



THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondents

Ms R Begum

(R1) Mace Limited
(R2) Ravi Jassal
(R3) Kevin Bosch
(R4) Quinn Bailey
(R5) Ray Shaw

Heard at : London Central Employment Tribunal

On: 28 & 29 May 2024

Before: Employment Judge Glennie

Members: Ms M Pillfold
Mr T Harrington-Roberts

Representations

For the Claimant: In person

For the 1st, 4th & 5th Respondents: Mr Dhorajiwala, of Counsel

For the 3rd Respondent In person

For the 2nd Respondent Neither present, nor represented

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The Claimant's application for a postponement of the hearing is refused.
2. The claims against all Respondents are dismissed.

REASONS

1. The Claimant, Ms Begum, makes complaints of direct discrimination because of sex, harassment related to sex, victimisation and detriment for making protected disclosures. The First, Third, Fourth and Fifth Respondents dispute those complaints. The Second Respondent has not presented a response.
2. At a preliminary hearing on 26 March 2024 Employment Judge Gidney observed that the Second Respondent had not been served with the proceedings and therefore did not know about the litigation. No party had contact details for the Second Respondent. Employment Judge Gidney therefore ordered that the claim against the Second Respondent should be dismissed without further order, at 4:30pm on 17 April 2024, if the Claimant had not provided contact details for the Second Respondent. That did not happen and the claim against the Second Respondent therefore stood dismissed on 17 April. The Tribunal's judgment reflects that dismissal.
3. On 8 April 2024 the Claimant made various applications including for a postponement of this hearing on the grounds that there was an outstanding criminal investigation underway. That application was referred to Employment Judge Gidney who refused it, that decision and further case management orders being conveyed in a letter dated 22 April 2024.
4. The Claimant then made a further application for a postponement of this hearing on 23 May 2024 relying on a letter dated 22 May from her care coordinator, which read as follows:

“Ms Begum is currently a patient under our community mental health team, I am writing to you as her lead professional. Ms Begum is currently too unwell to attend Court. Ms Begum is booked in for an urgent medical review with her consultant psychiatrist. Due to this we ask for the Court date to be postponed from 28 May 2024 until further notice due to the decline in Ms Begum's mental state and deemed not to have capacity to attend Court at current”.

The First, Fourth and Fifth Respondents objected to this application by an email also of 23 May 2024 to the Tribunal which read as follows:

“On behalf of the First Respondent we hereby object to the Claimant's application to postpone the five day hearing starting on 28 May 2024 for the following reasons.

Timing of application: the application has been made only two working days prior to the start of the five day hearing. The Claimant has been actively emailing the Tribunal and First Respondent only yesterday in relation to her claim and submitting representations (see email of 23 May at 12:45) which is after the date of the letter from the care coordinator and would, the First Respondent submits, not therefore support the position that she is too unwell to proceed with the hearing. In addition the Claimant has made previous attempts to have the hearing postponed (albeit on different grounds to this) one request which was rejected by Judge Burns on 17 April 2024 and the other which was rejected by Judge Gidney on 22 April 2024.

Prejudice to the Respondent: In addition to the First Respondent there are four individual named Respondents to this claim who would be prejudiced

by a postponement and indefinite delay of the hearing. The Fourth and Fifth Respondents (employees of the First Respondent) are keen to defend the allegations against them at a hearing and a postponement would add further stress to this process. The First Respondent has six witnesses all of whom have cleared their diaries to attend the five day hearing, one witness has travelled from Canada to the UK to give evidence in these employment proceedings. In addition Counsel has been fully briefed on the claim. As such a delay would be prejudicial to the Respondent and its witnesses given the time and cost involved in preparing to date and in the event of a postponement.

