



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Rowena Owens

**Respondent:** Network Rail Ltd

**By CVP**  
**On:** 14-18 March 2022, 21 and 22 March 2020,

**Before:** Employment Judge Martin  
Ms Denton  
Ms Omer

**Representation**  
**Claimant:** Mr Kohanzad - Counsel  
**Respondent:** Mr Holloway - Counsel

## RE-AMENDED RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claims are dismissed.

## RESERVED REASONS

1. On 4 June 2020 the Claimant presented a claim of sex discrimination. The Respondent prepared a response on 24 August 2020. There was a preliminary hearing on 15 March 2021 following which the Claimant particularised her claim by way of a Scott Schedule. This is appended to this judgment.
2. The Tribunal had before it a bundle of documents numbered to 961 (there were more pages than this in the bundle due to pages being added using a,b,c etc). The Tribunal had witness statements and heard evidence from The Claimant, Mr Jim Emmerson and Mr Stephen Wigg on her behalf. For the Respondent evidence was heard from Mr Marc Ellix, Mr Paul Kemp, Ms

Katherine Styles and Mr Peter Barron. There was a witness statement for Mr Duarte, but he was not called to give evidence.

### **The hearing**

3. In December 2021, the Respondent had applied to extend the hearing to 20 days as there were allegations against 22 individuals at the Respondent. on 11 March the Respondent sent a further letter withdrawing its application to extend the length of the hearing. It explained that to call the witnesses would cause operational and safety critical difficulties for the signalling operations at the Respondent's Wimbledon Area Signalling Centre and that on reflection the Respondent opted to limit itself to calling four witnesses. This meant that there was no live evidence from the Respondent about the individual allegations made by the Claimant.
4. There were a few technical issues during the hearing which were resolved and did not affect the presentation of the claim or the Respondent's defence.
5. The Claimant wanted to give her evidence in a more formal setting. Therefore, arrangements were made for her to attend the Employment Tribunal premises in Croydon to give her evidence. All other participants attended by CVP.
6. On day three, during the Claimant's evidence Mr Kohanzad raised a matter connected to the matters Mr Holloway had cross examined the Claimant about. Mr Kohanzad submitted that the Scott Schedule should not be read in isolation but should refer back to the particulars of claim.
7. It was submitted that the Claimant's case was not limited to the narrow wording of the schedule and that at paragraph 13 of the particulars of claim, the Respondent understood the Claimant to be complaining about a leak of her grievance to the team as opposed to just HM. It was submitted that the pleadings trump the list of issues. Rather than interrupt the Claimant's evidence, it was agreed that this would be discussed further after her evidence had completed.
8. After the Claimant's evidence had concluded Mr Holloway responded to the points already made by Mr Kohanzad. In summary his submission was that there all allegations in the claim form had been transposed to the list of issues or the schedule. He submitted that the Claimant was now attempting to change the allegation to add in that someone else was responsible for the leak. The Claim form did not articulate how this aspect of the claim was brought or against who. Therefore, the Scott Schedule was ordered. Mr Holloway said that the Claimant was now trying to add in new particulars some 11 months after the schedule was completed. The decision not to call witnesses was based on the information provided by the Claimant in the Scott Schedule.
9. The Claimant submitted that the starting point was the pleadings and invited the Tribunal to consider paragraph 13. He suggested that the essence of

the complaint is that the team were discussing it 48 hours after the grievance was made and this is what is covered in the pleadings.

10. After an adjournment in which the Tribunal carefully considered the pleadings and the Scott Schedule, the Tribunal rejected the Claimant's submissions and accepted the Respondent's. It accepted the Claimant's argument that the pleadings trump the list of issues.

11. Paragraph 13 states:

*"The Respondent went on to share the Claimant's grievance with HM and GB. Within 48 hours of her first grievance having been submitted, the Wimbledon signallers were aware of its contents and were discussing it whilst at work. The Claimant contends that the leaking of her grievance was an act of victimisation."*

12. The Tribunal considered carefully how this paragraph was constructed. It concluded that the second sentence relates to the consequence of the leak, rather than first two sentences which give the background and that the third sentence sets out the basis of the claim.

13. At the end of day 4, Mr Kohanzad said the Claimant was considering whether to add in that Mr Kemp was responsible for the leak about the grievance but would wait until he had given evidence before making an application to amend.

14. Mr Kemp gave evidence on days five and six. After his evidence Mr Kohanzad made an application to amend the Scott schedule item 28. The date of this allegation is "in or around July 2018. The allegation is that *"Mr Kemp sought to interfere with the proper running of the investigation (see paragraph 17 of the Grounds of Complaint)."* The amendment sought was to expand Mr Kemp's involvement on the basis that even if he did consider the investigation to be completed, his communications were inappropriate even if it were to solve employment issues in the team.

15. Mr Holloway resisted this application. After a short adjournment he submitted that the application if granted would substantially change the case and it was not just to allow it. He commented on the manner and timing of the application, pointing out that all Mr Kemp's emails had been disclosed prior to the claim being brought. Mr Holloway submitted that the Respondent had prepared based on the information given in the pleadings and Scott Schedule. If it were to be allowed, then the Respondent would need to call at least two further witnesses.

16. The proposed changes to the Scott Schedule allegation 28 were:

*"Paul Kemp sought to interfere with the proper running of the investigation. Paul Kemp sought to inappropriately pressurise the Respondent to have the Claimant return to work, be redeployed, or resign or in the alternative, be redeployed or resign".*

17. Having considered the application and the response to it, the Tribunal refused to allow the amendment the Claimant sought for the following reasons:

**Timing and manner of application**

18. The application was made on day six, after Mr Kemp had completed his evidence. The Tribunal accepts that there may exceptionally be circumstances when such late amendments can be made.
19. The Claimant says it was only from Mr Kemp's evidence that the amended issues became clear. The Respondent on the other hand says the emails the Claimant received from her Freedom of Information request had all the information needed, and she had them at the time of drafting both the ET1 and the Scott Schedule.

