



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Saroy

Respondent: Royal Mail Group Limited

Heard at: Croydon (via CVP) **On:** 6, 7 and 8 November 2024

Before: Employment Judge Leith
Ms J Cook
Ms N O'Hare

Representation

Claimant: Mr Saroy (the Claimant's son, Solicitor)

Respondent: Mr Peacock (Solicitor)

JUDGMENT

1. The complaint of victimisation set out in paragraph 5.1.2 (1) of the list of issues is well founded.
2. The remaining complaint of victimisation fails and is dismissed.

REASONS

Claims and issues

1. The claimant claims victimisation.
2. The parties had agreed a list of issues, which was annexed to the Case Management Orders of Employment Judge Martin following the Preliminary Hearing on 25 January 2024. The parties agreed that the agreed list of issues remained accurate (subject to the further clarification set out by the Claimant in her Scott Schedule of 15 February 2024):

"1. Jurisdiction

1.1 Were the claimant's claims for discrimination/victimisation presented within the primary time limit of 3 months from the act or last act of alleged discrimination/victimisation, plus any period of early conciliation?

1.1.1 The claim form was presented to the Tribunal on 26 July 2023. With the ACAS early conciliation period was from 30 May 2023 to 26 June 2023.

1.1.2 Therefore, any alleged acts which occurred prior to 28 February 2023 are out of time and the tribunal does not have jurisdiction to hear them.

2. Can the claimant demonstrate that the act forms part of 'an act extending over a period' including some later unlawful act?

3. Was there a clear break in the chain of events separating any of the unlawful acts?

4. If not, is it just an equitable to extend time for the presentation of any earlier claims?

5. Victimisation – s.27 Equality Act 2010

5.1 The claimant relies upon the following protected act for her claim for victimisation-

5.1.1 In 2012, the Claimant brought proceedings under the Equality Act 2010 by way of ET Claim 1101104/2012.

5.1.2 Whether the claimant was subjected to the following detriment(s) by the respondent?

1) Between June 2022 to date, Dave Griffith did breach the Respondent's implied duty of trust and confidence and/or the duty of co-operation and/or support by

a) causing or permitting others, and/or

b) did personally fail,

to engage with the Claimant's requests for the Respondent to support the creation and completion of a personal development plan which in turn blocked the Claimant's opportunities for career progression.

2) Further or in the alternative to the above, between [June 2022 to date when Paul Haden left his role as the Claimant's line manager- dates to be confirmed] Paul Haden did breach the Respondent's implied duty of trust and confidence and/or the duty of co-operation and/or support by

a) causing or permitting others, and/or

b) did personally fail,

to engage with the Claimant's requests for the Respondent to support the creation and completion of a personal development plan which in turn blocked the Claimant's opportunities for career progression.

5.1.3 Whether the claimant was subjected to the detriment(s) alleged because she did the protected act, or because the Respondent believed that the Claimant has done the protected act?

6. Remedy for discrimination/victimisation

6.1 What financial loss has the discrimination caused the claimant?

6.2 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

6.3 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

6.4 Should interest be awarded? How much?

Procedure, documents and evidence heard

3. At the start of the hearing, the Claimant made an application to strike out the response. We dismissed that application, for the reasons we gave orally at the time.
4. We heard evidence from:
 - 4.1. The Claimant
 - 4.2. Dave Griffith, Early Shift Manager
 - 4.3. Paul Haden, Early Shift Work Area Manager
5. Each of the witnesses gave their evidence by way of a pre-prepared witness statement, on which they were cross-examined.
6. We had before us a bundle of 206 pages, and a supplementary bundle of 37 pages, as well as an agreed chronology and cast list.
7. At the end of the evidence we heard submissions from Mr Peacock and Mr Saroy, supplemented in each case by written submissions. We are grateful to both representatives for their assistance

Factual findings

8. We make the following findings on balance of probabilities. We have not dealt with every area canvassed before us; rather, we have focused on those necessary to reach a conclusion on the issues in the claim.
9. The Claimant has been employed by the Respondent since 28 August 1990. She is employed substantively as a Processing Operational Postal Grade ("OPG"). "OPG" is a reference to the Claimant's grade, and "processing" to the department in which she works. She is based at Medway Mail Centre. She has in the past been seconded to various other roles, including a number of occasions as an Acting Manager.

10. The Claimant has a Certificate in Personnel Practice, which she obtained on 20 November 2001. She is an Associate Member of the CIPD.

11. At the relevant times, the Respondent had a place a Learning & Development Procedure. The procedure provided that managers were responsible for the application of the procedure within their areas of responsibility. Under the heading “Supporting your personal and professional development”, it said this;

“We want to support you to grow and provide you with opportunities to further your career and personal development. One of the ways we do this is by providing a variety of learning and development resources for you to explore to support your career progression and personal development goals.”

12. And this:

“All colleagues have access to personal development courses and e-learning through SuccessFactors. In the first instance, you should speak with your manager about your personal development.”

13. The procedure was supported by a Learning & Development Guide for employees. Under the heading “What learning and development is available?” It said this:

“Development should be owned by the individual, with managers offering guidance about suitable development activities.”

