



EMPLOYMENT TRIBUNALS

Claimant

Ms Jomila Ahmed

v

Respondent

Humankind Charity

Heard at: Norwich (by CVP)

On: 13, 14, 15 and 16 August 2024

Before: Employment Judge Postle

Members: Ms J Nicholas and Mr M Brewis

Appearances

For the Claimant: Mr D Panton, Solicitor

For the Respondent: Ms H Abas, Counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that the Claimant's claims under the Equality Act 2010 for the protected characteristic of pregnancy and victimisation, are not well founded.

REASONS

Background

1. The Claimant brings claims to the Tribunal under the Equality Act 2010 specifically claims under s.27 for victimisation (pregnancy and maternity).
2. The Claimant relies on nine communications which she says constitute a protected act, these are:-
 - 2.1. 20 March 2023 Grievance (page 101), the Respondent accept this is a protected act;
 - 2.2. An email to Joanne Rice on 18 April 2023 (page 148), the Respondent accept this as a protected act;

- 2.3. An email to Joanne Rice on 8 May 2023 (page 160), the Respondent accept this constitutes a protected act;
 - 2.4. An email to Rachel Gordon on 15 August 2023 (page 234), this is accepted by the Respondent as a protected act;
 - 2.5. An email to Joanne Rice on 17 August 2023 (page 320), this is not accepted by the Respondent as a protected act;
 - 2.6. The 19 August 2023 Grievance (page 318), the Respondent accepts that is a protected act;
 - 2.7. An email to Lindsey Fitzhugh on 4 September 2023 (page 265), the Respondent accepts that this constituted a protected act;
 - 2.8. An email to Lindsey Fitzhugh on 6 September 2023 (page 272), this is not accepted as a protected act by the Respondent; and
 - 2.9. An email to Lindsey Fitzhugh on 8 September 2023 (page 271), the Respondent accepts that as a protected act.
3. The Claimant alleges she was subjected to the following four detriments because she made one or more protected acts (page 83 of the Case Management Hearing):-
- 3.1. The decision of the Respondent not to uphold her Grievance on 20 March 2023 and decide no further action was required as being the first alleged detriment;
 - 3.2. The failure to uphold the Claimant's re-heard Grievance, as being the third alleged detriment;
 - 3.3. The Respondent's alleged failure to deal with, on 19 August 2023, the Grievance in a timely and reasonable manner, as being the fourth alleged detriment; and
 - 3.4. The decision of the Respondent not to disclose the evidential basis relied upon by rejecting her re-heard Grievance, as being the fifth alleged detriment.
4. There was a second alleged detriment but that was withdrawn during the course of this Hearing and that is listed at 14.2 of the Case Management Hearing Summary at page 85 of the Bundle.
5. There is also an issue of jurisdiction in respect of the first alleged detriment.

The Hearing

6. In this Tribunal we heard evidence from the Claimant through a prepared Witness Statement.

7. For the Respondents we heard evidence from Miss Rice, Regional People Partner and Miss Gordon, the Lead People Partner, both giving their evidence through prepared Witness Statements.
8. The Tribunal also had the benefit of a main Bundle of 403 pages and a Supplementary Bundle of 16 pages.

The Law

Jurisdiction

9. Section 123(1)(a) of the Equality Act 2010 sets out that the primary time limit for bringing a claim of victimisation is three months from the date of the act to which the complaint relates.
10. The Early Conciliation time limit extends time for bringing a claim and in effect stops the clock so to speak, s.207B(3) of the Employment Rights Act 1996, resuming only when the Early Conciliation Certificate is received.
11. Section 123(1)(b) provides, such other period as the Employment Tribunal thinks just and equitable.
12. Section 123 (3) provides, conduct extending over a period of time is to be treated as done at the end of that period. The test for whether conduct constitutes conduct extending over a period of time is to be found in The Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530. The focus must be on the substance of the complaint and a distinction must be drawn between acts extending over a period on the one hand and a succession of unconnected or isolated specific acts.
13. In the case of Aziz v FDA [2010] EWCA Civ.304, the Court of Appeal noted that in considering whether separate incidents form part of an act extending over a period, one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents.