**Balance of prejudice**

20. The Tribunal finds that there were emails from Mr Kemp which the Claimant had in which he set out options he considered appropriate for the Claimant. The Respondent would be prejudiced by allowing an amendment of this sought at this stage in the proceedings.
21. The Tribunal notes that there is no application to change the time frame set out in the Scott Schedule - '*on or around July 2018*'. On or around in our view would take us to about mid August. With reference to any prejudice to the Claimant by not allowing the application, the Tribunal considered that emails which post date this can be used to back up the allegations around the investigation issue. To the Claimant there is not much prejudice as the emails of 19 May quoted in pleadings gives the two options, a and b.
22. The Respondent says it would need to call HM to give context to counter Mr Kemp's evidence. The Respondent had decided who it wanted to call to give evidence based on the case as presented to them. The case as pleaded did not include this issue, so the Respondent was not on notice it was a live issue to deal with.
23. This is not a case where evidence was given which could not have been anticipated, as the emails which the Claimant had, clearly stated what Mr Kemp's view was. The Tribunal does not find this to be one of the exceptional cases, where a late amendment is appropriate, and the Claimant's application was refused.
24. There were many people mentioned in the hearing who had specific allegations made against them but were not present to defend them personally. Whilst the Tribunal recognises that this was largely because the Respondent chose not to call them, it considered it appropriate to discuss with the parties whether these people should be referred to by their initials in the written judgment as it is placed on the public register. The Tribunal

recognised that essentially this was a balancing exercise between articles 6 and 10 of the Human Rights Act 1998. The Claimant had not wanted to name people during her grievance because she did not want them to suffer financially or reputationally because of the issues she raised. The Claimant submitted that article 8 rights outweigh article 6 and 10 rights, and it was proportionate to anonymise names. The Respondent was neutral observing that the general principle was that justice should be open.

25. Having considered this the Tribunal decided to anonymise the names of those named in the Scott Schedule but who did not attend to give evidence by using their initials rather than their full names.

## The law

26. The relevant statute is the Equality Act 2010.

### Direct discrimination

27. Section 13 provides that:

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

28. Section 23 provides that:

29. *“On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case.”*

30. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

### Victimisation

31. Section 27 provides:

“(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) In **St Helens Metropolitan Borough Council v Derbyshire** [2007] IRLR 540, HL Baroness Hale endorsed the three step approach set out in **Chief Constable of West Yorkshire Police –v- Khan** [2001] IRLR 830, HL with regard to the RRA, which equally applies to the EqA:

“There are three relevant questions under the 1975 Act. First, did the employer discriminate against the woman in any of the ways prohibited by the Act? In this particular case, the alleged discrimination was by 'subjecting her to any other detriment' (contrary to s.6(2)(b) of the 1975 Act). Secondly, in doing so, did the employer treat her 'less favourably than ... he treats or would treat other persons'? Thirdly, did he do so 'by reason that' she had asserted or intended to assert her equal pay or discrimination claims or done any of the other protected acts set out in s.4(1) of the Act?

## Harassment

32. Section 26 of the EqA provides:

- (1) *A person (A) harasses another (B) if—*
  - (a) *A engages in unwanted conduct related to a relevant protected characteristic, and*
  - (b) *the conduct has the purpose or effect of—*
    - (i) *violating B's dignity, or*
    - (ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B. . .*
- (4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
  - (a) *the perception of B;*
  - (b) *the other circumstances of the case;*
  - (c) *whether it is reasonable for the conduct to have that effect.*
- (5) *The relevant protected characteristics are - . . . disability”*

33. A Tribunal should consider all the acts together in determining whether or not they might properly be regarded as harassment (**Driskel –v- Peninsular Business Services Ltd** [2000] IRLR 151, EAT and **Reed and Bull Information Systems Ltd –v- Stedman** [1999] IRLR 299, EAT).

34. The motive or intention on behalf of the alleged harasser is irrelevant (see **Driskel** above).

35. The Court of Appeal confirmed in **Land Registry –v- Grant (Equality and Human Rights Commission intervening)** [2011] ICR 1390 “when assessing

*the effect of a remark, the context in which it is given is always highly material”.*

36. In **Richmond Pharmacology –v- Dhaliwal** [2009] ICR 724 the EAT held that the Claimant must have felt or perceived his or her dignity to have been violated. The fact that a Claimant is slightly upset or mildly offended is not enough.
37. The word ‘victimisation’ is specifically defined by the Equality Act 2010 and has a different meaning from the normal use of the word. In considering a claim of victimisation the claimant must prove that there has been a protected act as defined. The claimant must also establish that there has been a detriment, and most importantly the Tribunal must find that the detriment was because of the protected act. A claim of victimisation cannot succeed without that causal link being established.

### **Findings of fact and conclusions**

38. The Tribunal has made the following findings of fact having heard the evidence and considered the documents and submissions. All evidence was considered even if not specifically referred to here. These findings are confined to those that are relevant to the issues, and necessary to explain the decision reached. One of the issues relates to whether the Tribunal has jurisdiction to hear the Claimant’s claims as they are out of time. To determine this, the Tribunal must make findings first. Therefore, the Tribunal considered each item in the Scott Schedule to determine if the things happened as the Claimant said they did and if so, whether they were discriminatory on the grounds of sex. We then considered the question of jurisdiction.
39. The Claimant worked as a signaller starting her employment on 1 March 2012. She is still employed by the Respondent. In November 2015 she moved to the signal centre at Wimbledon. This was considered a prestigious place to work. It is highly safety critical work.
40. The environment the Claimant worked in was male dominated with about 40 staff in total, of which two or three were women. The Claimant’s case is that from the first day working at Wimbledon she was subject to sex discrimination.
41. The Respondent recognises the RMT union. Of those employed at Wimbledon about 98% were members. There were two union representatives working in the Wimbledon signalling centre and Mr Kemp who did not work there. RB, one of the representatives was also one of the people the Claimant made allegations about. The Claimant was originally represented by the RMT but after a meeting in June 2017, the Claimant was unable to contact her representative so instead sought advice from UNITE.
42. The Claimant’s line manager was Mr Ellix, he joined the Respondent shortly before the Claimant went on sick leave. He took over from HM, who had been promoted and was Mr Ellix’s line manager. HM had been managing Wimbledon signalling box for some years.