14. Under the heading “How to identify learning and development needs” it said this:

“An employee’s development need may also be identified as part of the performance management process. Managers will advise employees of their development needs, and also offer advice and support on the different types of learning opportunities available to overcome these development needs.

Employees may also identify development requirements when they are considering changing jobs. It can be useful to review other job descriptions, or to ask people in the roles they are interested in, what skills they need to do well in their roles, in order to support a move to a more challenging role.”

15. The Respondent also had in force a grievance policy. The grievance policy provided that:

15.1. An employee should first try to work together with their manager to resolve workplace concerns.

15.2. Where the concern is not dealt with or where it involved their manager, they could raise it with their second line manager. The

second line manager would either deal with it themselves, or pass it to another appropriate manager to deal with.

15.3. Where a grievance was raised with the second line manager, it should be resolved within 5 to 28 days.

15.4. If the employee was unhappy with the outcome after raising the grievance with their second line manager, they could appeal.

16. We were not taken to a Supervision Policy or an Appraisal Policy. Mr Griffith's evidence was that the claimant would not require an appraisal, because the Respondent does not have an appraisal process for OPGs. Nor is there any regular series of 1:1 meetings for OPGs. That was also Mr Haden's evidence. We accept their evidence in that regard.

17. The Respondent has a form for recording professional development, referred to as a Personal Development Plan ("PDP"). Not all employees have a PDP. A PDP is typically put in place to support an employee's development into a new role, or where further development is required in their existing role.

18. The Claimant's substantive role as a Processing OPG involves processing mail within the Mail Centre. Day-to-day staffing issues such as duty rotas, holiday and sickness are dealt with by another department of the Mail Centre called the Staff Resource Unit, commonly referred to as the "Book Room". A number of staff at OPG grade work within the Book Room.

19. On 3 May 2012, the Claimant brought an Employment Tribunal claim against the Respondent, alleging sex and race discrimination (including a claim for equal pay). The details of that claim were not in evidence before us, although we understand that the claim included an allegation by the Claimant about failure to appoint her to a role in the Book Room. It was common ground that by issuing the claim on 3 May 2012, the Claimant did a protected act.

20. In the time leading up to her previous claim, the Claimant's substantive role reported to Mark Fairbrace. Mr Fairbrace reported to Paul Haden, who at that time was the Shift Manager. The Claimant acted up as a manager on occasion, to cover for Mr Fairbrace. When acting up, Mr Haden would be her direct line manager. On 7 May 2012 Mr Haden moved to another role within the Mail Centre. His evidence was that he was not aware that she had brought a claim against the Respondent (indeed, his evidence was that the first time he became aware of it was in the course of these proceedings).

21. The previous claim was settled by means of a COT3 agreement. That provided that the Respondent would give the Claimant a role within the Book Room for a minimum of 12 months, at the Claimant's substantive grade (OPG). That could be extended by mutual agreement. The agreement also provided that the Claimant would be given training and development in relation to the duties she would reasonably be required to undertake in the role.

22. Mr Haden's evidence was that he knew that the Claimant was working in the Book Room at that time, but did not know why. We accept Mr Haden's evidence regarding that. We find that he was unaware of the previous claim, or the reason for the Claimant being placed in the Book Room.
23. During the Claimant's time in the Book Room, she was given a PDP. The PDP provided that she would be given training and development in a number of relevant areas. Her line manager was Debbie Miles, the Book Room Manager, and her mentor/coach was Patrick Croskerry, the Production Control Manager.
24. The Claimant's evidence was that she received positive reviews during her time in the Book Room. At the end of the Claimant's 12-month period in the Book Room, the Claimant was told she would have to apply for a vacant role if she wanted to continue working there. The Respondent advertised a vacancy at her grade, with a closing date of 29 June 2014. In the interim, the Claimant was told she either had to return to her Processing OPG role, or take on the Deputy Manager role on the Processing floor.
25. On 15 July 2014, the Claimant was interviewed for the vacant role in the Book Room. She was unsuccessful at interview. The Claimant asked for feedback, but no feedback was provided to her. She was only provided with the notes and scoresheet from the interview in the course of disclosure for these proceedings.
26. The Claimant therefore continued to work as a Processing OPG (with a few months acting up as an Acting Manager at Medway Mail Centre).
27. In October 2014 the Claimant suffered a concussion, which affected her for many years. Her evidence, which we accept, is that she had significant memory issues during that period. While she continued to work for the Respondent over the following years, her evidence was that her colleagues noticed that she was not interacting with them as normal. Her condition started to improve in around 2018.
28. In Summer 2020, the Claimant saw a further vacancy advertised in the Book Room. She discussed that vacancy with her then Shift Manager, Gary Caxton. That vacancy was subsequently withdrawn by the Respondent. In September 2020, the Claimant became aware that another colleague, Debbie Miles, who had been working as a Processing OPG like the Claimant, was working in the Book Room. This was apparently because the Respondent realised that due to the effects of the COVID pandemic, and specifically the requirement to socially distance, they would not at that time be able to train a new member of staff in how to work in the Book Room. Therefore Ms Miles, who had worked in (and managed) the Book Room previously but had gone back to a sorting role in the processing department, was moved back into the Book Room to provide cover.
29. On 5 November 2020, the Claimant emailed Robert Brady, the Mail Centre Manager. She referred to a change in the number of staff in the Book Room,

and to her previous PDP. The subject of the letter was “Bookroom absence duty 0700 – 1436”, but within the letter itself she did not explicitly refer to the 2020 vacancy or to Debbie Miles. Nor did she ask for development to assist her to towards a Book Room role.

