Case No: 3304894/2020

EMPLOYMENT TRIBUNALS

Claimant: Ms S St Jean

Respondent: Harris Commercial (Lea Valley) Ltd

Heard at: Watford Employment Tribunal via CVP

On: 8, 9 and 10 March 2022

Before: Judge Bartlett, Mr Hoey and Ms Boot

Representation
Claimant: in person
Respondent: Ms Annand

JUDGMENT

1. The claimant's claims for direct sex and/or race discrimination under section 13 of the Equality Act 2010 fail.

2. The claimant's claim for indirect sex or race discrimination under section 19 of the Equality Act 2010 fail.

3. The claimant's claims for harassment under section 26 of the Equality Act 2010 fail.

4. The claimant claims for victimisation under section 27 of the Equality Act 2010 fail.

REASONS

Background

5. The claimant was employed by the respondent from 12 August 2019 until September 2021. The claimant was employed as a Service Administrator. The claim concerns events arising around March to May 2020.

The hearing

6. The hearing took place via CVP. When the claimant's witness Jahvell Vassell was giving evidence there was a difficulty with his connection which was that at one point he could not see but he could hear. Judge Bartlett suggested that he dialed out and dialed back in again which he did and which resolved the problem. During a few very short periods there was a little bit of echo or distortion but this did not affect communication due to the short duration of the episodes and the ability to repeat the few words affected.

7. At the start of the hearing Ms Annand stated that since Monday, which was two days, before the hearing started the respondent had been trying to email the claimant an amended version of the bundle which now included some extra pages and the respondents supplementary witness statements. She stated that it had not been possible to send those to the claimant because every time they tried they received a bounce back from her email address which said that her email account was full. They had sent the documents on the day before the hearing via a method which stated that they would be there by 9:00 AM on the day of the hearing. By shortly after 10 am on the first day of the hearing the claimant stated that she had not received those documents. The claimant gave a different email address and the documents were emailed to her. The hearing took a break for an hour and a half to allow the claimant to consider these documents and for the panel to read into the case.

8. At the start of the second day of the hearing Ms Annand stated that the claimant had sent through some further documents the night before and the morning of the hearing. Ms Annand did not object to the inclusion of these documents so as not to spend considerable time on the issue though she did query their relevance. In all the circumstances, including consideration of the overriding objective and the interest in not causing undue delay and the lack of objection from the respondent the tribunal decided to accept the documents into evidence.

9. The tribunal heard witness evidence from:

    9.1. the claimant
    9.2. Jahvell Vassell;
    9.3. Andrew Pacey; and
    9.4. Chris Neal

10. The claimant was cross examined on the first day of the hearing. Her cross examination concluded shortly after 3:30 on the first day. As the claimant was representing herself the first day of the hearing concluded shortly afterwards so that the claimant had extra time to prepare her cross examination particularly in light of the late receipt of some of the documents. In addition to assist the claimant in her preparation the tribunal gave a break of 55 minutes between Ms Annand giving her oral submissions and the claimant giving her oral submissions. Further, prior to hearing oral submissions the tribunal took a break of almost 50 minutes so that the claimant and the panel could consider Ms Annand's written submissions.

The issues

11. At the start of the hearing the parties were reminded that the issues were set out in the case management summary which took place on 11 March 2021. Judge Bartlett remind that parties that is these issues that would be considered in the case, it is those issues the tribunal needed to hear evidence about and it was those issues that the tribunal would ultimately decide.

12. The issues are as follows (extracted from the case management and therefore including its paragraph numbering):

Direct discrimination (Race and sex)

2. The Claimant complains about the following acts or omissions:

   a. The Respondent's decision on 1 April 2020 not to furlough the Claimant.

   b. Andy Pacey saying to the Claimant, on 1 April 2020, "There's nothing to say, I can't put you on furlough, but even if you hadn't gone off sick, I probably wouldn't have furloughed you anyway."