43. The Claimant has made many allegations of discriminatory treatment. The totality of the Scott Schedule is appended to this order. We have used the schedule taking out some information so our findings of fact and conclusions on the individual allegations can be added into the table.

### **The evidence**

44. The Respondent chose not to call the individuals who are named in the Scott Schedule. There is no documentary evidence about the allegations made by the Claimant. The Claimant's evidence was therefore largely unchallenged. Not all the allegations the Claimant now makes were in her grievance.

45. There were questions put to the Claimant about differences in her evidence at different times. It was suggested that this rendered her evidence unreliable. Given that there was no direct evidence from the Respondent in relation to the allegations themselves the Tribunal had to carefully consider reliability of the evidence it heard and in so doing had to assess the witnesses before it.

46. The Tribunal found the Claimant's evidence to be credible. As often happens when events have taken place some time ago, there are variations in the evidence given at the time the events occurred and at various stages in the grievance and tribunal process. This is to be expected. It would be very unusual, especially when there is emotional distress too, that every detail is fixed in the memory.

47. There was no direct evidence to rebut the allegations. All we could refer to are the statements taken during the grievance process. The Tribunal does not lend much weight, if any, to them. This is because of the way the interviews were conducted (this is discussed further below) and because it appeared that the staff interviewed were not cooperating fully in the process. To compound this, not all the relevant personnel were interviewed at the time. Initially, the Claimant was reluctant to name names as she was aware of the impact the allegations would have not only for the perpetrators but for their families. However, she did eventually name names, but even then, not everyone was interviewed. It should have been clear that the range of people who should have been interviewed was much greater than just those who were interviewed.

48. Mr Wigg and Mr Emmerson gave evidence for the Claimant. Much was made by the Respondent of the fact that Mr Wigg is the Claimant's current partner and Mr Emmerson was her former partner. It was suggested that their evidence should not be relied on as they would be biased and would obviously want to help her. Whilst the Tribunal agrees this is a factor to be considered, it does not mean that their evidence has no value or should be given little weight. Given the Claimant's relationship with them (she is still friends with Mr Emmerson) it is likely that she would talk to them about what happened in the workplace especially as they were familiar with it. They may not have been able to give direct evidence about many of the allegations as they were not there, but they could give valuable background



evidence about the culture in the signal box. They also worked for the Respondent. It is against this culture that the matters the Claimant complained about arose.

49. The Tribunal finds on the balance of probabilities that all the allegations pre grievance happened as the Claimant described them. It recognises that some were not set out in the grievance, however, it acknowledges that where there are so many allegations some may be left out. This is not a case of the Tribunal considering something happened. The Tribunal believes the allegations as set out in the Scott Schedule did happen.
50. There may be variation in the detail, however the substance of the allegations did not change. The Tribunal could not think of a reason that the Claimant would make up these allegations. Ms Styles, Mr Ellix and Mr Barron all said they believed things had happened and they could not give an explanation as to why she would make such extreme matters up. This is not the case of the discrimination being the occasional sexist comment or pat on the bottom, the matters described are much more extreme.
51. The Tribunal therefore finds that all the events happened as set out in items 1 – 25 of the Scott Schedule. The question is whether these amounted to discrimination on the protected characteristic of sex. For the purposes of this decision at this stage, the Tribunal has taken the Claimant's claims at their highest namely that all events happened, and all events were discriminatory on the grounds of sex.
52. Whether the matters in items 1-25 were brought in time depends on the Tribunal's findings in relation to the allegations from the grievance onwards (items 26 - 34 on the Scott Schedule). On the face of it, the first 25 allegations are out of time, and it is only if they can be linked to the remaining allegations to form a continuing act of discrimination that they will be deemed to be in time and give the Tribunal the jurisdiction to consider them. Had the Tribunal found them to be part of a continuing act it would have gone on to consider each allegation individually to consider if they were acts of discrimination, or other non-discriminatory actions.

### **Post grievance allegations**

53. The Tribunal considered the evidence which was given in relation to items 26 – 34 of the Scott schedule. Ms Styles was candid in her evidence, accepting that she had got matters wrong, and accepting her limitations in being able to deal with such an extensive and wide-ranging grievance. Ms Styles was very inexperienced in conducting grievances having only dealt with one before. What was apparent from her evidence and the documents relating to the grievance process, is that she did not fully understand her role. This is not surprising, as she was given little or no guidance or support and was expected to do her full substantive role at the same time. She said that if she were presented with a grievance of this magnitude again, she would insist on being taken off her substantive duties to enable her to devote sufficient time and resource to the grievance process.

54. On reading the minutes of the interviews it is striking that Ms Styles took what was said at face value without any follow up or probing. This is despite her evidence that she believed in much of what the Claimant had alleged. She appeared to be unaware of the burden of proof to be applied, and that she should make her findings on the balance of probabilities. She appeared to consider that she had to make findings beyond reasonable doubt and that she needed corroborating evidence from those she interviewed. No doubt this was because of inadequacies in the training and support she was given.
55. What was also striking was the number of allegations made by the Claimant which were not investigated at all. This was spelt out clearly by the questions Mr Kohanzad asked in cross examination. There was a long list of allegations in the grievance put to Ms Styles which she agreed she had not investigated or considered. From the Judge's notes of evidence there were 21 matters not considered. The Respondent commented on the Scott Schedule and says frequently that there was no evidence to back up the Claimant's claims. This is not surprising, because a significant number of witnesses were not called, and even if they were, were not asked questions about many of the allegations made by the Claimant.
56. The investigation was a shambles, and the conclusions reached were inadequate. Whilst this was unreasonable, the Tribunal is mindful that this is not a claim of unfair dismissal. It is a claim of discrimination. The question to be answered is whether the actions of Ms Styles amounted to less favourable treatment on the grounds of sex. There needs to be a causal connection between the two. Not only this, but parts of documents were lost, for example, the statement made by Mr Wiggs. The Tribunal finds that whatever the failings of the grievance investigation and outcome, this was not because of the Claimant's sex but was because Ms Styles was overwhelmed by the grievance, was not adequately trained, and not properly supported. The Claims of direct sex discrimination and victimisation by Ms Styles are not made out.