30. In April 2021, there was a management restructure. Thereafter, the Claimant was line managed by Paul Haden, who was then the Early Track Parcels Manager. Mr Haden reported to Dave Griffith, who from April 2021 was the Early Shift Manager. He in turn reported to Thomas East, the Optimised Production Lead, who reported to Robert Brady, the Mail Centre Manager.
31. On 22 May 2021, the Claimant emailed Mr Brady raising concerns about the Book Room vacancy (and Ms Miles’ apparent appointment to the Book Room). Then on 12 October 2021, the Claimant emailed Mr Brady raising a formal grievance. The letter was headed “Formal Grievance – Race discrimination/victimisation by way of failure to advertise opportunities within the Mail Centre Bookroom”. Her grievance was, in essence, that Ms Miles had been offered an opportunity to work in the Bookroom in 2020 which she had not. Within it, she expressly referred to her previous claim including complaints of race discrimination (and to Ms Miles, among others, being comparators for the purposes of that claim).
32. On 4 December 2021, the Claimant emailed Mr East, to whom she understood that Mr Brady had passed her grievance, asking for an update. Mr East replied as follows:

“Please note that I advised you of the correct process on the 12th October 2021.

I can confirm that the case has not been passed to me by Mr Brady on the 4th November as this is not the correct process.

As previously advised you need to rise the concern with your line manager who will meet with you to go through the concern. Your line manager will then enter the grievance on to PSP. At this point in time no case has been logged.

I will ask the resourcing manager to speak to your line manager to ensure they understand the process. It is important you speak to your line manager next week on the matter. I have copied the early shift manager in so they are aware of the requirement an ensure time is made available to make sure this happens.”
33. On 9 December 2021, the Claimant completed the Respondent’s grievance form [117]. On the form, when asked to provide details of the grievance, she said “Please see attached”. And when asked “what practical steps would you like to see taken to resolve your grievance”, she said “please see final paragraph of the attached”.

34. Mr Griffith's evidence was that he had not seen the letter to Mr Brady. He was taken in evidence to the grievance form and asked about the attachment referred to. His oral evidence on the point was somewhat vague. We find that the document attached to the Claimant's grievance form was the letter to Mr Brady dated 12 October 2021. We consider that it is highly unlikely that there was no attachment at all, as the form itself contained no detail about the Claimant's grievance. It was not suggested to us that any other document was attached to the form. The reference on the form to steps for resolution being set out in the final paragraph of the attachment is also consistent with that, as it was the final paragraph of the letter of 12 October 2021 which referred to what the Claimant wanted by way of resolution.
35. We therefore find that that Mr Griffith saw the letter of 12 October 2021 letter when he received the grievance form on or around 9 December 2021.
36. On 10 December 2021, Mr Griffith met with the Claimant to discuss her grievance. She was accompanied by her trade Union representative. Mr Griffith's contemporaneous notes of that meeting were before us. The notes were headed "S Saroy – Grievance Meeting".
37. On 12 February 2022, the Claimant chased Mr Griffith for an outcome to her grievance.
38. On 8 March 2022, Mr Griffith wrote to the Claimant to confirm that he was dealing with the grievance. His letter explained that the investigation should be completed within 28 days of the grievance being raised. On the same day, he wrote to the Claimant inviting her to a meeting to discuss her grievance, which was to take place on 17 March 2022. Mr Griffith's explanation for the delay was that there was an issue with the Respondent's HR case management system, which meant that he had not been able to set the grievance up as a new case to take forward.
39. In the interim, on 11 March 2022 Mr Griffith met with Larry Jenner, Production Supply Manager (who at that time was managerially responsible for the Book Room). Mr Griffith's notes of the meeting showed that Mr Jenner gave Mr Griffith the following information:
- 39.1. Since the COVID pandemic had started, there were no opportunities to train staff in working in the Book Room because social distancing rules made training difficult.
 - 39.2. Reserve positions had been advertised, but the Claimant did not apply for any of them (we note that there was no other evidence before us of those being advertised).
 - 39.3. The role that was withdrawn in 2020 was withdrawn because staff could not be trained. Consequently someone who was already skilled in using the Book Room platforms covered that role (that was a reference to Ms Miles).
 - 39.4. There was no specific process for being put on a waiting list to be trained as a Book Room reserve, and roles as a Book Room

reserve were not allocated on seniority, but on suitability such as IT skills.

39.5. When Mr Jenner was asked if he knew about the ET claim (albeit that the question referred to it having been in 2018), he replied somewhat cryptically “Not in [his] official capacity”.

