



EMPLOYMENT TRIBUNALS

Claimant: Mrs G Pal

Respondent: The Hut.com Limited

Heard at: Manchester Employment
Tribunal

On: 17, 18 and 19 January
2024 and 6 and 7 February
2024

Before: Employment Judge Childe

Ms Berkeley-Hill

Ms Roscoe

REPRESENTATION:

Claimant: In person, assisted by her husband Mr Pal

Respondent: Mr Lassey (counsel)

JUDGMENT

1. The complaints of direct discrimination are well-founded and succeed.
2. The complaints of harassment related to sex are well-founded and succeed.

REASONS

Summary of the case

Introduction

1. We were initially provided with an agreed tribunal bundle which ran to 175 pages.
2. During the first and second day of the hearing, the respondent and the claimant made respective applications to include additional documents in the bundle. For the reasons given at the time, those applications were granted. Those additional documents were paginated and inserted into the back of the original bundle. The total number of pages in the hearing bundle ran to 235 pages.
3. Witness evidence was provided by the claimant herself. We also heard evidence on behalf of the claimant from Mr Angel Cutitar, Mr A Dan Campan, Mr A Rosca and Mr RA Rosca. From the respondent, we heard evidence from Mr K Delev and Mr K Sarantou.
4. The agreed issues in this case are set out in the headings part of paragraphs 163 to 181 below. We have reached a majority judgment in this case. Where we refer to “*We*” in the judgment, we refer to the findings of fact, analysis and conclusion of the majority of the tribunal. Where we refer to “*The Minority View*”, we refer to the findings of fact, analysis and conclusion of the minority of the tribunal.

Findings of fact

5. The relevant facts are as follows. Where we have had to resolve any conflict of evidence, we indicate how we have done so in the analysis section of our reasons.
6. The claimant commenced her engagement with the respondent as a warehouse operative on 5 October 2022. The claimant was supplied to the respondent via an agency.
7. At the relevant time the claimant lived in Bradford. She is part of a Facebook group called '*jobs for Romanians*'. The claimant posted an advert on this Facebook group for the role of warehouse operative at the respondent's factory.
8. Mr Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar and Mr Anghel Rosca are on this Facebook group. They were not friends with the claimant or her husband, Mr Pal, outside of the Facebook group. They became acquainted when they worked together for the respondent. They are all of Romanian nationality. At the material time they all lived in Bradford.
9. Mr Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar and Mr Anghel Rosca all decided to work for the respondent because of the Facebook post Mrs Pal had made.
10. Mr Pal is of Dutch nationality.
11. Mr Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar and Mr Anghel Rosca were all working in the respondent Icon 2 warehouse on 12 November 2022 when the alleged comments were made to the claimant by Mr Delev.

The layout of Icon two warehouse

12. We find that the workstations where the claimant worked in the respondent's Icon two warehouse were set up as follows. We reach this conclusion on the oral evidence that Mr Delev and Mr Sarantou gave, which we accepted.
13. Automated conveyor belts operate around icon two factory moving goods around, together with 360 robots.
14. There were several workstations within the Icon 2 warehouse. This was described as a Reubin station where packing was done. During the nightshift, at each of those workstations, warehouse operatives picked, packed and sorted products for onwards shipping. These products included cosmetic products and other products such as My protein bars and powder which were handled at these workstations.
15. There were approximately 15 warehouse operatives based at each workstation. Mr Delev described each warehouse operative as working between two workstations.
16. There was an automated conveyor belt line that ran to the relevant workstation. Boxes were sorted, taped and packed. Behind the workstation were boxes of goods. Mr Delev estimated that the boxes were piled 2 m high and 2 m long behind each workstation.
17. There were no motorised vehicles driving around the claimant's workstation. Mr Delev accepted this in cross examination.
18. Sometimes music played within the Icon two factory. Mr Delev said the music was playing as loud as you would find in a nightclub on 12 November 2022. The claimant said no music was playing on 12 November 2022. We find on the

balance of probabilities that music was playing on 12 November 2022, but not as loud as you would find in a night club.

19. Mr Delev was an operational trainer and was stationed 10m away from the claimant's workstation. There were two workstations between Mr Delev and the claimant. On Mr Delev's evidence that means there must have been approximately 30 warehouse operatives and two sets of boxes which were approximately 2 m wide and 2 m high in between the claimant's workstation and Mr Delev.
20. It is accepted evidence that the claimant sat down on a flatbed trolley to tie her shoelace at her workstation at around 8 PM. This flatbed trolley was located close to her workstation.

The incident on 12 November 2022

21. What happened next is disputed between Mr Delev and the claimant and the witnesses that she called on her behalf.
22. We remind ourselves that the claimant must convince us that the evidence which she has provided makes it more likely than not that her version of the facts is correct. This is the balance of probabilities test.
23. We first provide a summary and analysis of the relevant parts of the witness evidence we heard regarding the incident on 12 November 2022. We then go on to decide what happened after the incident on 12 November 2022.
24. Finally, we reach a conclusion, taking into account all the evidence that we have heard about what occurred on 12 November 2022.

Mr Delev's evidence

25. Mr Delev's evidence is that he saw, from 10m and with two workstations and at least 30 members of staff in between, that the flat bed trolley's brake was not engaged. Mr Delev's evidence is that the flatbed trolley brake is about the size of a credit card.
26. Mr Delev's evidence was, having noticed that the claimant was on a flatbed trolley with the brake not engaged, he raised his voice to the claimant and then came over to the claimant to explain that what she had done was unsafe. He said he spoke loudly because there was music playing in the warehouse and machinery operating. Mr Delev's evidence is that he asked the claimant to stand up.
27. Mr Delev said in his witness statement that the claimant approached him and had responded to him to say that she thought her actions were safe. Mr Delev said he disagreed, and the claimant was unable and unwilling to listen. Ms Delev said in his witness statement that as far as he was concerned that was the end of the matter.
28. In his oral evidence, Mr Delev said after the exchange he reported the exchange with a senior colleague Angel Haydarove, who Mr Delev said managed the line where the claimant worked. Mr Delev said in his oral evidence that he had explained to Angel Haydarove that there had been a situation and that the claimant acted under unsafe conditions. Mr Delev said Angel Haydarove had told him that if the matter continued to let him know.
29. We were told by Mr Delev that Angel Haydarove worked for the respondent. Angel Haydarove was not called to give evidence in the tribunal and so we do

not have the benefit of his evidence about what Mr Delev said about this incident to him.