### **The appeal**

57. There was a long period of time before the appeal was heard. It started with Mr Barron, was passed to others, then returned to Mr Barron. Mr Barron who finally heard the appeal admitted that he was out of his depth. He had only carried out one grievance appeal for the Respondent and had only been employed by them for a couple of months. He was not appraised of the gravity of the matter when first being handed the appeal only realising this on reading the grievance documents. He noted the allegations and said he noticed from the questions Ms Styles had asked that there were no in-depth questions about the Claimant's allegations which led him to believe that she had no interest in obtaining information which would support the Claimant's account. The Claimant had asked for a substantial number of people to be interviewed (about 40) which Mr Barron considered to be disproportionate because it would take too long and was not required as many of the individuals had already been interviewed. The Tribunal find this curious given he did not think Ms Styles had asked in-depth questions. However, the Tribunal does accept that interviewing 40 people was not

reasonable. Mr Barron agreed to interview four further people but could only interview two as the other two were on either sick or compassionate leave.

58. The appeal was not upheld as he found nothing to substantiate the Claimant's allegations and that accounts of the culture in the signal box was that it was a 'welcoming and inclusive environment' (paragraph 47 (b) grounds of resistance). Mr Barron found that there was poor language used but this was not directed at anyone and that there was no evidence of pornography being viewed.
59. The Tribunal finds that the way in which Mr Barron conducted the appeal whilst having deficiencies was not done in that way because of discrimination but because he was insufficiently trained or supported throughout the process.
60. There was criticism of both Ms Styles and Mr Barron into their investigation into the use of shift signal managers' computers. The Tribunal is satisfied that they took reasonable steps to investigate this.
61. The allegations relating to Mr Kemp who is a trade union representative are found in items 27 and 28 of the Scott Schedule. They are that he "*drafted a template grievance for the use of colleagues who C had complained about and emailed this to MB*" (a union representative who the Claimant complained about) and "*sought to interfere with the proper running of the investigation (see paragraph 17 of the Grounds of Complaint)*". The Tribunal has dealt with the Claimant's application to amend this aspect of her claim above.
62. The Tribunal finds that it is not unusual for a representative to assist its members in drafting a grievance. Mr Kemp is an elected lay Area trade union representative with the RMT. He drafted a template grievance letter for a member and the Tribunal find that this was part of his role. At this stage the Claimant had not named names. The Tribunal also recognises that Mr Kemp had been told that the grievance was concluded in June 2017, and he had been told it had not been upheld. He did not know that it had been re-opened and was in fact continuing. Whilst the Tribunal does have concerns about some of the communications the Tribunal accepts Mr Kemp's evidence that the reason for them was that if the grievance had finished as he believed, then the management should be taking steps to get the Claimant back to work and managing the inevitable fall out from the allegations made. He made it clear in his communications that if the Claimant's allegations were substantiated then the individuals concerned should be disciplined. On the other hand, if they were not substantiated then this also had to be managed appropriately.
63. It was suggested that Mr Kemp made threats of violence towards witnesses and intimidated Mr Emmerson. This was strongly denied by Mr Kemp and the Tribunal could not find evidence to suggest this happened as alleged.

64. The Tribunal finds that the matters alleged in items 26 – 34 of the schedule whilst being unreasonable were not acts of discrimination, either of direct discrimination, harassment or victimisation.
65. This means that there is no continuing act of discrimination which could bring items 1 – 25 of the schedule in time.
66. Section 123 Equality Act provides for a 3-month limitation period from the date that the act complained of was done. This can be extended if there are just and equitable grounds to do so.
67. In Robertson v Bexley Community Centre t/a Leisure Link 2003 [IRLR] 434 CA, it was noted that, while Tribunals have a wide discretion to extend time in discrimination cases, it should only be exercised in exceptional circumstances. *'time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion.'*
68. In O'Brien v Department for Constitutional Affairs [2009] IRLR 294, the Court of Appeal held that the burden of proof is on the Claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.
69. Throughout the matters complained of the Claimant was a member of the RMT. She sought advice from the RMT from an early stage. She then sought advice from another union. The Claimant had union representation at the grievance hearing. The Claimant did not provide any information about why she delayed bringing her claim to the Tribunal. Waiting for an internal process to complete is not sufficient. There was no evidence adduced either by oral testimony or documentary evidence that the Claimant was unwell such that she was prevented from bringing a claim or any other reason given. It is not known what steps if any the Claimant took to obtain advice other than via her union.
70. The Respondent submitted that it was for the Claimant to show why time should be extended. The Tribunal was referred to s33(a) Limitation Act 1980 which states that the Tribunal must look at the length of the delay and the reasons for the delay. It was submitted that there was a substantial delay with no reasons given for it. Given this, it was submitted that the cogency of evidence was likely to be affected on both sides as the allegations related largely conversations only. It was submitted that the Claimant acted very slowly, and that she should have known from November 2015 about the facts giving rise to this claim yet there was no evidence as to what she did to enforce her rights, prior to contacting ACAS on 20 March 2020.
71. The Respondent referred to the case of Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, CA. In this case, the claim was presented three days out of time, and it was held not to be just and equitable to extend time. It was said: *"The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b)*

*[Equality Act] is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular, "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking."*