40. The Claimant’s grievance meeting with Mr Griffith did not take place until 22 June 2022. The Claimant was accompanied by her Trade Union representative. The Claimant expanded on her grievance. There were, broadly, two parts to her grievance. The first was about her 12-month period in the Book Room in 2014 not being extended. The second was about lack of access to training and development for staff (in the context of her wish to work in the Book Room).

41. On 24 June 2022, the Claimant emailed Mr Griffith as follows:

“I previously had a role in the bookroom. I would like my current personal development plan to include training in the bookroom.

If you are going to reject my request please confirm in writing.

Otherwise I look forward to discussing my adjusted development plan.”

42. Mr Griffith did not reply to that email. His evidence was that there was no specific reason for him not to have replied, although he was not sure if he could create a Personal Development Plan for the Book Room.

43. The Claimant emailed him again on 22 October asking for a response. Mr Griffith replied as follows:

“Once the process has been developed for how the reserves are selected and then allocated, a plan will be devised to give any reserves the appropriate training for the roles they will cover. This will be discussed and implemented by the OPL (Thomas East) & team, once confirmed.”

44. Mr Griffith’s evidence was that he fed back his conclusions regarding the grievance verbally in July 2022, and that following that the Claimant said that she said she was unhappy and would produce more evidence. There was no documentary evidence of that meeting taking place before us. Nor was it mentioned in Mr Griffiths’ witness statement. He referred to it for the first time in response to a question from the panel regarding the apparent delay in resolving the Claimant’s grievance. His evidence in his witness statement was that the reason for the delay in the grievance outcome was because of an ongoing restructure. It was not put to the Claimant that she was told the outcome of her grievance in July 2022. We find, on balance, that the meeting in July 2022 did not happen as described by Mr Griffith. We consider that if it had happened, there would be some

contemporaneous documentation regarding it, and at the very least Mr Griffith would have referred to it in his witness statement.

45. On 23 November 2022, Mr Griffith wrote to the Claimant to provide the outcome of her grievance. Mr Griffith's outcome was that the grievance was partly upheld. The first part of her grievance, regarding the non-extension of her role, was not upheld. The second part, regarding accessibility to staff training, was upheld. Mr Griffith explained that he would make a recommendation to the Optimised Production Lead, Mr East, to review the process and implement changes required to create a process that allowed employees to explore development opportunities.
46. Mr Griffith's evidence in his witness statement was that he emailed Mr Brady and Mr East to make that recommendation. There was no evidence of such an email before us. When asked about that, Mr Griffith first referred to emails from 2024 (which we will come on to in due course). Those emails did not appear to address the point, and they post-dated the grievance outcome by well over a year. When that was put to him, his evidence was then that he might have made the recommendation verbally rather than in writing. We find that Mr Griffith did not pass the recommendation on to Mr Brady and/or Mr East. If he had done so by email, that email would have been disclosed and would have been in evidence before us. The first suggestion he had passed the recommendation on verbally came in his oral evidence. The recommendation in question was a recommendation for a change in process, being made to a more senior manager. We consider that a recommendation of that type would have been (and would have needed to have been) made in writing. We therefore consider that the most likely explanation for there being no email evidencing the recommendation being communicated to Mr Brady and Mr East is because it did not happen. That is, Mr Griffith never formally communicated his recommendation to Mr Brady or Mr East.
47. The Claimant was off sick for a period of time from late 2022. On or around 3 February 2023, Mr Haden contacted the Claimant during her absence to inform her that there was a vacancy in the Book Room. Mr Haden's evidence is that he could not recall whether he did that in response to being asked to by Mr Griffith, or whether he had already done it before being informed by Mr Griffith, but that he would have done it in any event because he knew that the Claimant was interested in administrative jobs generally (not specifically vacancies in the Book Room).
48. The Claimant applied for the vacancy. She was invited to an interview on 15 March 2023 [149]. She was interviewed by Phillip Woods and Heidi Mackie. She was unsuccessful at that interview.
49. Mr Griffith's evidence was that in advance of that interview, he had several conversations with the Claimant, and that he sat with her and went through what he required from the Book Room in his role. His evidence was also that he spoke to Mr Woods and asked if he could arrange to have some time with the Claimant to upskill. That evidence was not in Mr Griffith in his

witness statement. Once again, it was given for the first time in cross-examination. When it was put to him that it was not in his witness statement, his evidence was somewhat surprisingly that it may have “slipped his mind” when he was writing the witness statement. The heart of the Claimant’s claim was that she was not provided support to develop her career towards a role in the Book Room. We find it inherently unlikely that such important piece of evidence would have slipped Mr Griffith’s mind while preparing his witness statement, as he suggested. We find that that support was not offered prior to the 2023 interview, and that Mr Griffith’s recollection in that regard was mistaken.

50. On 24 March 2023, the Claimant appealed the outcome of her grievance.

51. On 12 April 2023, the Claimant saw Mr Griffith in the Mail Centre while returning from her break. They had a discussion regarding access to training in the Book Room, and regarding being inspired to progress. The Claimant’s evidence was that Mr Griffiths told her that she was “carrying baggage”, but when she asked him to clarify the comment he walked away. Mr Griffith’s evidence was that he told the Claimant that he had worked with many people who felt that they were uninspired due to how the business had operated before he started, and that several of those people felt that they were carrying the baggage of the prior management approach.