Victimisation

14. Section 27(1) of the Equality Act 2010 provides as follows:-
 27. Victimisation
 - (1) A person (A) victimises another person (B) if A subjects B to a detriment because-
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
15. In order to succeed in a claim for victimisation the Claimant is therefore required to show two things under s.27, firstly, that she had been

subjected to a detriment and secondly, that she was subjected to the detriment because of a protected act.

Meaning of Protected Act

16. That is set out in s.27(2) as follows:-

(2) Each of the following is a protected act-

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

17. For conduct to constitute detrimental treatment the Claimant must be disadvantaged in an objective way such as a reasonable worker would, or might, take the view that they had thereby been disadvantaged in circumstances in which they had thereafter to work. Since an unjustified sense of grievance cannot constitute a detriment as has been set out in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337.

18. The test in terms of causation is the reason why, rather than but for. The Tribunal is required to identify the real reason, the motive and that motive may be conscious or unconscious.

19. It is also noted that an employer's alleged failure to properly investigate a complaint of discrimination or harassment will not constitute victimisation unless there is a link between the fact of the employee making the complaint and the failure to investigate. As set out in A v Chief Constable of West Midlands Police EAT313/42.

Burden of Proof

20. Under s.136 of the Equality Act 2010, the burden of proof of victimisation rests first with the Claimant and only shifts to the Respondent to provide an explanation if there are facts from which the Tribunal could decide that the Respondent has victimised the Claimant.

136. Burden of Proof

(1) ...

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

- (3) Subsection (2) does not apply if A shows that A did not contravene the provision.
21. If the burden shifts to the Respondent it is for the Respondent to prove that it did not commit an act of victimisation.
22. It will discharge the burden by proving that on the balance of probabilities the treatment in question was in no sense whatsoever because of the prohibited reason.

The Facts

23. The Claimant commenced her employment originally with Compass in May 2019 as a Young Person Drug and Alcohol Worker. By virtue of a TUPE transfer on 1 April 2023 the Claimant's employment transferred to the Respondent Humankind Charity.
24. On 19 March 2023 (page 102) the Claimant sends her Line Manager Mr Attard an email with the subject heading "Tuesday Incident" and refers to an incident on 14 March 2023, raising a number of allegations against a work colleague Saida Gjokaj. Specifically that she had said "Jomila is popping kids every year, do you even work" and comments attributed to Ms Gjokaj towards the Claimant "you're a pussy".
25. The following day, 20 March 2023, the Claimant submits a formal Grievance to her then employer Compass that she is being the subject of derogatory comments by Saida concerning pregnancy and maternity leave and for being called a "pussy" and they amounted to discrimination and / or harassment (page 101, the first alleged protected act).
26. Around 22 March 2023, Michelle Eyre at Compass was appointed as the Investigating Officer (page 344) and was to be supported by Donna Wilson of HR.
27. Thereafter, dates unknown but before 31 March 2023, Saida Gjokaj is interviewed and Mr Attard (page 105) and Mr Hark provides a written Witness Statement (page 197).
28. By 31 March 2023, before the Transfer is due to take place an Investigation Report is completed by Ms Eyre in which she does not uphold the Claimant's Grievance (page 132). Also on 31 March 2023, Donna Wilson sends the Report to the Respondent's HR Team and states,
- "Please note that it is not quite what we would normally submit, but as we have had some colleagues on annual leave and sickness leave it has been a bit of a challenge to pull together"

The reference before the Transfer which is to take place on 1 April (page 386).