72. The Claimant submitted that if the investigation was discriminatory, then jurisdiction was not in question. However, the Tribunal has found that the investigation was not discriminatory. The Tribunal was invited to start from the unvarnished question of whether it is just and equitable to extend time and must consider all the matters. It was suggested that the question of prejudice can be decisive. It was submitted that the only prejudice to the Respondent is its failure to call witnesses which was a choice it made. The Respondent does not say that the passage of time was a reason for not calling a witness. It was submitted that it was known why the Claim was late and it does not need an explanation in a witness statement. It is not expected that she would address any single permutation. Here there is a broad chronology that the Claimant went off sick, dealt with the issues internally and then she complained to the Tribunal which is not unreasonable.
73. In response the Respondent submitted that it is difficult for the Claimant to get around the fact that she has provided no explanation as to why she submitted her claim late. If reasons had been put forward there would have been a range of questions for her for example, what advice did she get, when did she seek it, why did she decide not to put claim in earlier when she knew of time limits. It was accepted that the Claimant did go off work, but she returned to work in November 2017, so this was not a valid explanation. It was emphasised that it is of relevance to consider the length or reason for delay. The Tribunal was reminded that the allegations ran November 2015 to May 2017.
74. The Tribunal has reluctantly concluded that the Claimant has provided no evidence on which it can exercise its discretion to extend time. It accepts the submissions made by the Respondent that the Claimant must give some explanation. It is not sufficient for her representative to give reasons in submissions, this is not evidence. The Tribunal accepts that the Respondent chose not to call witnesses and the reasons for this are set out earlier in this judgment. However, this does not detract from the fact that the Claimant has not provided any explanation as to why she did not present her claim earlier. It is inevitable that the length of time between the allegations and the presentation of the claim will prejudice witnesses. For the Claimant, the matters were significant and memorable. For the other witnesses it is likely that the matters were not of significance given it appears that this type of behaviour had been common for some time. Without explanation from the Claimant, it is not possible for the Tribunal to extend time. Therefore, the Claimant's claims are dismissed.

Employment Judge Martin

Re-Amended 25 May 2022

S

Scott Schedule pursuant to Order of Employment Judge Ferguson dated 11 March 2021

NB: a) in relation to all allegations of direct sex discrimination the Claimant relies on a hypothetical comparator, b) and in relation to all allegations of harassment the Claimant relies on 'purpose' and 'effect'.

No.	Date	Type of discrimination	Alleged discriminatory conduct	Location	Alleged Perpetrator(s)	Witnesses	NR Response to Allegation
1	05.11.15	Direct sex discrimination or in the alternative sexual harassment.	On her first day at work, when C offered to make tea for her colleagues RS said something along the lines of "how do you like your oral sex, giving or receiving?". He said this in front of the whole signalling shift present.	On the Operating Floor at Wimbledon ASC.	RS (Signaller)	All those on RS's shift would have potentially witnessed the incident. C cannot remember names, but thinks they will be named in the Roster and/or Occurrence Book.	This allegation dates back to 2015 the Respondent did not interview anyone who could remember or support this allegation. This allegation is therefore denied.
2	C cannot recall the specific date but thinks it was between November 2015 - April 2016.	Direct sex discrimination or in the alternative sex harassment.	While C was being trained by WC on his panel, he walked off and left C in control of the panel. A situation arose and C was not sure what to do. Because WC was not there she had to make a decision on her own WC returned and loudly told C off, humiliating her, and then walked off huffing loudly and repeatedly looking at C. The Signaller next to C was MG. After WC told C off, MG stopped observing his panel, and turned to stare at C. Over the next hour, whenever C looked up from her panel, MG would stop observing his panel and stare at C.	On the Operating Floor at Wimbledon ASC.	WC (Signaller) MG (Signaller)	Those on the shift would have witnessed the incident. C cannot remember specifically who was working on this shift, but it may have included AM (Signaller), PM (Signaller), PT (Signaller).	The Respondent denies this allegation. Further and in any event the Respondent denies that this allegation constitutes discrimination and /or harassment because of sex. Working in this kind of environment is very pressured and people react in different ways to stress, even if this incident had happened, which is denied, the reaction is in keeping with an individual making a mistake in a critical environment, regardless of their sex.
3	24.12.16	Direct sex discrimination or in the alternative sexual harassment.	MB played a pornographic scene on his device while on duty, proclaiming "there's nothing like a bit of dwarf porn". At the time his son, who was an unauthorised visitor, was sitting directly at the signal panel.	On the Operating Floor at Wimbledon ASC.	MB (Signaller)	Steve Wigg (Signaller), CE (Contractor). Other people on the shift could have witnessed the incident but C cannot recall names. The Roster and/or Occurrence Book should list those working on that shift.	The Respondent could find no evidence to support this allegation. No one interviewed had witnessed this incident or the use of pornography generally. The Claimant's manager was shocked by this allegation and denies that pornography was being viewed as alleged or at all.

4	After Christmas 2016	Direct sex discrimination or in the alternative sex harassment.	AF and MB would walk behind C while she was working and deliberately burp loudly as they walked past. Around this time WC sat next to C and deliberately burped loudly and continuously for in excess of 15 minutes. C eventually asked him if he was ok. For many weeks after this, colleagues (in particular AF, MGTC, WC and MB) would burp during a shift with C and loudly say "excuse me!".	On the Operating Floor at Wimbledon ASC.	WC, AF (Signaller), MB, MG (Signaller), TC (Shift Signalling Manager - "SSM").	Those on the shifts would have witnessed this behaviour. C cannot recall specific names, but thinks this may include AM, BF (Signaller), VS (SSM) and AF (SSM).	The Respondent found no evidence to support this allegation. Further and in any event the allegation does not constitute discrimination and/or harassment because of sex.
5	Between November 2015 to May 2017.	Direct sex discrimination or in the alternative sex harassment or sexual harassment.	Colleagues made deliberate and gratuitous use of the word "cunt" around C, in particular PT, AF and RS. This was on practically every shift that C worked. In addition, C recalls one incident in around spring 2017, when TC called a driver that had made a mistake a "soppy cunt".	On the Operating Floor at Wimbledon ASC.	TCPT, AF and RS.	There are too many instances to remember the names of potential witnesses. But the comments would have been witnessed by those working on C's shift and these may have included JP, JB, MB, DT, CA, KS, AM. PB witnessed TC's comments about the driver.	It is admitted that in such an environment foul language is sometimes used, although the Respondent does not condone this. Both female staff members who were interviewed said they had never heard this particular word being used.
6	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment or sexual harassment.	PT said "there is no such thing as a good cunt".	On the Operating Floor at Wimbledon ASC.	PT.	Those on the shift would have witnessed the incident. C cannot remember specifically who was working on this shift, but it may have included AM, PM (Signaller), MG	As above
7	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	Male colleagues would often leave the newspaper open in the kitchen on page 3 (for the Sun) or page 5 (for the Star) with naked women on show. If C closed the paper, when she returned to the kitchen it would be open on that page again.	Kitchen at Wimbledon ASC.	C did not know who was leaving the newspaper open because this would happen when she was not there.	Those on the shifts in question would have witnessed the incident. C cannot remember specifically who was working on these shifts.	The Respondent does not condone any sort of pornographic material in the workplace. There is no evidence to support this allegation.
8	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	RS looked at almost naked women (with two thin lines over their private parts) on a Company pc terminal.	On the Operating Floor at Wimbledon ASC.	RS	People working on the shift with R- BF, TC,DW (Signaller)	The Respondent does not condone any sort of pornographic material in the workplace and all employees have been trained in diversity and inclusion. There is no evidence to support this allegation.
9	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment or sexual harassment.	AF was on the back row in the Operating Floor and started showing something on his device to colleagues. RL said "you wouldn't want to see that when you took her knickers off" and "she's a fit bird - that's just wrong".	On the Operating Floor at Wimbledon ASC.	AF and RL (Signaller)	Everyone on the shift apart from C went to the back of the room to look at AF' device. RL was on the shift. C thinks that the following people may also have been on the shift: WC, CA (Signaller).	No evidence to support this allegation, it is denied.
10	C recalls that it was a Sunday shift, but cannot recall the date. C thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	MB had a conversation with DT in which MB discussed rape scenes from several films, and discussed the actresses in these scenes, expressing pseudo concern. The conversation went on for about 20 minutes. C was the only woman in the room.	On the Operating Floor at Wimbledon ASC.	MB	DT (Signaller). In addition, people on shift could have witnessed the conversation. This may have included MB (Signaller), KS (Signaller).	The Respondent found no evidence to support this allegation, it is therefore denied.