Insufficient medical evidence: It is not clear from the letter provided:

- What [the care coordinator's] medical qualifications are (the letter suggests the Claimant has not yet seen her consultant psychiatrist)
- When the Claimant's condition deteriorated such that, she is now too unwell to attend Court (given she attended a preliminary hearing on 26 March 2024 and has been emailing as recently as today in relation to the claim)
- The basis behind the conclusion that she is deemed too unwell to attend the hearing and;
- The prognosis for when she would be fit to attend such a hearing. The letter states that the Court date should be postponed until further notice, such a delay would be prejudicial to the Respondents given the likely lengthy delay. It is possible that key witnesses may leave the Respondent's employment and if there is significant time until a relisted hearing it is possible that memories start to fade.

The First Respondent further submits that the hearing cannot be postponed indefinitely as this would mean that it would not be possible to hold a fair trial and in such circumstances the First Respondent would be applying for the claim to be struck out".

5. That application was referred to Regional Employment Judge Freer who refused the application in terms that were conveyed in a letter dated 24 May 2024 as follows:

"The Claimant's application for a postponement submitted by a care coordinator.... ..on 23 May 2024 is refused for the reasons set out in the Respondent's reply also dated 23 May. The Tribunal at the outset of the hearing may at its discretion consider the prevailing circumstances and also any appropriate adjustments that could be made to the Tribunal process. The case remains listed for hearing starting on 28 May to 3 June 2024".

6. The Claimant was present at the commencement of the hearing on 28 May albeit with her camera turned off and with a support worker present. There was some discussion of the issues in the case. The Tribunal raised Section 110 of the Equality Act with regard to any potential liability of individuals who are not employees of the First Respondent, the Claimant's employer. The Claimant said that this was the first time that this had been mentioned. The Claimant confirmed that although she had mentioned other protected characteristics in her witness statement she accepted that sex was the only protected characteristic in issue in the case. With regard to adjustments the Claimant said that she wished to keep her camera turned off other than when giving evidence, that she wished

to use written representations sent to the Tribunal the day before the hearing, and that she should not be rushed.

7. The Tribunal then adjourned to read into the case with a view to commencing the evidence at 2pm on that day. The Claimant did not return at 2pm. Shortly after that there was forwarded to the Tribunal an email received by the Tribunal's administration at 1:06pm from an individual at the Claimant's treating NHS Trust. There was attached a copy of the care coordinator's letter of 23 May 2024 which we have already described. The email read:

"This [meaning the letter] was sent on Tuesday 23 but unsure if the Court has received it. This is Runa's lead professional providing a letter that Runa is not fit to attend this hearing at current. Runa has attended this morning due to worry of not complying, however it is her community mental health team's opinion to postpone attendance until Runa has been medically reviewed by her team's doctor. Runa is very distressed in mental state and will not be able to log back on at 14:00 as requested. Please could the Court consider the mental state Runa is presenting at current and the further impact of her wellbeing if she is to continue".

8. The Tribunal read this email to the Respondents present as it had not been copied to them. Mr Dhorajiwala referred to Regional Employment Judge Freer's refusal of the postponement application and submitted that the reference to prevailing circumstances meant any new developments. He contended that the position was effectively the same as on 23 May and that the medical evidence relied on was exactly the same. Mr Dhorajiwala therefore submitted that the application should be refused and in this he was supported by the Third Respondent Mr Bosch, who said that the matter needed to be brought to a conclusion.

9. The Tribunal concluded that the position was indeed the same as when Regional Employment Judge Freer refused the postponement and that the reference to the prevailing circumstances as before the current Tribunal could only be read as meaning any changed prevailing circumstances. Given that Regional Employment Judge Freer had refused the postponement as opposed to putting it over to be considered by the Tribunal he could not, in the Tribunal's judgement, have meant that it was open to this Tribunal to take a different view on the same materials should it wish to do so. In the event the Tribunal found that the position was essentially unchanged, and the postponement request should again be refused.

10. We then considered how to proceed. Rule 47 of the Tribunals Rules of Procedures refers to non-attendance in the following terms:

"If a party fails to attend or to be represented at the hearing the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so it will consider any information which is available to it after any enquires that may be practicable about the reasons for the party's absence".