30. Mr Delev said there was then a separate incident, around 30 minutes later, in which Mr Pal started to shout at Mr Delev. Mr Delev said Mr Pal started to threaten Mr Delev with physical violence, because Mr Pal believed Mr Delev had been disrespectful towards his wife.
31. Mr Delev said he reported this second incident (and indeed the first incident) to the shift manager, Konstantinos Sarantou.
32. Mr Delev subsequently sent a statement by email to his manager, Konstantinos Sarantou. This email was sent on 13 November 2022 at 3:35 AM to Konstantinos Sarantou, Angel Haydarov and others.
33. In relevant extracts of this email Mr Delev said:
 - a. *At some point, I noticed Gabriela Dobre to sit on one of the blue trolleys and to fix her shoelace. My first instinct was to terminate immediately that hazardous situation, as it was obvious that Gabriela is at risk where she was sitting, and call her to stand up. Distance between us was greater than 10 meters as there were 2 Rebin stations between us and to attract her attention I raised my voice so she can hear me.*
 - b. *Gabriela Dobre approached me, and I tried to explain her in what hazardous situation she was and in future she should act more responsible. She started to answer back, and I explained one more time the situation. Her response was total ignore from her side and she start to explain what she believes is safe. I didn't want to be involved in an argument and when I realise that Gabriela Dobre will not listen at all, I turned and walked away.*

- c. During the whole time of our conversation with Gabriela Dobre, Sandor-Laszio Pal was at the neighbouring Rebin station, which was few feet away and he didn't seem worried or disturbed by the way I was communicating with Gabriela Dobre.*
- d. All this was reported to SC @Angel Haydarov as he managed that line.*
- e. Half an hour later, I stood next to SC table when Sandor-Laszio Pal start shouting at me from his station, which at that moment was more than 10 meters away. The moment I start walk, he rushed towards me and start shouting "do you have problem with me?" In disbelieve and in shock from what I was asked, I kept my cool and I asked him "Why should I have problem with you?" in which he replied that I was disrespectful with his girlfriend before. Still in shock from these accusations, I tried to explain that I wasn't in any way disrespectful. In which he began to be more laud and verbally aggressive and he said: (quote) "I am Russian, and I cut throats. I don't care about police and stuff."*
- f. I asked him calmly does he threaten me but he didn't answer but reply that he had 6 witnesses how I was disrespectful to his girlfriend and asked me to go out and solve the problem between us like men.*
- g. At this moment, I've noticed SC Angel Haydarov and TM Bogomil Iliev next to me, who put an end of this. I left the place to report this incident to SM @Konstantinos Sarantou as I found myself in situations at the workplace that made me feel threatened.*
- h. Angel Haydarov were next to him and they put an end to the situation.*

34. Mr Delev had received no training on diversity and inclusion matters.

35. Mr Delev said there was no further investigation into the matter, and he had no further involvement in the claimant's working engagement with the respondent.
36. Mr Delev came across as distant and quite unemotional in his evidence.

The Claimant's evidence

37. The claimant's evidence about the incident was very different. She said the working environment was calm in Icon 2 and that it was possible for people to hear each other without shouting.
38. The claimant made some concessions during evidence.
 - a. The claimant accepted the music played on some days in the warehouse but not on 12 November 2022.
 - b. She accepted that it wasn't safe to sit on the flatbed trolley to tie her shoelace.
39. The claimant said that she had checked that the wheels on the flatbed trolley were locked before she had sat down on it to tie her laces. The claimant said she physically tried to move the trolley and it didn't move, which is how she could be sure the wheels were locked. The claimant accepted that Mr Delev had told her to stand up and said she was sitting in an unsafe position.
40. The claimant's evidence was Mr Delev had been right next to her when this conversation took place. The claimant's evidence was Mr Delev was less than a metre from her.
41. The claimant said that she had responded to Mr Delev by saying "*I'm just trying to tie my shoelaces*". He responded and said "*you can't speak to me. You have no right to speak in front of me. You have to shut up.*" The claimant recalled Mr

Delev saying *“you are a lazy woman. You are an agency worker. I am higher than you. You are a woman you can’t talk to me”* and *“shut up fucking scum.”*

42. The claimant’s evidence was that she was alone when Mr Delev said these words and the discussion lasted 2 to 3 minutes.
43. The claimant said she was upset and was taken to the toilet by her husband shortly afterwards.
44. The claimant’s evidence was around 10 minutes after then her husband Mr Pal came, along with Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar and Mr Anghel Rosca.
45. The claimant said in her witness statement that a manager came to speak to her after this incident and she explained what had happened to that manager. The claimant’s evidence was that she had said to the manager she had sat down on the flatbed trolley, which was safe and locked. She was then shouted at by Mr Delev and she didn’t see why he needed to shout. The claimant said she was humiliated by Mr Delev and he was not respecting her as a woman and had said bad words to her.
46. The claimant’s evidence was this manager had agreed that a case of discrimination had happened and for her protection had asked her to sign a verbal reprimand about what had happened.
47. We reject the respondent’s submission that the claimant did not say in her evidence that Mr Delev had said to her *“get up from there fucking dirty scum”*. Whilst the claimant did not say the entire sentence in her oral evidence, we find that the claimant did say Mr Delev had told her to get up and he had said *fucking scum* to her. We find the claimant’s evidence was Mr Delev had said to her *“get up from there fucking dirty scum”*.

48. We also reject the respondent's submission that the claimant's evidence about the allegation that "*she had no right to speak to him as she was a woman and an agency worker*" was inconsistent in her written and oral evidence. We find that the claimant's written and oral evidence about this allegation was broadly consistent. In the Claimant's witness statement, she says Mr Delev said she was not allowed to speak in front of him because she was *a miserable and lazy woman* and her oral evidence was he said *you have no right to speak in front of me, you are a miserable woman you have no rights*. We find this is the same thing. We find the claimant's consistent evidence was that she was being told by Mr Delev that she had no right to speak to him as she was a woman.
49. The minority did accept the respondent's submission that the claimant was inconsistent on this point.