11	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	BF came back from the toilet and said he had been in the toilet "spanking the monkey".	On the Operating Floor at Wimbledon ASC.	BF	CA and JP (Signaller).	The respondent found no evidence to support this allegation, it is therefore denied
12	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	During one of C's shifts, there was an irregular signal sequence and C mistakenly passed a call to a trainee colleague, JP. JP was taken aside by the Qualified Signaller on duty, WC, and was told it was C's signal and not to let her shirk her work. At C's request she met with WC and VS to discuss the issue. During a subsequent shift VS told colleagues, including AF, about this meeting. AF then repeated VS's comments to colleagues, alleging that Vince had said, "this is what you get when you let women in the signal box", going on to mention something about "women's hormones".	On the Operating Floor at Wimbledon ASC.	VS and AF.	Jim Emmerson (Signalling Technical Support) was there when AF purported to quote VS's comments. Other witnesses would include those on the said shifts with VS and AF. C does not know who this would be as she was not there.	The Respondent has ensured that all employees are trained in diversity and inclusion and does not condone these behaviours as alleged or at all.
13	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	During a shift C was on the phone to a colleague making a safety critical call. C noticed she was being observed because the room went quiet. C turned around to see that PB, who was standing nearby, was listening to C's call and had turned away from his panel to face C and was looking at her with an expression of disdain. When C looked at him PB continued to stare at C in an intimidating manner until she had to look away.	On the Operating Floor at Wimbledon ASC.	PB (Signaller)	Some of those on the shift would have witnessed the incident. C cannot recall who was present, but thinks the Shift Manager may have been AF.	PB is a very experienced employee. The Respondent believes that if he was listening to the conversation it was to check the information was correct, given that the employees work in a safety critical role.
14	C cannot recall the specific dates but thinks it was a night shift during April 2016 - May 2017	Direct sex discrimination or in the alternative sexual harassment or sexual harassment.	During a night shift C made an operational error locking up some points. At the time C was training a Trainee, JB. C called over the Shift Manager, AF. Neither C nor AF knew how to resolve the issue. PB, a long standing and experienced Signaller, was near to C and could see what was happening, but just stood there looking at C, declining to help. C perceived this as PB wanting her to fail. AA, who was a less experienced Signaller than PB and who was positioned further away, came over to help and resolved the issue. AF, then suggested that C should sit on Jake Baffour's lap to pacify him.	On the Operating Floor at Wimbledon ASC.	AF and PB.	JB (Signaller), TC (Signaller), AA (Signaller). In addition, those present on the shift. C cannot recall specific names.	This is the Claimant's perception of what occurred and she was given help and the situation was resolved. The allegation that this is somehow linked to discrimination and/or harassment because of sex is denied.
15	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	When talking to PB, DP described C as an "apocalypse waiting to happen".	On the Operating Floor at Wimbledon ASC.	DP	PB.	The Respondent does not understand this allegation. More specifically, if the event occurred as alleged, why this would constitute discrimination and/or harassment because of sex?