3. Did these acts or omissions occur?

4. If so, did they amount to less favourable treatment?

5. Was the treatment because of the Claimant's race? The Claimant relies on an actual comparator, her white colleague, Martyn Westerman.

6. Was the treatment because of the Claimant's sex? The Claimant relies on an actual comparator, her male colleague, Martyn Westerman (who has no dependents).

Indirect sex discrimination

7. The Claimant complains that on 1 April 2020 the Respondent applied a provision, criterion or practice to her and other employees, namely a requirement that employees returning to work from sick, had to stay at work, and not be furloughed.

8. Is this a provision, criterion or practice?

9. If so, did the Respondent apply it to employees who do not share the Claimant's protected characteristic, namely male employees?

10. If so, did it place, or would it place, others who are the same sex as the Claimant, namely females, at a particular disadvantage compared to males? The Claimant relies on the particular disadvantage of being a single parent and therefore having childcare responsibilities.

11. If so, did it place the Claimant at this particular disadvantage?

12. Has the Respondent shown the PCP was a proportionate means of achieving a legitimate aim? The legitimate aim relied upon is the fact the Respondent was seeking to follow HMRC Guidance which at the material time (namely at 1 April 2020) stated that employers could not claim under the CJRS for employees who were in receipt of SSP.

Harassment (sex and race)

13. The Claimant complains that the Respondent's Andy Pacey said to the Claimant, on 1 April 2020, "There's nothing to say, I can't put you on furlough, but even if you hadn't gone off sick, I probably wouldn't have furloughed you anyway."

14. Did this occur?

15. If so, did it amount to unwanted conduct?

16. Was the unwanted conduct related to the Claimant's sex?

17. Was the unwanted conduct related to the Claimant's race?

18. If so, did it have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

19. If so, was it reasonable for it to have that effect?

Victimisation

20. The Claimant emailed a grievance to the Respondent's Andy Pacey on 22 April 2020, in which she alleged discrimination. The Respondent accepts that this was a protected act.

21. The Claimant claims she was subjected to detriments because she had carried out a protected act, in that

a. Andy Pacey delayed in sending a response to the grievance.
b. Andy Pacey lied to the Claimant saying he had sent a response on 6 May 2020, which had been returned to sender.

22. Did the above acts or omissions occur?

23. Did they amount to a detriment?

24. Were they because the Claimant had carried out a protected act?

Remedy

25. If the Claimant succeeds, what is the appropriate remedy?

The law

Discrimination

13. S13 of the Equality 2010 sets out the test for Direct Discrimination:

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

(5)If the protected characteristic is race, less favourable treatment includes segregating B from others…"

14. S19 of the Equality 2010 sets out the test for Indirect Discrimination:

(1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a)A applies, or would apply, it to persons with whom B does not share the characteristic,

(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c)it puts, or would put, B at that disadvantage, and

(d)A cannot show it to be a proportionate means of achieving a legitimate aim.

(3)The relevant protected characteristics are—

- *age;*
- *disability;*
- *gender reassignment;*
- *marriage and civil partnership;*
- *race;*
- *religion or belief;*
- *sex;*
- *sexual orientation.*

15. Section 26 of the Equality Act 2010 sets out the test for harassment:
(1)A person (A) harasses another (B) if—

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

(b)the conduct has the purpose or effect of—

(i)violating B's dignity, or

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

(2)A also harasses B if—

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

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

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(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—

age;

disability;

gender reassignment;

race;

religion or belief;

sex;

sexual orientation.

16. S27 of the Equality Act 2010 sets out the test for victimization:

"(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…

(5)The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

17. In MOD v Jeremiah [1979] IRLR 436, [1980] ICR 13, the CA said that a detriment exists "*if a reasonable worker would take the view that the treatment was to his detriment"*. However any alleged detriment must be capable of being objectively regarded as such as emphasised by HL in St Helens Metropolitan Borough Council v Derbyshire [2007] UKHL 16, [2007] IRLR 540, [2007] ICR 841, applying Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285, [2003] ICR 337, where it was held (para 35) that "*an unjustified sense of grievance cannot amount to 'detriment*'".