Mr Pal's evidence

50. Mr Pal made some concessions in his evidence. He accepted that it wasn't good health and safety practice for the claimant to sit on the flatbed trolley to tie her shoe.
51. Mr Pal said that he had been in close proximity to the claimant when Mr Delev approached. He said he heard Mr Delev call the claimant a fucking dirty scum. He said Mr Delev said to the claimant that she had no right to speak to him and that she was just a dirty woman.
52. Mr Pal's evidence was that nobody else intervened in that conversation, but several other witnesses approached afterwards. They included Alexandru Dan Campan and Mr Anghel Rosca.

53. Mr Pal said he then took the claimant to the toilet to calm down and he was away from the shop floor for about 10 minutes.
54. Mr Pal said after about 10 minutes he then had a discussion with Mr Delev about what Mr Delev said to his wife. Mr Pal accepted he lost his temper during the subsequent discussion with Mr Delev. Mr Pal accepted he raised his voice and struggled to control his temper. Mr Pal said this was because of the horrific situation that had occurred between Mr Delev and the claimant.
55. Mr Pal did not accept that he had said to Mr Delev "*I am Russian and I cut throats. I don't care about police and stuff*" as alleged by Mr Delev. Mr Pal made the point that he is Dutch not Russian.
56. Mr Pal's evidence was that Mr Sarantou and two other managers then intervened after his discussion with Mr Delev.
57. Mr Pal's evidence was he then told Mr Sarantou about how Mr Delev had spoken badly to his wife. He told Mr Sarantou that she had been referred to as dirty and that Mr Delev had no right to speak to her as a female in the way he did.
58. We found Mr Pal to be a genuine and honest witness. He was able to describe the circumstances of the incident in a clear way. He was also able to make concessions under cross examination.
59. The minority found Mr Pal to be confused.
60. We accept the respondent submission that at no point did Mr Pal state he heard Mr Delev say "*get up from there fucking dirty scum.*" Mr Pal did however say in his witness statement that Mr Delev called the claimant dirty scum. He did not refer to this phrase in his oral evidence, until he was taken to it by counsel.

61. We reject the respondent's submission that Mr Pal's evidence contradicted the claimant's evidence. The contradiction the respondent seeks to draw is between Mr Pal's witness statement where he says Mr Delev told the claimant *she has nothing to say, that she is a woman* and his oral evidence where he said *she was only an agency worker, that she was female and had no right to reply to him*. We find this is a false distinction. Mr Pal was saying broadly the same thing in his written and oral evidence and this was *Mr Delev told the claimant that she had no right to speak to him as she was a woman and an agency worker*. The minority accepted the respondent's submission on this point.

Evidence of Mr Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar
and Mr Anghel Rosca

Anghel Cutitar

62. Mr Anghel Cutitar gave the clearest account of these four witnesses about what he witnessed on 12 November 2022. He said he was about 7-8m away from the claimant's workstation when he heard a loud shout. He turned around and saw a number of people gathered around the claimant's workstation. He noticed his sons were there (Mr Remus Anghel Rosca and Mr Anghel Rosca) and so he walked over to see what was happening.
63. Mr Anghel Cutitar said Mr Delev was less than a metre away and he was speaking to the claimant in a raised voice. He recalled heard Mr Delev say she was a dirty woman. He saw the claimant was crying and shuddering. He heard Mr Delev say fuck.

64. Mr Anghel Cutitar said he remembered the conversation lasted around for five minutes.
65. Mr Anghel Cutitar also said he heard Mr Pal talk to Mr Delev after the initial incident with the claimant. He recalled Mr Pal telling Mr Delev that it was not nice for him to speak to his wife like that and that Mr Delev's behaviour had been shameful.
66. Mr Anghel Cutitar said that he continued to work for the respondent until December 2022. Mr Angel Cutitar wasn't offered any work after this point and he assumed it was because the festive period was over. He said he had no issues with the first respondent and would go back and work for them.
67. We found Mr Anghel Cutitar to be a straightforward and honest witness. Mr Anghel Cutitar was careful to limit his evidence to what he had heard, which is as we have set out in paragraph 63 above. We reject the respondent's submission that Mr Anghel Cutitar's evidence was tainted or unreliable as suggested in submissions. We find there was no motivation for Mr Anghel Cutitar not to tell the truth and we accept the evidence he has given in its entirety.
68. The minority accepted the respondent's submission on this point.

Mr Alexandru Dan Campan

69. Mr Alexandru Dan Campan's account of what happened on 12 November 2022 was that he said he was about half a metre away from the claimant and Mr Delev when the incident occurred. He remembered that Mr Delev said to the claimant that she couldn't speak to him. He thought Mr Delev's words were bad and that he was speaking to her in that way because she was a woman.

70. Mr Alexandru Dan Campan suggested he intervened himself at one point in the conversation between Mr Delev and the claimant.
71. Mr Mr Alexandru Dan Campan recalled two managers coming over to where the incident had taken place. The second manager he identified as Mr Sarantou and the first one as somebody else.
72. On the balance of probabilities, we find that Mr Alexandru Dan Campan did not intervene in the discussion between Mr Delev and the claimant as he suggested. Neither Mr Pal, the claimant or Mr Anghel Cuitatar recall this taken place. We find Mr Alexandru Dan Campan has misremembered this part of the events that took place. However, we accept his evidence about what he heard and also about the two managers coming over after the incident of place.
73. Whilst we found Mr Alexandru Dan Campan's recollection of what happened on 12 November 2022 to be confused in places, we find he was an honest witness. We find no motivation for Mr Alexandru Dan Campan not to tell the truth. Other than the point about intervening in the discussion between Mr Delev and the claimant we have accepted his evidence.
74. The minority found Mr Dan Campan to be unreliable.

Mr Remus Anghel Rosca

75. Mr Remus Anghel Rosca said he overheard the conversation between Mr Delev and the claimant. He heard Mr Delev say "*make her dirty woman*" and "*you are not allowed to speak because you are a woman*" and "*you are not allowed to shout me because you are a woman.*" He fairly accepted he could not remember exactly what was said. He said it was 2 to 3 m away from Mr Delev and the claimant at the time.