52. The Claimant’s evidence was that she made a note of the conversation after returning home from work that day. That note was in evidence before us. It said this:

“On Wednesday 12th April 2022. At 1010 after my breaktime I was going back to my work area I spoke with the early shift manager. During our conversation of inspiring, I said he was not begins inspiring for me to do other work, he said that I was carrying baggage. I said what baggage, he didn’t say nothing after that. I moved back towards to my work area secondary parcels.”

53. We find that the Claimant told Mr Griffith that she he was not inspiring her to do other work, and that Mr Griffith referred to the Claimant, specifically, as having baggage. Mr Griffith then terminated the conversation. We reach that finding because:

53.1. The Claimant’s version was supported by a contemporaneous note (and where the Claimant’s witness statement differs from the contemporaneous notes, we prefer the contemporaneous note).

53.2. It is more likely that the Claimant would have recalled the conversation than Mr Griffith, as the conversation would inevitably have had more significance for the Claimant than for Mr Griffith.

53.3. The Claimant’s contemporaneous note was made that day, whereas Mr Griffith was, in his evidence, recalling the conversation many months later.

53.4. We consider that it is implausible that Mr Griffith would have referred to other employees having the baggage of the prior

management approach in his conversation with the Claimant. That would be a surprisingly critical comment for Mr Griffith to make about his management predecessors (one of whom was, of course, by then one of his direct reports). And by that point, Mr Griffith had been in post for over two years, so such a comment would not reflect well on him.

54. On 13 April 2023, the Claimant emailed Mr Woods to ask for feedback from the interview she had attended for the Book Room role. Feedback was provided to her in writing on 20 April 2023.

55. The Claimant's grievance appeal was heard on 3 May 2023 by Tegwyn Roberts. The Claimant did not receive the outcome until 18 September 2023. The appeal was not upheld. The outcome letter could best be described as cryptic. Although it was three pages long, it was not entirely clear how Ms Roberts reached the conclusion she did. There were no notes before us of any meeting between Ms Roberts and Mr Griffith (although the outcome letter referred to such a meeting having taken place). We did not hear evidence from Ms Roberts.

56. On 14 October 2023, the Claimant emailed Mr Griffith as follows:

"Now that Ms Tegwyn Roberts has completed her investigation into my complaint,

When we can meet to discuss my personal development plan so that I can develop the skills to work in the bookroom."

57. Mr Griffith responded as follows:

"The case is not completed as you know so I will need to consider what impact any actions I take will have on the remainder of the case.

If you require a PDP, you will need to have the initial discussion with your line manager to decide what's required. Any development related to the Bookroom will need to be provided by a trained member of the Bookroom team and will require authorisation from Tom East.

If you write to Tom, he can decide if there is a development opportunity available at this time."

58. On 12 January 2024, the Claimant emailed Mr East as follows:

"I was informed by Dave Griffith on the 14th October 2023 to write to you in terms of a Personal Development Plan, which would include learning opportunities in the Bookroom.

Previous job interviews for roles in the Book room state that I need to gain insight into the Bookroom.

I have been requesting development opportunities in the Bookroom but these have been declined without substantive reasons.

I want a Personal Development Plan, which includes opportunities in the Bookroom.

Please confirm by response that a Personal Development Plan will be formulated by Friday 19th January 2024.”

59. On 13 January 2024, Mr East replied to the Claimant informing her that he would pass her details to the Staff Resourcing Manager. He also emailed Phillip Woods asking him to consider how to give individuals interested in the Book Room opportunities. He noted that it needed to be cost effective, and the GDPR would be an important consideration. Mr Woods responded to Mr East, copied to Mr Griffith. He explained that there was a vacant role in the Bookroom advertised, which closed in two weeks time. He explained that once that vacancy was filled, all duties and reserves would be filled so opportunities would be limited.

60. There were further internal emails. Mr Brady emailed Mr Griffith as follows:

“Can you explain to her if she wants a PDP she is the one that needs to own and drive it. Im happy to support it but there are limited opportunity. In terms of the bookroom you will need to talk to Phil on this. I believe she may have been interviewed previously for a role”

61. Mr Griffith responded:

“I think Tom [East] has responded and given Phil [Woods] the green light to start a plan based on the vacancy that is currently in the bookroom on the night shift. I’ll explain the expectation to her and let her know that it is based the plan is based on an application for any vacant roles only.

I think the issue will be covering A/L in the future as there should be a process for this as opposed to it being lapsed.”

62. The Claimant’s evidence was that she had raised the question of a PDP for working in the Book Room with Mr Haden. She was not specific about when she did that. Mr Haden’s evidence was that the Claimant never did so. His evidence was that the Claimant had raised with him the possibility of working in an administrative role more broadly. In response to that, he put in place training for the Claimant to develop her computer and quality analysis skills – that is, in respect of administrative roles that fell within his work area. His evidence was also that he could not have produced a PDP for the Claimant to develop her skills to work in the Book Room even if he had been asked, because he could not develop a PDP for a role on which he was not himself trained.