16	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	On numerous occasions colleagues would whistle the Laurel & Hardy tune around C. When this happened, C's colleagues would go silent and look at each other. On several occasions the tune was whistled by SL. C cannot recall the other colleagues that whistled the tune.	On the Operating Floor at Wimbledon ASC.	SL.	Those on shift at the time would have witnessed this. There were many occasions and C cannot recall who was on those shifts, but it may have included TC and SJ.	The Respondent does not understand this allegation. More specifically, if the event occurred as alleged, why this would constitute discrimination and/or harassment because of sex?
17	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	C was trying to speak to the Shift Manager, TC, to provide information, but he did not hear her. RS shouted across the room, in front of everyone on shift, " <i>Tony, the fat woman over here wants to speak to you</i> ". TC and another colleague present, SJ, laughed. TC or SJ then played the Antiques Roadshow theme music on a device and both continued to laugh.	On the Operating Floor at Wimbledon ASC.	RS, TC and SJs.	Those on shift at the time would have witnessed this, and this may have included BF.	The Respondent found no evidence to support this allegation, it is therefore denied.
18	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	When female drivers made a mistake, they were spoken about differently by some male Signallers, in particular PT, and PM. They would highlight the fact that the driver was a woman.	On the Operating Floor at Wimbledon ASC.	PT and PM	These comments were made on multiple occasions. Those on the shifts would have witnessed the comments. C cannot recall specific witnesses but thinks that AM and Steve Wigg (Signaller), may have witnessed these comments.	This allegation is denied – the Respondent questioned the other female employees working in Wimbledon on this point, both said they would be spoken to if they had made a mistake, but this would be no different than how other male members of the team were spoken to.
19	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	On 3 or 4 occasions while C was on at work (as the only female employee on the shift) PT would say things like " <i>do you think women should be in the workplace?</i> ", and " <i>I think women should be in the home</i> ".	On the Operating Floor at Wimbledon ASC.	PT	Those on the shifts with PT would have witnessed these incidents. C cannot recall who was on these shifts.	This allegation is denied. It is accepted that general banter goes on in the workplace but the Respondent will not tolerate sexist banter – or indeed any sort of banter that could be perceived as discriminatory.
20	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sexual harassment.	PT brought in a sex toy, displaying it to colleagues, and while doing so, would look at C and smile. He did this for about 15 minutes while everyone in the room was quiet. The next day, the sex toy was still in the room, and RS picked it up and said " <i>look Rowena</i> ", while holding it up.	On the Operating Floor at Wimbledon ASC.	PT and TS	Those on the shifts with PT and RS would have witnessed these incidents. Steve Wigg witnessed one of the occasions. C cannot recall who else was on these shifts.	This allegation is denied. There is no evidence to support this allegation.
21	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	While C was on shift, it was coming up to dinner time. TC took orders for a takeaway, and asked everyone apart from C. This was noticed by DW who asked C if she wanted anything. TC did not say anything to C. C was upset about being excluded and so said to DW that she did not want to make an order.	On the Operating Floor at Wimbledon ASC.	TC	DW. In addition, those on the shifts would have witnessed this behaviour. C cannot recall specific names, but may include BF and RS	The Claimant was included – she was asked if she wanted to order. She did not.

22	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	During a shift on a Saturday, a meal was planned for the following day. C is a vegetarian, which was known to her colleagues. DW was going to cook the meal and asked C if she wanted him to make her a vegetarian option. C was very happy that someone was being nice to her and said yes. The next day SJ, and not DW, cooked the meal, and despite knowing that C is a vegetarian, made a meat based meal with no vegetarian option. C therefore had to go out on he own to get her own meal.	On the Operating Floor at Wimbledon ASC.	SJ (Signaller)	Those on the shift would have witnessed this, which may include DW, TC, BF and RS	The evidence from the witnesses is that someone cooks and everyone can help. There are bound to be times when an individual does not like the meal cooked or cannot eat the meal and will have to seek out another option. The Respondent does not accept this was a deliberate act against the Claimant.
23	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	AF stared at C with disdain and hostility and huffed loudly after C made an easily rectifiable mistake. Shortly after, on the same shift, C opened a snack. AF and D looked at C and VS said C was being a bit noisy. Male colleagues who regularly spoke loudly did not receive comments like this. C offered AF and VS some of her snack, and AF sneered at C and turned away.	On the Operating Floor at Wimbledon ASC.	AF and VS	Those on the shift would have witnessed the incident, which may have included AM, PT, MG and PM.	This is the Claimant's perception of the alleged incident. The Respondent found no evidence to support the allegation
24	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	Often, goodbyes from a male Shift Manager, TC, were restricted to "gents" being said as he left work.	On the Operating Floor at Wimbledon ASC.	TC	The comments were made on numerous occasions, and those on the shift would have witnessed them. C cannot remember specifically who was working on these shifts, but it may have included BF, RS, DW.	The Respondent found no evidence to support this allegation. The two female colleagues at Wimbledon denied that they work in a sexist environment.
25	C cannot recall the specific date but thinks it was between April 2016 - May 2017.	Direct sex discrimination or in the alternative sex harassment.	During a shift, C was on a busy panel and her computer terminal stopped working. C reported this to TC, the Shift Manager, who spoke to IT. TC became more and more hostile towards C while the problem persisted. Eventually IT called C, but she was engaged in safety critical work, which she prioritised, and did not answer the phone. TC aggressively told C to answer the phone in a raised voice. He did not speak to or treat male colleagues in this way.	On the Operating Floor at Wimbledon ASC.	TC	Those on the shift would have witnessed the incident. C cannot remember specifically who was working on this shifts, but it may have included BF, RS, DW.	This allegation is denied. This in an extremely stressful environment and at times staff become curt with one another, regardless of sex.
26	In around November 2017.	Direct sex discrimination and victimisation.	R leaked C's grievance in breach of confidentiality owed to her.	n/a	Marc Ellix, HM, GB.	n/a	It is acknowledged that the fact of the Claimant's grievance was shared by Marc Ellix with Paul Kemp and MB (both Area Council representatives for the RMT). However, this was a mistaken attempt to provide the Claimant with support from her trade union representatives before Mr Ellix was aware that both Mr Kemp and GB were implicated in the Claimant's grievance.

27	On or before 15.07.18.	Direct sex discrimination and victimisation.	Paul Kemp drafted a template grievance letter for the use of colleagues who C had complained about and emailed this to MB.	n/a	Paul Kemp.	MB.	It is admitted that a template grievance was submitted however this does not constitute discrimination and/ or harassment because of sex.
28	In or around July 2018.	Direct sex discrimination and victimisation.	Mr Kemp sought to interfere with the proper running of the investigation (see paragraph 17 of the Grounds of Complaint).	n/a	Paul Kemp.	n/a	This is denied. The content of the Claimant's grievance was not shared, the fact a grievance had been made was shared but the content of the grievance was not.
29	03.11.17 - 03.12.18.	Direct sex discrimination and victimisation.	Katherine Styles failed to properly investigate C's grievances (see paragraph 21 of the Grounds of Complaint).	n/a	Respondent / Katherine Styles.	n/a	Agreed this was upheld at appeal and a further hearing was convened.
30	03.11.17 - 03.12.18.	Direct sex discrimination and victimisation.	Those interviewed during C's grievance investigation (apart from HM (OM), Marc Ellix (LOM), IS (Deputy LOM), Steve Wigg (Signaller) and Jim Emmerson (Signalling Tech Support)) "closed ranks" in that they did not provide an honest and open account of C's treatment by colleagues.	n/a	Those interviewed during C's grievance investigation (apart from those named under "Alleged Discriminatory Conduct").	n/a	This is denied. Those who were interviewed gave corroborating statements, if this does not support the Claimant's allegations it does not follow that they had "closed ranks"
31	After 08.03.19.	Direct sex discrimination and victimisation.	Failure to investigate C's grievance dated 08.03.19 concerning Paul Kemp's conduct.	n/a	Respondent.	n/a	Grievance hearing meeting notes on page 195 confirm that a grievance hearing for the 2019 grievance was held on 25.11.2019
32	Prior to Feb 2020.	Direct sex discrimination and victimisation.	R deliberately withheld grievance interview minutes from C until forced to do so pursuant to a Freedom of Information request (and even then full copies were not provided).	n/a	Respondent.		There was no deliberate act by the Respondent to withhold information, as alleged or at all.
33	03.11.17 - 17.02.20	Direct sex discrimination and victimisation.	Refusal to interrogate the SSM computers (see paragraph 29 of the Ground of Complaint).	n/a	Respondent / Katherine Styles / Peter Barron.	n/a	IT checked computers – nothing of this nature was found
34	17.02.20.	Direct sex discrimination and victimisation.	Failure to properly address C's appeal (see paragraph 27 of the Grounds of Complaint).	n/a	Respondent / Peter Barron	n/a	This is denied. The Claimant's appeal was heard in accordance with the Respondent's procedures.