76. Mr Remus Anghel Rosca's evidence about whether Mr Alexandru Dan Campan intervened in the conversation between the claimant and Mr Delev was confused. At first, he said nobody intervened and then said Mr Alexandru Dan Campan intervened. He said he couldn't recall what Mr Alexandru Dan Campan said.
77. Whilst we found Mr Remus Anghel Rosca's recollection of what happened on 12 November 2022 to be confused in places, we find he was an honest witness. We find no motivation for Mr Remus Anghel Rosca not to tell the truth. Other than the point about Mr Alexandru Dan Campan's intervening in the discussion between Mr Delev and the claimant, which we find did not happen, and Mr Angel Rosca knowing the claimant, we have accepted his evidence.
78. The minority view found Mr Remus Anghel Rosca's evidence to be unreliable.

Angel Rosca

79. Angel Rosca said in oral evidence he overheard the discussion between Mr Delev and the claimant. He heard Mr Delev call the claimant "*fucking dirty scum*", "*a dirty woman*" and he heard Mr Delev say that the claimant didn't have the right to talk to him because she was an agency worker.
80. Mr Angel Rosca said that he couldn't remember anyone else intervening in the discussion. He said his dad, his brother, himself and others went to where the claimant was working to protect her. He said he could recall Mr Pal going over to speak to Mr Delev after a period of ten minutes.
81. Mr Angel Rosca said in his oral evidence that he and others then spoke to Mr Sarantou about the incident. Mr Angel Rosca said he told Mr Sarantou that Mr Delev said to the claimant "*get the fuck up*" and "*everything else that*

happened.” We find that Mr Angel Rosca has mis-remembered this conversation and he did not say these things to Mr Sarantou. Had he done so, we find Mr Sarantou would have remembered this.

Was Angel Rosca present on shift on 12 November 2022?

82. Mr Angel Rosca said that he was present on 12 November 2022. He gave evidence that when he arrived at work that day there were around 500 people due to start their shift. Each person was given a number which they then took with them and used to gain access to the building. Around an hour later a person would come and find them to make sure they were present.
83. Mr Angel Rosca was taken to the respondent’s shift update report document dated 11 November 2022 which suggested that he was at work on that day. Mr Angel Rosca’s evidence was that his shift had been cancelled that day. He pointed out that the shift update report document did not record a number which would have given him access to the building. He said he had received a text message from the agency to say his shift had been cancelled. We have seen that message. It is also the case that the respondent’s own time entry system does not show Mr Rosca as having worked that day.
84. The respondent’s case was that Mr Angel Rosca was not on shift on 12 November 2022. Mr Angel Rosca evidence was that he was. He pointed to a text message that he received confirming his shift.
85. Whilst the respondent’s shift update report document dated 12 November 2022 recorded him as absence without leave, it also recorded a number against his name which would allow him to gain access to the building.

86. We heard evidence from Mr Sarantou about how the agency would have gathered the information about whether Mr Angel Rosca was on shift on 11 and 12 November 2022 and then how the agency would supply the respondent with the data about whether Mr Angel Rosca was working on 11 and 12 November 2022.
87. Mr Sarantou fairly accepted in evidence that he did not know whether Mr Angel Rosca was or was not working on 11 and 12 November 2022. No witness evidence was provided by the respondent from anyone from the agency who would have checked that Mr Angel Rosca was working on either day. The respondent's own evidence is contradictory. The respondent's case was that Mr Angel Rosca was in work on 11 November 2022. The respondent's own time entry system does not show Mr Rosca as having worked that day.
88. We find that the respondent has not provided clear evidence that Mr Rosca was not in work on 12 November 2022. On the balance of probabilities, we prefer Mr Angel Rosca's oral evidence and find that he was on shift on 12 November 2022. His evidence was clear and corroborated by the text messages we saw. The respondent's documentation does not appear to be accurate and cannot be relied on in isolation. The minority, on the balance of probabilities, preferred the respondent's evidence on this point.
89. Whilst we found Mr Anghel Rosca's recollection of what happened on 12 November 2022 to be confused in places, we find he was an honest witness. We find no motivation for him not to tell the truth. He continued to work for the respondent without complaint until his work came to an end of December 2022. We have accepted his recollection of what was said between the claimant and

Mr Delev as being accurate, other than the matters identified at paragraph 81 above. The minority did not accept the evidence of Mr Anghel Rosca.

What happened after the incident on 12 November 2022

90. We find, on the balance of probabilities, that Mr Delev went to speak to Angel Haydarov about what had happened with the claimant, immediately after the incident.
91. Mr Delev accepted in questioning that he had gone and spoken to Angel Haydarov after the initial discussion with the claimant. This is also recorded in his email to on 13 November 2022 3:35 AM to Konstantinos Sarantou, Angel Haydarov and others.
92. During this period Mr Pal took his wife to the toilet to calm down as she was very upset about what Mr Delev had said to her.
93. Then, when the claimant returned, Angel Haydarov came over to speak to the claimant. The claimant's evidence is that she gave the following information to a manager about the incident: she had sat down on the flatbed trolley, which was safe and locked. She said she had been shouted at by Mr Delev and she didn't see why he needed to shout. The claimant said she was humiliated by Mr Delev and he was not respecting her as a woman and had said bad words to her. This manager agreed that a case of discrimination had happened and for her protection had asked her to sign verbal reprimand about what had happened.
94. The claimant's evidence was that she didn't know the name of this manager, but it was not Mr Sarantou. We find, on the balance of probabilities, that this manager was Angel Haydarov.

95. This finding is consistent with Mr Sarantou's evidence which was that either the claimant or Mr Delev first reported the incident to Angel Haydarov, a senior colleague, who then reported it to Bogomil Iliev, a team manager who then reported it to Mr Sarantou.
96. It is also consistent with Mr Alexandru Dan Campan's evidence which was that he recalled another manager first coming over to speak to the claimant after the incident (not Mr Sarantou).
97. The respondent has not called Angel Haydarov to contradict the claimant's version of event.
98. We therefore accept the claimant's evidence and find that she immediately reported an allegation of discrimination to Angel Haydarov of the respondent on 12 November 2022. The minority does not find that discrimination was mentioned during this conversation.
99. We find that around 30 minutes after the incident between the claimant and Mr Delev, Mr Pal approached Mr Delev and complained to him about what Mr Delev said to his wife. We find Mr Pal was angry with Mr Delev because 30 minutes earlier he had heard Mr Delev call his wife scum. He had also heard Mr Delev say to the claimant that she had no right to speak to him, she was just a dirty woman. Mr Pal lost his temper during the subsequent discussion with Mr Delev and he raised his voice.
100. We do not accept that he had said to Mr Delev "*I am Russian and I cut throats. I don't care about police and stuff*" as alleged by Mr Delev.
101. We reached this finding preferring the evidence of Mr Pal. His evidence on this point was straightforward, honest and believable. He was prepared to make concessions, such as agreeing he lost his temper, even if that did not

support the claimant's case. We find, given what Mr Pal heard Mr Delev say, it was likely that he would have challenged Mr Delev in the way he did.