11. The reasons for the party's absence were apparent from the correspondence that we have already referred to. The Tribunal considered that, having read into the case, and given the Claimant's request for the Tribunal to make use of her written representations, rather than simply dismissing the claim for non-attendance, we should proceed in the Claimant's absence.

12. Shortly after the Tribunal had adjourned on 28 May a further email was received from the Claimant at 4:20pm on that day in the following terms:

"I apologise I could not make this afternoon's Court hearing. I have been impacted and overwhelmed and health has declined. I will be seeing my psychiatrist tomorrow at 11am so I am unable to attend tomorrow's session. I was unable to have the capacity to process all the information and would not have been able to ask questions, however I feel my written representation I provided yesterday has covered most of what I want to say and what I would have asked. I will of course keep you updated with my health and if there is anything further you require please do let me know. Once again please do accept my apologies"

The Tribunal asked itself whether this email changed the situation in any material way, albeit after the decision had been made to refuse the postponement. We considered that we should not speculate about what, if any, further information might arise from the Claimant's meeting with the psychiatrist or as to what the consequences of any such further information being made available might be. We concluded that we should continue on the path already adopted. We noted in this connection, from what the Claimant had said about her written representations, that she may well have understood that this could be what would happen.

13. The Tribunal gave its judgment and reasons orally. The Claimant was not present at this stage of the hearing, and the Tribunal caused an email to be sent to the Claimant stating that the outcome of the hearing was that the claim had been dismissed, and that the judgment and written reasons would be sent in due course.

14. We turn then to the substantive claim. Section 13 of the Equality Act 2010 makes the following provision about direct discrimination:

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

15. Section 26 of the Equality Act provides as follows with regard to harassment:

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

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) The conduct has the purpose or effect of –

(i) Violating B's dignity, or

(ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if –

(a) A engages in unwanted conduct of a sexual nature, and

(b) The conduct has the purpose or effect referred to in subsection (1)(b).

16. Section 27 of the Equality Act provides as follows with regard to victimisation:

(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) *Each of the following is a protected act –*

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

17. The statutory provisions about detriment for making protected disclosures are found in the following sections of the Employment Rights Act 1996:

43A In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

43B In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following –

- (a) *That a criminal offence has been committed, is being committed or is likely to be committed,*
- (b) *That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
- (c) *That a miscarriage of justice has occurred, is occurring or is likely to occur,*
- (d) *That the health or safety of any individual has been, is being or is likely to be endangered,*
- (e) *That the environment has been, is being or is likely to be damaged,*
- (f) *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.*

47B (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

18. The Tribunal reminded itself of the provisions governing the burden of proof, although in the event these were not of great significance in the present case, as the Tribunal was able to make clear findings on the evidence before us. Section 136 of the Equality Act provides that:

(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) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

19. With regard to the protected disclosure detriment complaint, section 48(2) of the Employment Rights Act provides that, on a relevant complaint, it is for the employer to show the ground on which any act, or any deliberate failure to act, was done.

20. The following witnesses were called on behalf of the First, Fourth and Fifth Respondents and they all confirmed the contents of their witness statements either by affirmation or on oath.

- 20.1 Mr Quinn Bailey.
- 20.2 Mr Ray Shaw.
- 20.3 Ms Jackie Duncan.
- 20.4 Ms Rachel Evans.
- 20.5 Ms Kate Blessard.
- 20.6 Ms Passov Anashetti.

21. The Third Respondent Mr Kevin Bosch also gave evidence confirming the contents of his witness statement.

22. The Claimant was not present and therefore did not confirm her witness statement or give evidence. As stated above, the Claimant had asked for her witness statement with the additions to it sent to the Tribunal the day before the hearing to be used as her written representations. The Tribunal referred to those representations when considering the case but considered that they did not have the same weight as evidence from the Claimant.

23. The Tribunal has considered the factual issues in chronological order. First, the Claimant complains of an alleged incident on the London Underground on 26 October 2022 involving the Fourth Respondent and which she alleges amounts to harassment related to sex or to direct discrimination because of sex. She further alleges that on arrival at work she told Ms Evans about the incident, saying that the person concerned was wearing a Mace fleece, but without identifying the Fourth Respondent.