29. On 3 April 2023, Ms Rice of the Respondent received Compass' Report and originally Sarah Caehan, Service Manager, was to be appointed to conduct an Investigation.
30. On 11 April 2023, the Claimant forwards her Grievance of 20 March 2023 to Ms Rice. Ms Rice responds on 12 April 2023,
- “Your previous employer Compass did forward to us the below an initial preliminary work already commenced to us as part of due diligence. We have since appointed a member of our SM Team who will investigate / chair your Grievance.”

(Page 146)

31. Ms Rice then contacts Ms Caehan and asks to confirm a time to meet and discuss the Claimant's Grievance. They agreed to meet the following week on 18 April 2023 (page 385). On 18 April 2023 at around 10:30am, there is a meeting between Ms Rice and Ms Caehan to discuss the Claimant's Grievance. Furthermore, there is a request made by email to Compass for notes of the Investigation Meetings with Ms Gjakaj and Mr Attard and further, requests copies of the Claimant's 19 March 2023 email.
32. Ms Eyre on 18 April 2023 responds (page 149 – 151) via Debbie Spaven at the Respondents saying,
- “We did not meet with the Claimant as we had her emails re the allegations for the grievance and recordings and transcripts with meetings with Ms Gjakaj and Mr Attard.”
33. On the same day, 18 April 2023, the Claimant makes the second alleged protected disclosure, emailing Ms Rice saying she had not yet been invited to a Grievance Hearing to deal with her complaint and stating that the whole thing was causing her stress and the failure to deal with the Grievance in a reasonable time to her miscarriage (page 148).
34. On 19 April 2023, Ms Rice responds to the Claimant's email noting that upon reviewing the Investigation Report compiled by Compass, the Report had concluded that “no action required” and that from the Respondent's perspective the Grievance matter was dealt with by Compass and closed pre-transfer (page 153).
35. The email goes on to say,
- “You have a right of appeal and if you wish to exercise that right please let me know and arrangements will be made for the appeal to be heard.”
36. On 19 April 2023, the Claimant responds that she is surprised by the outcome and questions Ms Rice about previously saying that an employee at the Respondents would be appointed to investigate the Grievance and

they are now saying the decision had already been made (page 154). The Claimant requests relevant papers in respect of the Grievance process.

37. On 21 April 2023, Ms Rice responds saying amongst other things, that she had gone back to Compass requesting the additional information following the conclusion of the investigation. She further suggests a telephone call or meeting to resolve the situation and reach a resolution.
38. On 8 May 2023, the Claimant emails Ms Rice and questions how can she appeal without the Grievance documents and informs her that she will be issuing a claim in the Employment Tribunal. This being the third protected act (page 160).
39. On 12 May 2023, Ms Rice sends to the Claimant the Investigation Report, reiterates the Right of Appeal and in fact actively encourages the Claimant to take this course of action, i.e. by lodging an Appeal and how to do that (page 176 – 177).
40. On 27 May 2023, the Claimant does submit a formal Appeal (page 195) and Sharon Pedilham the Area Manager, is assigned as the Investigation Manager with Ms Gordon as HR support, (unfortunately Ms Pedilham has now left the employ of the Respondent). The Appeal was to be conducted by way of a re-hearing.
41. The date set for the Appeal was 2 June 2023 and re-scheduled at the request of the Claimant.
42. There was a further invite dated 12 July 2023, again this was re-scheduled as the Claimant wanted more time to prepare and the Hearing was ultimately re-scheduled and set down for 21 July 2023. Notes of that meeting with the Claimant are at page 209 – 213. Ms Pedilham clarified at the start of that meeting each of the Claimant's grievances.
43. Thereon, following that meeting, there were interviews with Nicola Montague, Anthony Mclarty Jennifer Atkinson and Saida Gajokaj (page 216 – 222), all said to have been witnesses at the time of the incident of 14 March 2023.
44. On 11 August 2023, the Claimant is sent the Outcome of the re-Hearing of the Grievance in which the Respondents do not uphold the Grievance (page 230 – 233). In that Outcome Letter, each part of the Grievance is set out, what the Investigation has revealed and the reasoning for not upholding the Grievance. We note in point one there was a partial upholding.
45. On 15 August 2023, the fourth protected act which is not accepted by the Respondent as a protected act, namely the Claimant's emails to Ms Gordon and Ms Pedilham confirms she will be appealing the outcome of the re-hearing of her Grievance and requests copies of her own interview notes and the interview notes of the witnesses. She further confirms that