26	In around November 2017.	Direct sex discrimination and victimisation.	R leaked C's grievance in breach of confidentiality owed to her.	It is acknowledged that the fact of the Claimant's grievance was shared by Marc Ellix with Paul Kemp and MB (both Area Council representatives for the RMT). However, this was a mistaken attempt to provide the Claimant with support from her trade union representatives before Mr Ellix was aware that both Mr Kemp and GB were implicated in the Claimant's grievance.	C says cant say Ellix did it because she was a woman.  HM had a close relationship with the union. Clear in discussions with Mr Kemp in which Mr Kemp said HM told him C would not be able to return to work in Wimbledon. Ellix gave M a broad outline of the grievance. Needed assurance and advice. Aware raised a grievance summary of broad comments, escalated to Baxter, gave him copy of grievance of 6 November provided copy. M knew on 5 November. No evidence to say HM, everyone knew details in short space of time, but can not say where the leak came from. Only victimisation in the pleadings. P18.. Given the findings made, the leak may have been of a very general nature and given that the other people were party to them they would have known what it was about. No evidence actual letter was leaked.
27	On or before 15.07.18.	Direct sex discrimination and victimisation.	Paul Kemp drafted a template grievance letter for the use of colleagues who C had complained about and emailed this to MB.	It is admitted that a template grievance was submitted however this does not constitute discrimination and/ or harassment because of sex.	Nothing in this allegation. Just gave blank template. Only victimisation in Pleadings. P18.
28	In or around July 2018.	Direct sex discrimination and victimisation.	Mr Kemp sought to interfere with the proper running of the investigation (see paragraph 17 of the Grounds of Complaint).	This is denied. The content of the Claimant's grievance was not shared, the fact a grievance had been made was shared but the content of the grievance was not.	Kemp believed investigation was finished. Never made contact with Styles. Narrow issue. Wording used in emails indicative of the culture. Inappropriate terminology even allowing for his particular use of language. This supports the culture in the organisations. He bothered about what happening next and length of time.
29	03.11.17 - 03.12.18.	Direct sex discrimination and victimisation.	Katherine Styles failed to properly investigate C's grievances (see paragraph 21 of the Grounds of Complaint).	Agreed this was upheld at appeal and a further hearing was convened.	Did fail not because of sex. Not experienced, out of depth. No real support from R.
30	03.11.17 - 03.12.18.	Direct sex discrimination and victimisation.	Those interviewed during C's grievance investigation (apart from HM (OM), Marc Ellix (LOM), IS (Deputy LOM), Steve Wigg (Signaller) and Jim Emmerson (Signalling Tech Support)) "closed ranks" in that they did not provide an honest and open account of C's	This is denied. Those who were interviewed gave corroborating statements, if this does not support the Claimant's allegations it does not follow that they had "closed ranks"	Closing ranks. Because of leak likely did close ranks. Was this because she was a woman, or backs against the wall. Tight group. V=difficult to say because of sex discrimination rather than a complaint only to protect their backs. Hence she switched union after her rep stopped communicating with her.  She RMT member, paid dues, not supporting her, let her down and the process down.

			treatment by colleagues.		
31	After 08.03.19.	Direct sex discrimination and victimisation.	Failure to investigate C's grievance dated 08.03.19 concerning Paul Kemp's conduct.	Grievance hearing meeting notes on page 195 confirm that a grievance hearing for the 2019 grievance was held on 25.11.2019	Not clear what meant refer to C 3 <sup>rd</sup> grievance, no reference to Kemp save for leak. No mention of Kemp in meeting notes save for leak. Considered if it was warning Emerson off via brother but grievance refers to emails so not that.
32	Prior to Feb 2020.	Direct sex discrimination and victimisation.	R deliberately withheld grievance interview minutes from C until forced to do so pursuant to a Freedom of Information request (and even then full copies were not provided).	There was no deliberate act by the Respondent to withhold information, as alleged or at all.	Clearly should have been given., but were they deliberately. Incompetence? Did not show she should. Would be Styles and Barron. Baron thought KS had sent the information. KS given catalogue of mistakes in the investigation included to accept KS saying it was her mistake and not to do with SXD.
33	03.11.17 - 17.02.20	Direct sex discrimination and victimisation.	Refusal to interrogate the SSM computers (see paragraph 29 of the Ground of Complaint).	IT checked computers – nothing of this nature was found	KS go the serial numbers, not understood by anyone which computers C talking about. Clearly she tried to interrogate them, discourse between IT and KS. May not be thorough enough but that is a different issue.
34	17.02.20.	Direct sex discrimination and victimisation.	Failure to properly address C's appeal (see paragraph 27 of the Grounds of Complaint).	This is denied. The Claimant's appeal was heard in accordance with the Respondent's procedures.	If wanted to brush under the carpet would have dismissed C appeal in the first instance. PB out of his depth.