102. We find that Mr Delev gave evidence that Mr Pal had said he was Russian and cut throats, to support his narrative that Mr Pal have been overly aggressive towards him and to distract from the comments he had made to the claimant. On the balance of probabilities we consider Mr Pal will not have said such a thing. He is Dutch, not Russian.

103. We also consider the motivation of Mr Pal. We ask ourselves what motivation did Mr Pal have to approach Mr Delev and speak to him 30 minutes after the incident between Mrs Pal and Mr Delev, and lose his temper, unless he genuinely had heard Mrs Pal being spoken to in the way Mr Pal described to us?

104. Mr Delev's case was that the interaction between the claimants and himself was "*uneventful*". If that were right, why would Mr Pal lose his temper with Mr Delav, without good reason? The evidence from Mr Delev is that he didn't know the claimant or Mr Pal and we find, on the balance of probabilities, no reason for Mr Pal to behave as he did, other than because he genuinely had heard Mrs Pal being spoken to in the way Mr Pal described to us.

105. The minority accepts the respondent's version of events for paragraph's 99 to 104.

Mr Sarantou's evidence

106. We find that Mr Sarantou's then had a discussion with Mr and Mrs Pal about the incident. We find Mr Pal, in describing the incident, did say to Mr

Sarantou that Mr Delev had behaved aggressively and would not have spoken to a man like he had to Mrs Pal.

107. Mr Sarantou then described, for the first time in his oral evidence, what can be best described as a cursory investigation into what had happened. He said he *“asked witnesses about the incident”*. Those witnesses *“could remember an argument but not the exact words that were said”*.

108. Mr Sarantou’s conclusion was that both parties were at fault.

109. On Mr Sarantou’s own evidence he was being put on notice that Mr Delev had spoken to Mrs Pal in an aggressive way because she was female. This is consistent with the claimant’s case.

110. Mr Sarantou was not present when the incident occurred. We find that he did a cursory investigation which didn’t get to the bottom of what had happened that evening, let alone whether discrimination had occurred. Despite not reaching a conclusion on this matter, he nonetheless decided that all parties were equally to blame.

111. We find Mr Sarantou was wrong to conclude that Mrs Pal was *“equally to blame”* for the things that Mr Delev had said to her.

112. The claimant and Mr Pal signed a coaching form on 12 November 2022. This coaching form was issued by the agency rather than the respondent and was provided by an individual called Ainara. This coaching form said *“engaged with verbal argument with training champion. Both parts (sic) involved had been spoken to. The outcome was inconclusive then both parties will received (sic) a warning.*

113. On 17 November 2022 the agency cancelled the claimant and Mr Pals’ working arrangement with the respondent. We have seen a message on the

agency's internal messaging system called Slack which says this was because the agency took a zero tolerance to threatening behaviour. We'll refer to this messaging system as Slack.

Mr Pal's grievance complaint dated 17 November 2022

114. Mr Pal submitted a grievance to the agency on 17 November 2022 by email.

115. Mr Pal was cross-examined by Mr Lassey about a message on the agency's Slack system. This message appeared to be between two members of management for the agency, Jason Thomas and Karol Fila. The message appeared to extract a grievance that Mr Pal had submitted which made a complaint about Mr Delev's conduct on 12 November 2022 but did not allege unlawful discrimination. It was put to Mr Pal in cross examination that he had not alleged any discrimination against his wife in this grievance.

116. Mr Pal responded to say that only part of the original grievance he had submitted have been copied into the Slack message.

117. During the second day of the tribunal hearing the respondent disclosed, for the first time, the full grievance email from Mr Pal. This email was sent at 5:22 PM on 17 November 2022 to Eleni Kalemi at the agency. Mr Pal said in this email *"around 8:00 p.m. he [Mr Delev] started shouting at his wife my, Gabriela Pal and to humiliate her like this, for her safety, she tried to tie her safety shoes. At that discussion I was present as well as Remus Anghel, Campan Alexandru and Anghel Cutitaru. After [Mr Delev] started shouting for almost 2-3 minutes at my wife and reproaching her for the fact that she does not even have the right to speak, that he is a worker from an agency, not from*

the company, and then he swore -o and yelled at her, considering that it was my wife who was about to collapse as a result of the verbal violence applied by this person, I intervened and asked him to stop threatening my wife and to stop talking to her like that that such behavior is unacceptable, after which he told me, as well as considering that we are an Agency, we do not even have the right to speak in front of him.” This part of Mr Pal’s grievance was copied and pasted into the Slack message which the respondent had disclosed.

118. The following part of the grievance was not extracted into that message.

The discussion continued, but I also started talking to him in the same tone so that he could hear what I was saying, that I do not tolerate anyone humiliating my wife, especially since she is also pregnant. The heated discussion in a few minutes was also attended by the warehouse managers, who then moved us to another department and investigated what happened. The attitude of the [Mr Delev] was also confirmed by the other witnesses and we were informed of a report in which we were all going to receive a written reprimand. It was transparently detailed to us that there will be no dismissals, considering that they find both parties guilty, although we do not blame ourselves for not allowing an abusive man to abuse my pregnant wife. From those presented, we consider the following: The fundamental legislation regarding labor law has been violated, we also note and show the fact that both the European conventions regarding the right to work and the right not to be discriminated against according to the European convention on human rights to which Great Britain joined and took were violated commitment to align the legislation with Western European principles. I also note that the right to a fair trial was violated, as both the decision to fire us and what happened on our days off,

behind us, we could not attend in front of the management to show our point of view, moreover: on 11/13/2022, we signed that written reprimand in good faith, knowing that we will not be fired due to the attitude of the THG employee. And thus both the right to a fair trial and the right to defense were denied. Likewise, taking into account the statements of those from the agency who are in our favor, it certainly denotes a sign of discrimination in the procedure of "finding our attitude".

Conclusion about what happened on 12 November 2022

119. We conclude, on the balance of probabilities and considering all the evidence we have heard, the following:

120. At around 8 PM the claimant sat down on a flatbed trolley to tie a shoelace. Before she sat down, she made sure that the trolley's wheels were in the locked position. The minority does not accept that the wheels were locked.