she is issuing a claim in the Employment Tribunal. Ms Rice responds saying she has no specific right to see the Witness notes and statements (page 234).

46. On 17 August 2023, the Claimant emails Ms Rice to say she will be appealing and again requests Witness Statements of the four interviews claiming she has a right under the Respondent's Grievance Policy. In fact the Respondent's Grievance Policy does not contain such an absolute right, only at discretion they will be provided where applicable (page 320).
47. Again, the Respondent's Ms Rice responds saying there is no legal requirement to provide the Claimant with the Witness Statements of those interviewed and the Respondents further state it is not their Policy to provide them. Subsequently, when they were asked if they consented to the release of the interview of the Witness Statements, each individual Witness declined to give their consent.
48. On 19 August 2023, the Claimant emails Ms Rice with the second Grievance alleging the failure to provide her with the evidential basis of those Witnesses which lead to her first Grievance not being upheld was unreasonable and was victimisation. The Claimant advances this as a protected disclosure and apparently that is accepted by the Respondents as a protected disclosure (page 318).
49. On 29 August 2023, Lyndsey Fitzhugh by email invites the Claimant to an Appeal Hearing on 8 September 2023. However, the Claimant responds saying in her view it would be premature due to her 19 August 2023 Grievance being outstanding. Ms Fitzhugh confirms and clarifies that the Appeal against the first Grievance and now the second Grievance could be heard together (page 261 – 264).
50. On 4 September 2023, the Claimant emails Ms Fitzhugh requesting again the Witness interviews to be disclosed and alleged a failure to provide them was because she has complained of discrimination. A further protected disclosure.
51. Ms Fitzhugh again responds saying the Respondent is not obliged to provide statements and states the reason for that is due to the team involved being reluctant to provide their statements and further they do not consent to the release of them.
52. On 5 September 2023, the Witnesses interviewed confirm in emails they do not consent to their statements being shared (pages 267 – 270).
53. On 6 September 2023, the Claimant emails Ms Fitzhugh stating she will not engage in the Appeal process unless she is provided with the interviews of the Witnesses, being the ninth protected disclosure and not accepted as one by the Respondent.

54. Again, Ms Fitzhugh responds saying they have no legal obligation to provide them and in any event, there is no consent from the authors of the Witness Statements to release them.
55. The Claimant then emails on 8 September 2023 stating she has an outstanding Grievance from 19 August 2023 and the matter is now going to the Tribunal, being the tenth protected disclosure and accepted by the Respondents as a disclosure.

Jurisdiction on the First Detriment

56. The act complained of is the refusal by Compass to uphold the Claimant's Grievance of 20 March 2023. The decision was made by Compass on 31 March 2023. The ACAS Certificate shows conciliation commenced on 17 April 2023 and concluded on 9 May 2023 so there is an additional 22 days to add on to the time limit. The claim should therefore have been issued by 27 July 2023 and was in fact filed on 6 August 2023. Clearly the claim is 15 days out of time, unless the Claimant can show it is part of a continuing act extending over a period of time.
57. The first point to make is, is it a continuing act and the answer to that is no. The initial decision was made by Compass. That was a one off isolated incident and the relevant factor, though the Tribunal accept it is not conclusive, is whether there is continuing discrimination or state of affairs by the same individuals involved in those incidents. Here there was a transfer to a wholly new employer and thereafter the substantive decision was made. Compass effectively ceased to be involved after 30 March 2023. Therefore it is not a continuing act or a continuing state of affairs.
58. The next question the Tribunal should ask itself is, should we exercise our discretion to extend time on the basis of it being just and equitable to do so. It is of course the exception rather than the rule and there must be good grounds to justify it. The Tribunal accepts the Claimant had legal representation, but how much during that period is unclear.
59. What is of note is around 15 April 2023 the Claimant did suffer an unfortunate miscarriage and the inevitable consequences that would have had both physically and emotionally.
60. Given the fact the Respondents would not be prejudiced by allowing this in time, as they have been able to deal with the allegation adequately and the claim was issued within a relatively short period of time and the miscarriage occurring in April, the Tribunal are unanimously of the view that it is just and equitable to extend time.