18. S.23 of the Equality Act 2010 sets out the law relating to comparators:

"(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case."

19. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL (a sex discrimination case), Lord Scott explained that this means that "*the comparator required for the purpose of the statutory definition of the discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class.*"

Burden of Proof for discrimination

20. S136 of the Equality Act 2010 sets out the burden of proof which applies to discrimination issues:

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

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

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

21. In Igen Ltd v Wong the Court of Appeal approved the guidance given in Barton v Investec Securities Ltd [2003] IRLR 332 concerning the burden of proof in discrimination cases which is that:

"(1) Pursuant to s 63A of the SDA 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s 41 or s 42 of the SDA 1975 is to be treated as having been committed against the claimant. These are referred to below as "such facts".

(2) If the claimant does not prove such facts he or she will fail….

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive."

22. In Madarassy v Nomura International plc 2007 ICR 867, CA Lord Justice Mummery stated:

"The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Findings of Facts

23. The events in this claim relate largely to a period of approximately three weeks between 18 March and 12 April 2020. The matters relating to the grievance relate to 22 April 2020 to 12 May 2020. This was an unprecedented period during which the country entered into a national lockdown, there were significant uncertainties about what this changed situation meant for individuals and businesses, about COVID-19, who was at risk, how it was transmitted etc. As a number of allegations relate to the operation of the furlough scheme and the claimant's consequent grievance we think it is important to bear in mind this context.

24. We accept Andy Pacey's evidence that after the national lockdown was announced, near the end of March 2020, there were at least five days when their clients put their trucks up and the respondent did not know what that meant for their business. We accept that after this initial period their clients diversified which meant that the respondent also had to change its working arrangements and practises. We accept that during the period that we need to consider for this tribunal claim the respondent faced uncertainties about its work levels, type of work and what was needed from employees. The situation was one of flux.

25. We also understand this time was one of great anxiety for the claimant. It was a time of great anxiety for many but the claimant had existing health conditions which exacerbated the situation. This may have affected how she perceived the events in question. We accept that the Claimant was greatly affected by the events as she described them to the Tribunal. We accept that she genuinely felt that there some inconsistencies in the reasons she was given around 1 April 2020 about SSP, furlough and returning to work.

26. Jahvell Vassell's witnesses evidence included evidence that he had experienced racist banter in the office and that he claimed he had overheard comments about the claimant's childcare arrangements and single mother status. His evidence was not that managers including Andy Pacey and Chris Neal made these comments rather he only identified "colleagues". For the purposes of this judgement we are prepared to accepted that comments along the lines of what Jahvell Vassell said were made. However, these incidents did not form part of the claimant's claim. Further, we find that there was no direct link and there was no basis to infer a link (taking into account all the circumstances) between these comments and the decision making surrounding not placing the claimant on furlough. We do not accept the claimant's assertion that because of these comments there is some basis to infer there was discrimination relating to the events in this claim. Instead we found that there were clear and cogent reasons from the respondent's witnesses, which were consistent with the situation in the country at that time, that the respondent was facing at that time and the terms of the Coronavirus Job Retention Scheme for the respondent's actions that had no connection whatsoever to the claimant's race or sex.

27. For completeness, we record that we make no findings in relation to the events Jahvell Vassell claims led to his resignation. They do not form part of the claim.

28. There was undisputed evidence that the Respondent had twice adjusted the claimant's working hours to help her address her childcare needs which were problematic because one child had particular issues. We find that the respondent had been accommodating of the claimant's needs.

29. The tribunal found that the claimant gave honest and heartfelt evidence but it also finds that the evidence from Andy Pacey and Chris Neal was open and honest.

Direct Discrimination

30. There is no dispute between the parties that the events that the claimant alleges were acts or omissions for the purposes of Direct Discrimination occurred. For the purposes of this decision, we are prepared to accept that the Respondent made a decision, in a loose sense, of the word not to furlough the claimant on 1 April 2020 because she was not furloughed at that point.