63. Mr Haden was not copied into any of the Claimant's emails to Mr Griffith about a PDP for the Book Room.
64. We find that the Claimant did not specifically ask Mr Haden for a PDP to develop her to work in the Book Room. If she had done so, we consider it is likely that she would have mentioned it in one of the emails she sent to Mr Griffith about a PDP. If she had done so, we consider that Mr Haden would also have explained to the Claimant why he could not produce a PDP for a role which he was not trained to perform himself, which would in turn have caused the Claimant to mention that in her emails to Mr Griffith.
65. The claimant notified ACAS under the early conciliation process of a potential claim on 20 May 2023 and the ACAS Early Conciliation Certificate was issued on 26 June 2023. The claim was presented on 26 July 2023.

Law
Victimisation

66. Section 27 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.
- (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.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”

67. The claimant must have done a protected act (or the employer must believe that the claimant has done, or may do, a protected act).
68. A detriment means being put under a disadvantage. In order to be subjected to a detriment, an employee must reasonably understand that they have been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11). It is not, however, necessary to establish any physical or economic consequence (*Warburton v Chief Constable of Northamptonshire Police* [2022] ICR 925).

69. The test in terms of causation is “reason why”, rather than “but for”. That requires the Tribunal to consider the alleged victimiser’s reasons (whether conscious or subconscious) for acting as he or she did.
70. It is not necessary for the protected act to be the main motivation for the detriment, as long as it was a significant factor (*Pathan v South London Islamic Centre* [2014] 5 WLUK 441).

Burden of proof

71. Section 136 of the Equality Act deals with the burden of proof:

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

(3) But subsection (2) does not apply if A shows that A did not contravene that provision”

72. Section 136 of the Equality Act prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which “a reasonable tribunal could properly conclude” on balance of probabilities that there was discrimination. It must, however, be something more than merely a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33).

73. The burden of proof at that stage is on the Claimant (*Royal Mail Group v Efobi* [2021] UKSC 22). The employer’s explanation is disregarded.

74. If the claimant satisfies that initial burden, the burden shifts to the employer at stage 2 to prove on balance of probabilities that the treatment was not for the prescribed reason.

Conclusions

75. It is common ground that the Claimant did a protected act, namely the Employment Tribunal claim she brought in May 2012.

76. We have found that:

- 76.1. Mr Haden was not aware of the 2012 claim at any point prior to the issuing of these proceedings;
- 76.2. Having seen the Claimant’s grievance letter, Mr Griffith was aware of the 2012 claim, and aware that it contained an allegation that the Respondent had breached the Equality Act, from, at the latest, 10 December 2021.

77. We deal with the alleged detriments in the way they are broken down in the Scott Schedule.

1. Between 01.11.22 and 31.03.23, DG failed to implement the remedial measures as recommended by his own investigation into C's grievance within a reasonable period.

78. We have found as fact that Mr Griffith never raised his recommendations formally with Mr East (or Mr Brady). So the allegation is made out on the facts.

79. We consider that that constituted a detriment to the Claimant. The Claimant raised a grievance because she wanted the situation not be resolved. Mr Griffith upheld part of the grievance, and said he would do something to resolve it. But he did not then go on to do the thing he had said he would do. Mr Griffith, in his evidence, expressed his recommendation as being in general rather than specific terms – that is, it was to benefit all staff, not just the Claimant. But it was in response to the issue the Claimant had raised in her grievance. Failing to follow through on the outcome of his grievance did put the Claimant at a detriment.

2. Between 24.06.22 and 26.07.23, DG did refuse to engage with C's requests to meet, discuss and create the Personal Development Plan

80. On 24 June 2022, the Claimant emailed Mr Griffith to ask for a PDP. He never replied to that email. The Claimant emailed Mr Griffith again in October 2022. He gave an answer which did not engage with the question of a PDP. So we find that this allegation is made out on the facts, in that Mr Griffith failed on those two occasions to engage with the Claimant's request to discuss and create a PDP.

81. We bear in mind that it was not Mr Griffith's role to complete a PDP for the Claimant. A PDP, if one was appropriate, should have been produced between the Claimant and Mr Haden as her first line manager. But crucially, Mr Griffith did not on either occasion refer the matter back to Mr Haden, or even signpost the Claimant back to Mr Haden. His failure to do so appeared particularly stark when read alongside his response to the Claimant's email of 14 October 2023.

82. Had he responded to the earlier emails in similar terms, we do not think his personal failure to create a PDP with the Claimant could be characterised as a detriment. But what was, in the circumstances, a detriment to the Claimant was the way that he appeared to simply ignore the question of a PDP when she raised it in June and October 2022.

3. Between 12.04.23 and 30.04.23, PH did refuse to engage with C's requests to meet, discuss and create the Personal Development Plan

83. We have found that the Claimant did not expressly ask Mr Haden for a PDP. Nor were her requests to Mr Griffith referred back down to Mr Haden. The policies in evidence before us made it clear that personal development

needed to be driven by the employee, in discussion with their first line manager.