Protected Act

61. Dealing now with the disputed protected act, the email of Rachel Gordon of 15 August 2023 (page 234).

62. The Tribunal viewing this email objectively, she makes it clear she is issuing a claim in the Employment Tribunal and she mentions her previous Grievance relates to discrimination allegations, therefore on balance the Tribunal are of the view that this satisfies the requirements for a protected act.
63. The email from Ms Rice of 17 August 2023 (page 320), again the Tribunal take the same stance as above, the Claimant refers to complaints of discrimination, there is reference to contact with ACAS, there is reference to Tribunal process and again, when viewed objectively on the balance it satisfies the requirements for a protected act.
64. The email to Ms Fitzhugh of 6 September 2023 (page 272), again the Tribunal repeat the stance above, she again refers to the complaint of unlawful discrimination, so viewed objectively this satisfies the requirements for it to be a protected act.

First Alleged Detriment

65. The first, not to uphold the Claimant's Grievance of 20 March 2023, were they recommended no further action.
66. This decision was made by the Claimant's previous employer on 31 March 2023, within constrained time limits with staff away on annual leave or on sickness absence, Michelle Eyre interviewed the available witnesses, all before the Transfer of Undertaking was due to take place on 1 April 2023. It was Compass' conclusion that no further action was required based on the evidence they had obtained from the available witnesses as set out in their Investigation Report.
67. That Report was sent by Donna Wilson to the Respondents on 31 March 2023 and the Claimant accepted in evidence that the decision had been made not to uphold the Grievance by Compass, not the Respondents. Thereafter there was a muddled approach it is accepted by the Respondents, over whether they were going to continue to investigate which seems to be the original plan, if Compass had not completed the Investigation prior to the Transfer. It is also accepted Ms Rice had not properly reviewed Compass' Report prior to a meeting with Ms Caehan on 18 April 2023 to decide the way forward.
68. However, when Ms Rice did review the Report by Michelle Eyre of Compass, she realised in fact it had been concluded and recommended no action required. Ms Rice then communicated the outcome on 19 April 2023 to the Claimant as the Claimant had on 18 April 2023, been chasing and was upset at the delay. Ms Rice's evidence was clear, she thought that because the Claimant was upset they needed to give her an outcome, there were loose ends and the Appeal (which the Claimant was being offered) could look at Compass' reasons for not upholding the March Grievance.

69. What is clear, Compass' reasons for not upholding the Grievance was based entirely on the evidence they had been able to gather in the short time span available between 23 March 2023 and 31 March 2023, allowing for staff absences, holiday and sickness. Also the Claimant had been asked to participate in the investigation by email of 28 March 2023 (page 3 of the Supplemental Bundle) although sent to her work email when at the time she was absent through sickness.
70. There were difficulties at the time with Compass preparing the Report. Therefore when properly reviewed by the Respondent, an Appeal was offered and the Claimant was actively encouraged to Appeal. The Report of Compass was based on the available witnesses at the time, being Saida Gjokaj, Mr Attard, Mr Hark who all provided a written statement.
71. What Ms Gjokaj did accept was a passing comment in September 2022 about the Claimant's pregnancy. That had been dealt with at the time and Ms Gjokaj had been spoken to. Mr Attard was unable to provide any evidence of previous conflicts between the Claimant and Ms Gjokaj, or any evidence of any other comments. Ms Gjokaj flatly denied the recent allegations, particularly that "Jomila keeps popping kids", "do you even work" or the "pussy" comment said to have all been made on 14 March 2023. Mr Hark also had no relevant evidence to support the Claimant's Grievance.
72. Therefore it was not surprising Compass, on the basis of the evidence and in the first point accurately and factually concluded that there was evidence of the conversation between Saida and the Claimant occurring the year before in relation to the Claimant's pregnancy and maternity, a recognition from Saida Gjokaj that her comments had been inappropriate and suggested that these were made like she would to a friend.
73. On the second point, the "pussy" comment, it was reasonably concluded there was not enough evidence to find one way or another and therefore it was not possible to find positively.
74. On the third point, Ms Gjokaj's conduct amounting to discrimination and harassment, there was no evidence to confirm this.
75. Therefore the Tribunal repeats that the only conclusion that Compass could have come to, the decision not to uphold the Claimant's 20 March 2023 Grievance did not constitute a detriment. The Grievance was determined entirely on the complaints and the evidence that was available to Compass at the time.

Second Alleged Detriment

76. That was withdrawn.

Third Alleged Detriment

77. The Respondent's failure to uphold the Claimant's Grievance Appeal of 11 August 2023.
78. Again, looking at the totality of the evidence and the Claimant's original Grievance, the fact that the Appeal was conducted by way of a re-Hearing and that witness evidence that emerged during the course of the investigation and the Claimant and the Respondent agreeing four key points to be considered (page 225), the decision not to uphold the Appeal was entirely consistent with the evidence before the Respondents and for no other reason.
79. There was clearly a detailed and thorough re-heard investigation. Sharon Pedilham was assigned to deal with the Appeal, there was a willingness of the Respondents to effectively start afresh, they rescheduled the Appeal on three occasions at the request of the Claimant, the four key points were considered,
 - 79.1. an incident on 14 March 2023 where the Claimant alleged that Ms Gjokaj's conduct had made her feel threatened and uncomfortable;
 - 79.2. the Claimant's allegation there had been an ongoing issue in her relationship with Ms Gjokaj and Ms Gjokaj making comments about the Claimant's part time contract, including the comment "Jomila pops kids every year, do you even work";
 - 79.3. The Claimant's allegation that on 14 March 2023, Ms Gjokaj had called the Claimant the word "pussy" on account of her having raised concerns with Ms Pedilham in 2022; and
 - 79.4. A general allegation that Ms Gjokaj's conduct constituted discrimination or harassment.
80. During the course of this re-heard Grievance, staff were interviewed who were apparently present and one of those was of course Ms Gjokaj, another was Jennifer Atkinson, another Anthony Mclarty and Nicola Montague. Their statements are at pages 216 – 324 and of course there is the detailed interview with the Claimant at pages 209 – 213.
81. When the Respondents set out their conclusions on each point, the first point was there was no evidence from the witnesses present that Saida behaved inappropriately during the incident (page 226). Those present on 14 March 2020, some recalled it was the Claimant who shouted at Ms Gjokaj and she had not responded, therefore it was proper to conclude firstly there was a partial upholding that an incident did occur, however, from the evidence collated it was not believed there was an intentional incident to make the Claimant feel uncomfortable.

82. The second point, the element here is Ms Gjokaj denied making the comment alleged and the Respondent went further to enquire whether any other comments had been made and witnessed by those interviewed. None of those were able to recall any such comment, in particular anything relating to the Claimant's part time statement allegations.
83. The conclusion therefore was there was insufficient evidence to prove or disprove the allegations.
84. The Tribunal repeats, the conclusion came from the evidence available to the Respondents.
85. The Claimant has criticised the fact that the Respondents did not contact a previous employee, Ms Pinnock, the Respondent's reason for not contacting her is that they have a Policy that where employees have left the Respondent when conducting an internal investigation, they do not contact those staff and that is not an unreasonable approach to take. In any event, the Respondents were conducting a complete re-Hearing starting afresh without time constraints, so in respect of Compass' Report, that was now no longer relevant as this was, we repeat, a re-Hearing.
86. The third point, the "pussy" allegation, the Respondents on the evidence before them were unable to prove or disprove that the comment was made and that was clearly the only possible conclusion, particularly as Ms Gjokaj flatly denied it and another witness of 14 March 2023 confirmed they did not hear those words used. Therefore it was an entirely reasonable conclusion. In fact, it would have been open to the Respondents to find words had not been used given the other witnesses evidence.
87. The fourth general allegation is that Ms Gjokaj conduct was harassment and discrimination.
88. Again, looking at the witness evidence available to the Respondents, there was simply no evidence to support this. In fact, formally they had both been friends, there had clearly been 'banter' in the past which the Claimant acknowledged. In September 2022 Ms Gjokaj was spoken to about an incident with the Claimant and that was the end of that matter.
89. Therefore, given the re-Hearing, a thorough investigation and the evidence before the Respondent it was entirely reasonable not to uphold her Appeal.

Fourth Alleged Detriment

90. The Respondent's failure to deal with the Claimant's Grievance on 19 August 2023 in a timely and reasonable manner.
91. It is noted here that the Claimant's only Grievance was the Respondent's refusal to disclose to the Claimant the witness statements from the re-heard Grievance and seemingly time issues. In the meantime the

Claimant was also appealing the re-heard Grievance of 23 March 2023, so the Respondents quite properly took the view to continue the Appeal alongside the new Grievance. There were clearly good reasons to do so as they were linked. Therefore it was entirely reasonable to deal with them in that way.

92. The Claimant was, in any event, aware of the gist of the witnesses evidence from the Respondent's Outcome Letter, having had those statements would not have assisted the Claimant and furthermore the reasoning of the Respondent's for not releasing them was also entirely reasonable. Firstly, the witnesses did not consent to the release and that was ultimately confirmed in writing and the Respondents have a Policy of not providing them in these circumstances.
93. In terms of time, the Hearing of the new Grievance, the second Grievance lodged on 19 August 2023, the Respondents had scheduled the Hearing for 8 September 2023, the Claimant disengaged from the process because she said she was refused access to the witness statements. There is therefore no detriment.

Fifth Alleged Detriment

94. The fifth and final alleged detriment is the decision of the Respondents not to disclose to the Claimant the witness statements of those individuals who participated in the Grievance Appeal.
95. Again, the Tribunal repeats the Respondents reason for not disclosing and that was not the Respondent's usual practice. The witnesses involved did not consent to their disclosure in any event. More importantly, there was clear findings in the Outcome Letter of 11 August 2023, the evidence those witnesses were able to offer.
96. Therefore having those witness statements would have made no difference to the Claimant in preparing for her Appeal.
97. In relation to each of the alleged detriments, the Claimant has failed to establish facts from which the Tribunal could conclude that the Respondent has victimised the Claimant and therefore the burden of proof does not shift and the claims fail.
98. In fact, the Respondent's conduct in relation to each detriment was in any event in no sense because the Claimant had made a protected act.

Employment Judge Postle

Date: 4 September 2024

**Case Number:- 3309496/2023;
3313512/2023.**

Sent to the parties on: 01/11/2024

For the Tribunal Office.

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) and Respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal Hearing has been recorded you may request a transcript of the recording, for which a charge is likely to be payable in most but not all circumstances. If a transcript is produced it will not include any oral Judgment or reasons given at the Hearing. The transcript will not be checked, approved or verified by a Judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>