31. The claimant identified Martyn Westerman as a comparator at the Preliminary Hearing and this is set out in the list of Issues. At various points during the hearing she made reference to numerous other employees and in submissions she referred to John Morris in a way that could be seen as alleging he was a comparator. The tribunal was not provided with sufficient information about any of these additional names to determine whether or not they were comparators. It is not in accordance with the overriding objective for individuals to be identified at such a late stage, particularly in submissions, because the respondent cannot provide evidence on the issues. In any event from the information that was available to the tribunal it finds that these individuals are not comparators because they did not work in the claimant's department or did not carry out the same role as her and therefore they are not in the same material circumstances.

32. Further, the tribunal finds that Martin Westerman was not a comparator because he had a different role to the claimant, he worked under a different manager but he returned to work on 14 April 2020. He was on sick leave on 1 April 2020 and he was not seeking to return to work on that date instead he returned to work on 14 April 2020 and received a letter from the respondent dated 14 April 2020 placing him on furlough with effect from 15 April 2020. In many circumstances a short difference in dates of return would not be material but in the circumstances of this case they are material. This is because the situation at the end of March 2020 and in April 2020 and indeed for some period of time afterwards was one of great flux. Nobody in this country had experience such a situation, there had been no national lockdowns and guidance and rules including those related to the Coronavirus Job Retention Scheme changed frequently.

33. Another individual whose name came up was Taylor Whitbread. We find that she was not a comparator because she, did not do the same work as the claimant, she was never offered furlough and Taylor Whitbread wanted to return to work and did not want to be on furlough. Therefore her circumstances were materially different to the claimant's.

34. Though the above findings dispose of the claimant's direct discrimination claim for completeness we have considered the position as if the claimant had identified a hypothetical comparator.

35. The Tribunal must consider whether or not the acts were less favourable treatment. What is required is less favourable treatment rather than merely different treatment. There is no requirement to treat all employees identically. The test is objective and it is for the Tribunal to decide though the claimant's perception is not be disregarded. The fact that a claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment as can be seen from Burrett v West Birmingham Health Authority 1994 IRLR 7, EAT. As the claimant would have been paid more on furlough as compared with SSP we are prepared to accept that the decision on 1 April 2020 not to put the claimant on furlough was a detriment. However we do recognise that some people wanted to be placed on furlough and some people did not. We do not accept that Andy Pacey's statement was less favourable treatment as it was merely communication of the first alleged act and it was not inherently less favourable.

36. We find that the treatment was not connected in any way to the claimant's race or sex.

37. We find that the decisions about furlough were made because of business needs, the requirements for employees to work at any given time and the rules of the CJRS. All of these things were in a state of flux. In addition Mr Pacey's evidence, which we accept, was that on 1 April 2020 around 2 out of 9 employees in the office had been put on furlough. We consider that this indicates that decisions about furlough were made on an individual basis relating to business need. We also accept Mr Pacey's evidence that on 1 April 2020 the claimant's work still existed and it was being completed by other employees who were in the office and Mr Pacey himself. Therefore an assessment of the work level at the time the claimant returned to work would need to be made to assess whether she could be put on furlough. We understand that the claimant craved certainty at this time and this is understandable however for the reasons we have given we find that it was not possible to give this level of certainty and not giving it was not connected to race or sex.

38. We accept Andy Pacey's evidence that he was concerned not to open the respondent up to liability by breaching the CJRS rules which at that time said:

> **If your employee is on Statutory Sick Pay**
>
> Employees on sick leave or self-isolating should get Statutory Sick Pay, but can be furloughed after this.
>
> Employees who are shielding in line with public health guidance can be placed on furlough.

39. We find that this was the reason for the respondent's actions and this was not connected in anyway to race or sex.

40. Further, we find that the claimant was not the only individual in this situation.

We accept the respondent's evidence that at least two other employees were in a similar situation.