24. Ms Evans' evidence was that the Claimant told her that someone had bumped into her or knocked her on the tube, giving the impression that this had involved her arm. Ms Evans confirmed that the Claimant had not given a name for the person involved, but said he was wearing a Mace fleece. Ms Evans stated that the Claimant had not suggested that there was a sexual element to what had happened. The Fourth Respondent's evidence was that he did not recall any such incident, although he accepted that he used the underground line in question and that it was possible that he might have accidentally brushed against the Claimant on some occasion, although he did not at that time know who the Claimant was.

25. The Tribunal found as a matter of probability that there had been physical contact of some sort between the Claimant and a male employee of the First Respondent on 26 October 2022. Beyond that, however, the Claimant has not made out the facts alleged which would support a complaint of harassment related to sex or direct discrimination because of sex. In particular, the Tribunal found that it was not established as a matter of probability that the Fourth Respondent was even involved at all, as his evidence was that he had no knowledge of an incident. The Claimant did not identify him on 26 October and only did so in fact when she saw him, on her own account, on 8 December 2022.

26. The Claimant relied on what she said to Ms Evans as a protected disclosure (with regard to the detriment complaint) and as a protected act (regarding the complaint of victimisation).

27. We found that the Claimant had not established the necessary elements for either as the only evidence before the Tribunal is that the Claimant told Ms Evans that a man had bumped into her or knocked her on the tube. This did not, in the Tribunal's judgement, amount to a protected act within section 27(1) of the Equality Act. The Claimant's complaint that a man had bumped into her did not carry any connotation of a contravention of the Act or connection with the Act. Nor did it amount to a qualifying disclosure within section 43B of the Employment Rights Act. The Tribunal found that the Claimant could not have had a reasonable belief that someone bumping into her on the underground could amount to the commission of a criminal offence, or to the breach of a legal obligation.

28. The Claimant then complained of an incident on 11 November 2022 involving the Second Respondent. He was not an employee of the First Respondent and the Tribunal had doubts as to the legal basis of the claim against him. It is not necessary to go further into that as the claim against the Second Respondent, as we have already indicated, stands dismissed.

29. With regard to the Third Respondent the Claimant complained that on 17 November 2022 he stared at her in a way that amounted to harassment related to sex or direct discrimination because of sex while he was on the phone. The Third Respondent's evidence was that he was in the office on that date and recalled taking a work call and moving from his desk towards the kitchen area in order to speak. He denied staring at the Claimant in an intrusive or sexual way, and he said that he would never do that.

30. In her written representations the Claimant referred to a floor plan showing her desk in a different area from the kitchen. This had not been raised with the Third Respondent, nor was it apparent, if it had been, what that might have established. In the event the Tribunal found that the Claimant had not established as a matter of probability the facts necessary for this complaint to succeed.

31. Furthermore, the Tribunal found that there was no legal basis for the claim against the Third Respondent. On all of the evidence before us he was employed, not by the First Respondent (the Claimant's employer), but by a different company which operated in the same office. There is no evidence to suggest that the Third Respondent was at the material time an agent of the First Respondent. Section 110(of the Equality Act provides as follows in relation to the liability (meaning the personal liability) of employees and agents:

(1) A person (A) contravenes this section if –

(a) A is an employee or agent.

(b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and

(c) The doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

32. The effect of this the Tribunal finds is that an individual can only be personally liable under the Equality Act if he or she was at the relevant time an employee or agent of the Claimant's employer, which the Third Respondent was not. The claim against the Third Respondent also fails for this additional reason.

33. The Claimant's case was then that on 5 December 2022 she told Ms Evans and, for part of the conversation, Ms Duncan about the incidents on 11 and 17 December, maintaining that she thereby made a protected disclosure or did a protected act.