84. In the circumstances, we do not think it can be said that Mr Haden refused to engage with the Claimant's requests to meet, discuss and create a PDP, because she did not ask him to meet, discuss or create a PDP. So the allegation is not made out on the facts, and fails.

4. Between 24.06.22 and 26.07.23, PH did fail to comply with R's (1) Supervision Policy; (2) Appraisal Policy; (3) Learning and Development Policy; and/or (4) Access to Training procedures. Which would have allowed for the creation and implementation of C's Personal Development Plan, and the implementation of any formulated Personal Development Plan for C.

85. For substantially the same reasons, the Claimant had not requested a PDP from Mr Haden. He therefore cannot have failed to create or implement a PDP.

86. Furthermore, there was no supervision policy or appraisal policy before us, and the Learning and Development procedure did not put any explicit requirement on Mr Haden to create a PDP for the Claimant.

87. It follows that the allegation is not made out on the facts, and fails.

5. Between 01.11.22 and 31.03.23, DG failed to communicate the recommendations to the Optimised Production Lead regarding recommendation to implement the remedial measures as recommended by his own investigation into C's grievance, within a reasonable period.

88. This is, in substance, a repeat of the first allegation. For the same reasons, it is made out, although it adds nothing.

6. Between 12.04.23 and 30.04.23, DG caused or permitted PH to refuse C's requests to meet, discuss and create the Personal Development Plan

89. This is an allegation that Mr Griffith permitted the substance of allegation 3 to happen. We have found that the substance of allegation 3 was not made out. It follows that this allegation also fails.

7. Between 24.06.22 and 26.07.23, DG did cause or permit PH did fail to comply with R's (1) Supervision Policy; (2) Appraisal Policy; (3) Learning and Development Policy; and/or (4) Access to Training procedures. Which would have allowed for the creation and implementation of C's Personal Development Plan, and the implementation of any formulated Personal Development Plan for C.

90. This is an allegation that Mr Griffith permitted the substance of allegation 4 to happen. We have found that the substances of allegation 4 was not made out. It follows that this allegation also fails.

8. On 12 April 2023, DG expressed the view that C carried too much baggage when asked why she is not be able to access a role or training opportunity in the 'Book Room'.

91. We have found that this did happen, in that in the context of a discussion about access to a role in the Book Room, Mr Griffith told the Claimant that she carried too much baggage.
92. We consider that this constituted a detriment. For an employee to be told by their second-line manager that they are carrying too much baggage is, objectively, an unpleasant thing to hear. It carried the sting of blaming the Claimant for her inability to secure a role in the Book Room.

Was the Claimant subjected to a detriment because she did a protected act?

93. We then turn to consider the reason for the treatment for the four factual allegations we have found to constitute a detriment. Those are 1, 2, 5 and 8. Collectively, they fall within allegation 5.1.2 (1) on the list of issues.
94. We first must consider whether the Claimant has surmounted the initial burden of showing facts from which, in the absence of a contrary explanation, a reasonable tribunal could conclude that discrimination occurred. That requires us to consider whether the fact that the Claimant had raised an Employment Tribunal claim complaining about a breach of the Equality Act was a significant part of the reason for the detrimental treatment.
95. Mr Griffith was responsible for all of the detrimental treatment. At all relevant times, we have found that Mr Griffith had knowledge of the existence of the previous claim, and of the fact that it included complaints that the Equality Act had been breached. That is, he knew the Claimant had done a protected act. We do, of course, bear in mind that Mr Griffith was not at Medway Mail Centre at the time of the previous claim, so had no personal reason to be aggrieved by the claim. We bear in mind also that there was a long time gap between the claim and the alleged detrimental treatment. Of course for several years of that period, the Claimant was unable to engage in attempts to be deployed to the Book Room because of the effects of her concussion.
96. We have found the “baggage” comment was made broadly as the Claimant described it – that is, that Mr Griffith referred to her specifically as having baggage. The context is that the Claimant had brought a Tribunal claim, and had been placed in the Book Room temporarily as a resolution to that claim, but by some eight years later had been unable to secure a permanent role in the Book Room. She had raised a grievance about the situation, in which she had referenced the previous litigation. That grievance had been heard by Mr Griffith. In that context, the comment gives rise to the obvious inference that the baggage being referred to by Mr Griffith included the previous Tribunal claim.
97. We therefore conclude that the Claimant has surmounted the burden in respect of that allegation (allegation 8).

98. In respect of the recommendation following the grievance, there was no reason, on the face of it, for the failure by Mr Griffith to pass on his recommendation to Mr East. Of course at the first stage we are not considering the Respondent's explanation. We consider that the inference we draw from the "baggage" comment is relevant to this allegation. That comment was made to the Claimant only a few months later. We consider it is indicative of what was in Mr Griffith's mind at the time. That is, it shows that the existence of the previous claim was something that Mr Griffith had in mind, and had in mind as a negative factor in respect of the Claimant. We therefore conclude that the Claimant has again surmounted the initial burden in respect of those allegations (allegations 1 and 5).
99. In respect of the failure to meet with the Claimant regarding the PDP, or to respond to her requests for a PDP, we consider that the inference we have drawn in respect of the "baggage" comment is relevant. For substantially the same reasons, we therefore conclude that the Claimant has surmounted the burden in respect of that allegation (allegation 2).
100. We then turn to consider the Respondent's explanation for the treatment.
101. We take the baggage comment first. Mr Griffith's explanation for the comment was that he was not referring to the Tribunal claim. But that was predicted on his evidence that he had in fact made quite a different comment regarding baggage, and had not referred specifically to the Claimant having baggage. We did not accept his evidence in that regard. We have preferred the Claimant's evidence (or rather, the Claimant's contemporaneous note). We do not consider that the claim was the entirety of the "baggage" that Mr Griffith referred to. But we do consider that it was in his mind, and that when he referred to the Claimant having baggage, that was one element of the baggage to which he was referring.
102. The protected act does not have to be the whole, or even the main reason for the detriment treatment – it is sufficient that it is a significant part. Mr Griffith has not persuaded us that the previous Tribunal claim was not a significant part of his reason for referring to the Claimant's baggage. We find that it was. It follows that allegation 8 succeeds.
103. In respect of the recommendation from the grievance, Mr Griffith had no explanation for his failure to action his grievance recommendation. That is because his evidence was predicated on him having communicated the recommendation to Mr East. We have found on the evidence before us that he did not do so (either by email or orally). There is therefore no evidence before us from which we conclude that there was a non-discriminatory reason for his failure to do so. Mr Griffith did not advance any contrary explanation. He did not suggest that he had forgotten, or that he had some other reason for not passing the recommendation on.
104. In the circumstances, there is nothing before us to discharge the burden upon the Respondent of showing a non-discriminatory reason. It

follows that we conclude that the reason (or at least a significant part of the reason) was the previous claim. So allegations 1 and 5 succeed.

105. In respect of Mr Griffith's refusal to engage with the Claimant's requests to meet, discuss and create the PDP, there were two occasions when the Claimant expressly asked him for a PDP within the time period covered by the allegation. On the first occasion, he had no explanation for the failure, although his evidence was that he was not sure that he could create a PDP for a role in the Book Room. On the second occasion he did reply, but did not engage with the PDP point.

106. Mr Griffith's overarching evidence in his witness statement was that creating a PDP for the Claimant was not his role. That is clearly right, given the policies. Set against that, of course, his evidence to the Tribunal was that he was concerned about whether he could create a PDP specifically for a role within the Book Room. That was somewhat contradictory, in that if it was not his role to create a PDP for the Claimant then he did not need to worry about whether he could create one specifically for a role in the Book Room. But in any event, neither explanation satisfactorily dealt with why he failed to reply to the Claimant's first email requesting a PDP, or to engage with it in any way. And even when he did reply to the second email, in October, he did not apologise for the delay and failure to reply to the earlier email, or give any explanation. And once again, he did not explicitly engage with the request for a PDP. That failure is thrown into sharper relief by his response to the Claimant's email of 14 October 2023.

107. Weighing all of that up, we are therefore not satisfied that the Respondent has shown that the real reason for Mr Griffith's failure to engage with the Claimant's requests for a PDP was not, at least in part, the fact that she had done a protected act. So allegation 2 succeeds.

108. The Respondent accepted in submissions that there were no jurisdictional issues. So it follows that we find for the Claimant in respect of allegations 1, 2, 5, and 8 on the Scott Schedule (albeit that allegations 1 and 5, insofar as we have found them to be substantiated, duplicate each other). With reference to the list of issues, the Claimant therefore succeeds on allegation 5.1.2 (1). For the reasons set out above, allegation 5.1.2 (2) does not succeed.

109. We conclude by saying this. Our task was to consider the claim as it was captured in the list of issues and Scott Schedule. Our judgment is that four of the allegations on the Scott Schedule are made out. We are conscious that the Claimant remains employed by the Respondent. Both parties will, no doubt, have views about the impact of our judgment on the ongoing employment relationship. We think it is therefore important that we make clear the limits of our judgment:

109.1. Our judgment should not be taken as meaning that the Claimant ought to have been appointed to a role in the Book Room. The Claimant did not allege that the failure to appoint her to any of

the vacant roles was an act of discrimination, so that is not a point we have specifically considered.

109.2. Nor should our judgment be read as meaning that the Claimant ought to have had a PDP. The allegation we were considering was specifically about whether Mr Griffith had engaged with her requests for one, not whether she ought to have had one in place.

109.3. Our judgment should also not be read as suggesting that a PDP would have assisted the Claimant to obtain a role in the Book Room. That was not a matter on which we heard evidence, or one on which we were required to make findings.

109.4. Finally, our judgment should not be read as containing a finding that Mr Griffith's grievance recommendations would, had they been enacted, have led to the Claimant obtaining a role in the Book Room. Once again, that is not a matter on which we were called upon to make findings.

Employment Judge Leith

13 November 2024
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

21ST November 2024

O.miranda
FOR THE TRIBUNAL OFFICE

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