121. Mr Delev was around 10 m away from the claimant. He noticed that she was sat on the flatbed trolley tying her shoelace. He could not see from that distance whether the trolley's wheels were in the locked position or not. Mr Delev was concerned that the claimant was sat down and was tying her shoelaces in an unsafe way. The minority accepts the respondent's assertion that Mr Delev could see that the wheels were not locked.

122. Mr Delev walked from his workstation to the claimant and stood around a metre and a half away from her. The claimant and Mr Delev had an exchange. Mr Delev told the claimant to stand up and said she was sitting in an unsafe position.

123. The claimant responded to Mr Delev by saying *“I’m just trying to tie my shoelaces”*.
124. Mr Delev was annoyed that the claimant answered back in this way. He was shouting at this point and said to the claimant *“that she had no right to speak to him as she was a woman and an agency worker”* and then said, *“get up from there fucking dirty scum”*. We will refer to these comments as the Comments in this judgment. The minority accepts the respondent’s version of this incident.
125. We have preferred the evidence of the claimant about what happened on 12 November 2022 for the following reasons.
126. We consider the claimant gave an honest, truthful and balanced account of the Comments themselves and the circumstances surrounding the comments. She was prepared to make concessions and accept where she had been in the wrong, such as accepting that she was sitting in an un-safe place when tying her shoelaces.
127. For the reasons set out in paragraphs 47 and 48 we find the claimant’s evidence about the content of the Comments was consistent in both her written and oral evidence to the tribunal.
128. We have found at paragraphs 93 and 98 that the claimant reported an allegation that she had been subjected to discrimination by Mr Delev, to Angel Haydarov, that same evening (12 November 2022), shortly after the incident occurred. We have found that Angel Haydarov accepted that the comments could be discriminatory.
129. We have found at paragraph 118 that Mr Pal lodged a grievance on 17 November 2022, five days after the Comments were made, on behalf of the

claimant and himself. In this grievance Mr Pal alleged that the claimant had been subjected to discrimination by Mr Delev. Mr Pal said in this grievance that Mr Delev was an abusive man who abused his pregnant wife. Mr Pal also said the right of the claimant not to be discriminated against had been violated by the respondent.

130. Taking a step back, we find that the claimant reported that she had been subjected to discrimination by Mr Delev immediately after the incident and five days later, which is consistent with her account that the Comments took place.

131. Neither the respondent nor the agency took any steps to investigate the claimant's allegations, which would include finding out exactly what she said Mr Delev had said to her. In these circumstances, we do not find that the failure of the Claimant to spell out what the Comments were, in her complaint to Mr Angel Haydarov on 12 November 2022 or in Mr Pal's grievance dated 17 November 2022, suggests that the Comments weren't made. The respondent chose not to ask the claimant further about this, despite being on notice that she said Mr Delev had behaved in an abusive and discriminatory way towards her.

132. We have found at paragraphs 93 and 98 that Angel Haydarov said to the claimant that for her protection, she should sign a verbal reprimand about what had happened. We find that this is the reason that the claimant signed the verbal reprimand and not because she believed she had done wrong or because the Comments were not said.

133. We find the claimant's evidence was corroborated by Mr Pal's witness evidence, which again we found to be honest and truthful and balanced. We accept that Mr Pal may have been motivated to support the claimant's

evidence that the Comments were said, when the Comments were not said, because he was her husband. However, we have found that this is not the case because we have found at paragraphs 50, 51, 58 and 61 that Mr Pal was able to give a true and accurate account of what he heard on 12 November 2022. He was able to make concessions which did not support the claimant's case, such as agreeing that the claimant was acting unsafely when sitting on the flatbed trolley. His evidence about what he heard Mr Delev say is consistent with the Comments that the claimant alleged were said.

134. We did not prefer Mr Delev's evidence. We found that Mr Delev tried to play down the significance of the incident on 12 November 2022 in his witness evidence. We find it more likely that there was a significant altercation between Mr Delev and the claimant on 12 November 2022 in which Mr Delev was shouting and using the words the claimant has attributed to him. The consistent evidence of all the claimant's witnesses, which we have accepted, is that there was shouting and commotion between Mr Delev and the claimant. Mr Delev didn't refer to this at all in his witness statement evidence. We find Mr Delev did so to detract from the significance and serious nature of the incident.

135. There were other parts of Mr Delev's evidence that we did not accept, and which contributed the reason why we did not prefer his evidence. We found his evidence that he had been able to see whether the brakes on the flatbed trolley were engaged, from 10 metres away, with at least 30 members of staff, two conveyor belts and Reubin workstations and with boxes on those workstations which were 2 m high and 2 m wide all in between, incredible and on the balance of probabilities unlikely. We find Mr Delev gave this evidence to exaggerate his concern about the claimant's health and safety breach.

136. We don't accept Mr Delev's evidence that the factory was so noisy that he had to speak loudly to the claimant to be heard. We have found that Mr Delev was a metre and half from the claimant when he had this conversation. We have found that music was playing in the factory on 12 November 2022. We found Mr Delev's evidence that music was playing in the factory at the same volume as in a nightclub as incredible. We find Mr Delev gave this evidence, which we do not accept, to support his narrative that this was the reason he spoke loudly to the claimant, rather than because he was angry was that she had answered him back when he told her to stand up.

137. We have found that Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar and Mr Anghel Rosca all came over to where the incident took place, shortly after they heard Mr Delev start to shout at the claimant. We accept the evidence given by Alexandru Dan Campan, Mr Remus Anghel Rosca, Mr Anghel Cutitar and Mr Anghel Rosca. We have not accepted that they have fabricated their evidence to support the claimant's version of events, although we have set out in this judgment where we find they were mistaken in their evidence. We conclude that they are independent witnesses with no reason to not give an honest account of what they saw and heard.

- a. They were not personal friends of the claimant or Mr Pal, although we accept, they did become acquaintances through work.
- b. The claimant had got them the job with the first respondent, but that of itself was not a reason for them to give false evidence to support the claimant.
- c. There was no evidence that they held any animosity towards Mr Delev or the respondent, for any reason.

d. The evidence from Mr Anghel Rosca and Mr Anghel Cutitar was that they continued to work for the respondent for a further month without incident, which is consistent with them not holding ill feeling towards the respondent which might motivate them to fabricated claim against the respondent.

138. We accept that there were some inconsistencies in their evidence. They could not all remember the same thing being said. We do not find that surprising in the circumstances. The factory was noisy. Music was playing. As we have said, there was some machinery operating and there were a lot of workers in the warehouse. This was an unforeseen surprising situation for these witnesses. English is not their first language, nor is it the first language of Mr Delev. In those circumstances, on the balance of probabilities, we find that not all witnesses would have heard everything that was said and some may have recalled what was said in a slightly different way to others.

139. We find, given the circumstances, that these witnesses give an honest account of what occurred. Any contradictions or differences in recollections of what was heard was for the reason set out in paragraph 138 above. This does not make them, in our judgment, unreliable witnesses.

140. Taking their evidence together, these witnesses broadly recalled that the Comments were said. We refer to our findings in paragraphs 63, 69, 75 and 79 in this regard. This is consistent with our conclusion that the Comments were said.

141. The minority accepts the respondent's version of events as described in paragraphs 125 to 140 above.

Relevant Law- Establishing discrimination.

142. In **Talbot v Costain Oil, Gas and Process Ltd and ors** 2017 ICR D11, EAT, His Honour Judge Shanks — having looked at the relevant authorities — summarised the following principles for tribunals to consider when deciding what inferences of discrimination may be drawn:
- a. it is very unusual to find direct evidence of discrimination.
 - b. normally a tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question.
 - c. it is essential that the tribunal makes findings about any 'primary facts' that are in issue so that it can take them into account as part of the relevant circumstances.
 - d. the tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference.
 - e. assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also of reliability and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities.
 - f. the tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors that point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment.

- g. if it is necessary to resort to the burden of proof in this context, S.136 EqA provides, in effect, that where it would be proper to draw an inference of discrimination in the absence of ‘any other explanation’, the burden lies on the alleged discriminator to prove there was no discrimination.

Burden of proof

143. Section 136 of the Equality Act 2010 (“EQA”) provides as follows:

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

(2) If there are facts from which the court [which includes employment tribunals] 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”

144. Direct evidence of discrimination is rare and tribunals frequently have to consider whether it is possible to infer unlawful conduct from all the material facts. This has led to the adoption of a two-stage test, the workings of which were described in the annex to the Court of Appeal’s judgment in **Wong v Igen Ltd (formerly Leeds Careers Guidance) [2005] ICR 931**.

145. The Claimant bears the initial burden of proof. The Court of Appeal held in **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** that “*there*

is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent's act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage”.

146. At the first stage, the tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them.

147. As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, “could conclude” refers to what a reasonable tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the tribunal must assume that there is no adequate explanation for those facts.

148. Unreasonable behaviour of itself is not evidence of discrimination – **Bahl v The Law Society [2004] IRLR 799** – though the Court of Appeal said in **Anya v University of Oxford and anor [2001] ICR 847** that it may be evidence supporting an inference of discrimination if there is nothing else to explain it.

149. In a harassment case, the first stage of the burden of proof is particularly relevant to establishing that the unwanted conduct was related to the protected characteristic.

150. If the burden of proof moves to the Respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act.

151. 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 prohibited ground. That would require that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a tribunal would normally expect cogent evidence.

Direct Disability Discrimination

152. Under s13(1) of the EQA read with s9, direct discrimination takes place where a person treats the claimant less favourably because of disability than that person treats or would treat others. Under s23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.'

153. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of disability. However in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as she was. (**Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] UKHL 11; [2003] IRLR 285)

Harassment

154. Section 26 of the EQA defines harassment as follows:

“(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.

...

...

(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”.

155. We are therefore required to reach conclusions on whether the conduct complained of was unwanted and if it did, whether it was related to sex. If so, we must consider whether it had the necessary purpose or effect.

156. If the claimant proves any of the conduct they complain about, it was unwanted. There is no need to say anything further about that.
157. The requirement for the conduct to be “related to” sex needs a broader enquiry than whether conduct is “because of sex” like direct discrimination **Bakkali v Greater Manchester Buses (South) Limited** UKEAT/0176/17.
158. What is needed is a link between the treatment and the protected characteristic, though comparisons with how others were or would have been treated may still be instructive. In assessing whether it was related to sex, the form of the conduct in question is more important than why the respondent engaged in it or even how either party perceived it.
159. It is for the claimant to establish the necessary facts which go to satisfying the first stage of the burden of proof. If they do, then it is plain that the respondent can have harassed them even if it was not its purpose to do so, though if something was done innocently that may be relevant to the question of reasonableness under section 26(4)(c).

Conclusion

160. We take the following approach to decide this case. We first determine, in connection with each issue identified by the claimant, whether the claimant has established whether there are facts which could lead us to conclude that the respondent has subjected the claimant to unlawful discrimination.
161. If so, we then apply the reverse burden of proof provisions to determine whether those acts amount firstly to harassment related to sex and secondly to direct discrimination because of sex.

162. We refer to each allegation and issue that we determine by the number identified in the List of Issues.

Allegation

Harassment

Issue 1.1.1 On 12th November 2022 did Mr Delev say to the claimant “get up from there fucking dirty scum”?

Issue 1.1.2 On 12th November 2022 did Mr Delev tell the claimant that she had no right to speak to him as she was a woman and an agency worker?

163. Yes, we have found the Comments were said. The minority does not accept the comments were said and therefore does not agree with the findings at paragraphs 164 to 171 below.

Issue 1.2 If so, was that unwanted conduct?

164. Yes, it was. There is no question that the claimant found the Comments to be unwanted conduct.

Issue 1.3 Was it related to sex?

165. We find Mr Delev told the claimant “*that she had no right to speak to him as she was a woman and an agency worker*” because of the claimant’s sex. We have found at paragraph 124 that Mr Delev was annoyed that the claimant had answered back to him. Mr Delev said that the claimant had no right to speak to him as she was a woman, which was clearly related to sex.