34. In paragraph 14 of her witness statement Ms Evans said in summary that there was a meeting on 5 December 2022 with the Claimant in the course of which she said a number of things, namely that some female members of staff had made comments about what she was eating, that some male members of staff were on the phone in the corner of the office near her desk leering, being passive aggressive and generally disrespectful, and that people would be on the phone looking in the direction of where she was sitting.

35. In paragraph 18 Ms Evans then addressed the allegations that the Claimant was making about this meeting. She said that, contrary to the Claimant's case, she had not named the Second Respondent and she said that she could be confident that had a name been mentioned she would have written it down. Ms Evans continued that the Claimant did not say or suggest that she was being stared at because she was a woman or that staring was sexual or hostile or intimidatory behaviour.

36. Ms Evans continued that the Claimant did not allege that a sexually aggressive gesture had been made towards her by the Second Respondent and again said that had this been said, she would have made a note of it. Ms Evans said that the Claimant did not mention the Third Respondent by name, and she said that she did not know who he was. Ms Evans stated that the Claimant did not allege that he or anyone else had stared at her breasts and that she would have made a note of that allegation had it been made. Ms Evans further stated that the Claimant did not suggest that she was being treated differently due to being a woman or that she felt harassed due to her sex, and that she referred to both men and women displaying behaviours that she did not feel were appropriate.

37. In the absence of evidence from the Claimant the evidence that we have about this meeting or conversation is that of Ms Evans and Ms Duncan. The Tribunal found on the basis of that evidence that the Claimant had not established the elements necessary for what she said to amount to protected disclosures or protected acts. We found that as a matter of probability she had raised the concerns in the terms described by Ms Evans. The Claimant complained of conduct towards her by both men and women which she found troubling. With regard to victimisation, those complaints did not carry any connotation of contravention of, or connection with, the Equality Act. With regard to detriment for making a protected disclosure, the Claimant could not have had a reasonable belief that what she was complaining about tended to show the commission of a criminal offence or breach of a legal obligation. She was complaining of what she perceived as unpleasant behaviour of a general nature towards her.

38. The Claimant relied on a further incident on 5 December 2022 involving the Second Respondent. Her complaints about that stand dismissed by virtue of Employment Judge Gidney's order.

39. The Claimant then complained that on 8 December 2022 the Fifth Respondent twice bumped into her at a social event and that this was a detriment for making the protected disclosures or an act of victimisation for doing the protected acts. We have found that the Claimant has not made out her case that she made protected disclosures or did protected acts, and the claimant fails for that reason.

40. Additionally as regards the allegation against the Fifth Respondent, the situation is rather similar to that of the allegation involving the Fourth Respondent. The Fifth Respondent has said that he does not recall such an incident occurring. He cannot exclude the possibility that at what was a crowded social event he may have bumped into the Claimant unintentionally, but he denies doing so intentionally and denies any knowledge of the Claimant's complaints which she says were the motivation for this incident happening. The Tribunal accepted the Fifth Respondent's evidence in that regard.

41. In those circumstances we find again that the Claimant has not as a matter of probability made out the factual basis for the allegation that she has made.

42. There were then two further allegations. One was that the First Respondent failed to support the Claimant in her complaint and that this was an act of direct discrimination because of sex. We find that there is nothing in the evidence that we have received that could provide the basis for a finding that the way the complaints were dealt with was in any way influenced by the Claimants sex.

43. There was then an allegation that the Claimant was not allowed annual leave between 9 and 16 December. This was said to be also an act of direct sex discrimination. The evidence before us is that the Claimant did in fact take her leave between those dates. She was then off sick for a long period immediately following that. The factual basis of that complaint is not made out.

44. Finally, and returning to the allegations against the Second Respondent, to the extent that it might have been contended that the First Respondent is liable for the acts of the Second Respondent, the conclusion that we have reached in relation to Section 110 of the Equality Act in relation to the Third Respondent would have been equally applicable to the Second Respondent.

45. All of the complaints are therefore dismissed.

EMPLOYMENT JUDGE GLENNIE

Date9 September 2024.....

JUDGMENT SENT TO THE PARTIES ON:

21 October 2024

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AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE