yuille and Ms Khmelenko saw the review and laughed at it, because they knew that the person who had provided the service was an engineer called Martin. It was of course perfectly possible that both parties were right: that the customer had been very happy with the service provided both by Martin and by the claimant, but had only named the claimant in their review, and that there had been simply an office misunderstanding. There are other theoretical explanations, but it seemed to us that this was a misunderstanding based on a communication point, and we make no further finding. There was likewise no evidence

whatsoever that age or disability played any part in this small event.

71. Points 12 to 14 refer to the impact on the claimant of modernisation, the exchange of 13 August, and her email of 24 August. We do not repeat what we have already said, but add a point about section12. Excessive evidence focussed on this matter.

72. The claimant's responsibilities before modernisation included invoicing. The respondent had many long-term customers and they were therefore sent many invoices over the years. The claimant's system for doing this was to print a hard copy of the invoice information from the accounts system (QuickBooks) and copy type it individually into the respondent's database of customer records. Mr Yuille wanted her instead to copy and paste, which would be a quicker, simpler action, and one which guaranteed complete consistency between QuickBooks and the database. We accept that the claimant was reluctant to do this. We do not accept that she sometimes forgot to use the modern system and used the old system out of force of habit. We accept that the claimant's reluctance was driven by the fact that she did not want to change her established way of working, and that Mr Yuille was aware of this. We do not accept that the claimant's age or disability had anything to do with this: she experienced the difficulty and reluctance experienced by anyone whose way of work has been changed by technology. It was striking that she said in evidence more than once that she was a very experienced trained Pitman secretary. That seemed to us a revealing phrase, because it identified her pride in a qualification which was much respected in its day, but was not that of the modernised system.

73. Point 15 dealt with dismissal and we do not add to our above findings.

Footnotes

74. We thank both counsel for their professionalism. The tribunal file shows that the claimant wrote to ask for these reasons on the last afternoon of the hearing. Her request was processed by office staff early in December We apologise, on behalf of the office administration, for this level of delay.

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Employment Judge R Lewis

Date: 14/12/2022

Judgment sent to the parties on

29/12/2022

N Gotecha
For the Tribunal office