166. Given we have found Mr Delev's comment, set out in paragraph 165, relates to sex and Mr Delev has advanced no reason to suggest that this was not related to sex, we find the respondent has failed to discharge the reverse burden of proof and conclude this comment was related to sex.
167. We find that the comment "*get up from there fucking dirty scum*" was a continuation and escalation of Mr Delev's view that the claimant should not speak to him because she was female. We find that Mr Delev saw the claimant as scum and we find that was related to her sex.
168. We have considered the respondent's submission that the comment "*get up from there fucking dirty scum*" was not related to sex, but rather was made because Mr Delev was concerned about the claimant's health and safety. Mr Delev doesn't accept he made this comment. He has therefore provided no context or explanation for why this comment was said. In the absence of such an explanation, we conclude that Mr Delev has provided no non-discriminatory explanation for making this comment.
169. We go on to conclude, based on the evidence, that Mr Delev was initially concerned that the claimant was sat down and was tying her shoelaces in an unsafe way (as set out in paragraph 121 above). However, we find that Mr Delev said to the claimant "*get up from there fucking dirty scum*" because Mr Delev was annoyed that, as a woman, the claimant answered him back by saying "*I'm just trying to tie my shoelaces*" (as set out in paragraph 123 above) when he had told her to stand up from the flatbed trolley.

1.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

170. Yes it did. We have found at paragraph 124 that Mr Delev was shouting when these comments were made. We find they had the purpose and effect of violating the claimant's dignity as they were directed at the claimant because Mr Delev was annoyed that a woman had answered him back. The comments are aggressive, offensive and involve the use of a swear word.

171. Having reached this finding, we do not need to consider issue 1.5.

Direct Discrimination

What are the facts in relation to the following allegations:

2.1.1 On 12th November 2022 Mr Delev said to C2 "get up from there fucking dirty scum"
[woman]

2.1.2 On 12th November 2022 Mr Delev told C2 that she had no right to speak to him as she was a woman and an agency worker

172. We have found in paragraph 163 that the Comments were made. The minority does not find that these comments were made and therefore does not agree with the findings at paragraphs 173 to 181 below.

2.2 Did the claimant reasonably see the treatment as a detriment?

173. Yes, the claimant gave clear evidence that she saw this treatment as a detriment and we find, given the contents of the Comments, that it was reasonable of her to see this treatment as a detriment.

2.3 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different sex was or would have been treated? The claimant relies on a hypothetical comparison.

174. The claimant identifies a hypothetical comparator only. We consider, following the guidance in *Shamoon v Chief Constable of the Royal Ulster Constabulary*, that in connection with this allegation the question of less favourable treatment on the grounds of sex cannot be answered without first considering the ‘reason why’ the claimant was treated as she was.

175. We have found, in paragraphs 165 and 169 that the reason Mr Delev made the Comments to the claimant was because he was annoyed that, as a woman, the claimant answered had answered him back when he challenged her about her decision to sit on the flat the trolley to tie her shoelaces.

176. We find that Mr Delev would not have spoken to a man in that way. This is because, in making the comment that the claimant should not speak to him as a woman, he was clearly indicating that it was because she was female that she should not speak and as we have found at paragraph 169, *the get up from there fucking dirty scum* comment was made because Mr Delev was annoyed that, as a woman, the claimant answered him back. We find that Mr Delev would not have had a problem with a man answering him back, if he had challenged a man about his decision to sit on the flat the trolley to tie his shoelaces.

If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of sex

177. Yes, by proving that the Comments were said the claimant has provided from the tribunal could conclude that the less favourable treatment was because of sex. The minority does not find that these comments were made.

178. We have found, in paragraph 165, that Mr Delev told the claimant “*that she had no right to speak to him as she was a woman and an agency worker*” **because** of the claimant’s sex (our emphasis).

179. We have found, in paragraph 169, that Mr Delev said to the claimant “get up from there fucking dirty scum” **because** Mr Delev was annoyed that, as a woman, the claimant answered him back by saying “*I’m just trying to tie my shoelaces*” (as set out in paragraph 123 above) when he had told her to stand up from the flatbed trolley (our emphasis).

2.5 If so, has the respondent shown that there was no less favourable treatment because of sex?

180. No, the respondent has not.

181. As we have found, Mr Delev doesn’t accept he made the Comments. He has therefore provided no context or explanation for why the Comments were said. In the absence of such an explanation, we conclude that Mr Delev has provided no non-discriminatory explanation for making the Comments. We therefore conclude that the Comments were made because of sex.

Minority Judgment

182. The minority finds Mr Delev and Mr Konstantinios to be credible, clear and straightforward, and consistent with their statements.

183. By contrast, the minority finds the claimant and her witnesses to be well meaning but muddled. Their evidence was very confused about the incident in terms of who was there, who joined later and what exactly was said both during the incident and reporting it afterwards. Mr Pal signed the coaching note which is, in reality, a record of an informal discussion correcting his behaviour. The minority find it inconceivable that he would have signed that, effectively accepting at least part responsibility for the incident, if events had happened the way he and the claimant describes. The ETI doesn't mention the *'you can't talk to me like that because you are a woman'* comment at all, but it alleges that Mr Delev said scum woman. All of the accounts are slightly different and some are markedly different (for example, Mr Anghel Rosca recalled very specifically a particular form of words 'get the fuck up' which was not recalled anyone else). In relation to the presence or otherwise of Angel Rosca, the minority found Mr Sandantou's explanation of the documentation to be clear and credible and that it is more plausible that Mr Santandou's explanation is the accurate one. Whilst the minority accepts that there is difficulty with language, which makes it more difficult for the claimant to present her case, this very fact probably also contributes to the muddled recollection of what was said in the moment.

184. Mr Konstantinios was a particularly strong witness and the minority found his account of the key incident to be the most credible and the most likely. He said that he spoke to the claimants shortly afterwards to get their versions of

events. He said that what they said to him at that time was largely consistent with what he had been told by Mr Delev. He was clear that the words *'fucking dirty scum'* and *'you have no right to speak to me as you are a woman and an agency worker'* were not said. He conceded that he recalled Mr Pal suggesting that Mr Delev would not have spoken to a man like that, but not that he would have made certain comments to a man.

185. The minority also found Mr Delev to be a good witness. His oral evidence and witness statement was consistent with his contemporaneous recollection.

186. In order to believe the claimants, the minority would have to accept that both Delev and Mr Konstantinios are both deliberately lying and colluding to lie so as to deceive the tribunal. This seems improbable.

Employment Judge Childe

6 March 2024

JUDGMENT SENT TO THE PARTIES ON

21 MARCH 2024

FOR THE TRIBUNAL OFFICE

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s)