41. The respondent did offer the claimant to be put on furlough on 24 April 2020 with effect from 1 April 2020. The claimant refused this offer and was never placed on furlough. The respondent made this offer to another employee James Bland who was on SSP due to concerns that he was vulnerable. The same offer was made to Mr Bland on 27 April 2020. There is an email from Mr Bland's father expressing happiness at this decision. From the dates it can be seen that the offer to put Mr Bland on furlough was made three days after it was made to the claimant. Mr Bland was a white man. He is not a comparator but his similar treatment is a background factor which we are entitled to take into account in informing our decision about how a hypothetical comparator would be treated. We have taken the treatment of Mr Bland into consideration and we find that it is a strong indicator that the claimant did not suffer direct discrimination due to her race or sex.

42. We recognise that the claimant stated that she felt she was being given different reasons for the respondent's decision. The claimant's reasoning is based on the telephone conversation she had with Andy pacey on 1 April 2020. The claimant recorded this telephone conversation and a record of that conversation is in the bundle. At some points the appellant and Mr Pacey appear to be talking at cross purposes. The claimant did not say that she was coming back to work. We find that both the claimant and Mr Pacey were seeking confirmation from each other about the other's position before they made a decision about returning to work in the claimant's mind and whether or not to put the claimant on furlough in Mr Pacey's mind. We also accept Ms Annand's submission that it is not fair to extract parts of a sentence from the telephone conversation as a whole and that it should be considered in light of the whole conversation that took place. We find that Mr Pacey did mention various factors, he did not say that the claimant would not be put on furlough but he did not provide her with any certainty about whether she would or not and how long it would be. He made reference to the claimant and her son continuing to be vulnerable which was the reason why she had gone on leave on 18 March 2020 in the first place and that those circumstances still persisted, and the rules of the CRJS. We do not accept that there is anything in the reference to the circumstances that have any connection whatsoever to the claimant's race or sex. They were objective factors which genuinely existed at that time. The claimant considered these references to be inconsistencies but properly read these are not inconsistencies they are Mr Pacey identifying factors which are in play in the complex situation.

43. Taking into account all of the background factors that we have identified above we find that the claimant has not discharged the prima facie burden of proof. There is nothing more than a series of events which arose because of objective factors affecting the respondent's business and the claimant.

44. Even if we were wrong and the claimant had discharged prime facie burden of proof, we find that the respondent would have discharged the burden of proof which lies on it. This is because the respondent has provided evidence, which we accept, for the reasons why it acted as it did and these reasons have no

connection whatsoever with race or sex.

45. The references to "if you hadn't gone off sick, I probably wouldn't have furloughed you anyway." are directly linked to the respondents work and requirement for employees to perform that work and have no connection whatsoever to the claimant sex or race.

Indirect Sex Discrimination

46. The claimant identifies the PCP in this situation as "*on 1 April 2020… Employees returning to work from sick, had to stay at work, and not be furloughed.*"

47. We do not find that this was a PCP because we do not accept that there was a requirement that employees returned to work from sick, had to stay at work and not to be furloughed.

48. We find that in the conversation on 1 April 2020 between the claimant and Andy Pacey he expressed various possibilities and uncertainties. He did not express a requirement that those returning from SSP were required to stay at work and would not be furloughed. Further, we accept Andy Pacey's comments that the business was changing day to day and that at any given time the work of an individual had to be assessed to determine whether or not they should be furloughed. As set out above we also find that Andy Pacey required employees not just the claimant to return to work from sick leave before consideration was given to place them furlough because of his genuine interpretation of the CJRS at that time which did not allow placing people on SSP on furlough.

49. Therefore we would have also found that the respondent was pursuing the legitimate aim of seeking to follow the CJRS which was in force on 1 April 2020 and that a requirement to return to work and end SSP was a proportionate means of achieving that legitimate aim.

Harassment

50. The claimant asserts that Andy Pacey's comments to the claimant on 1 April 2020 *"There's nothing to say, I can't put you on furlough, but even if you hadn't gone off sick, I probably wouldn't have furloughed you anyway."* was harassment within the meaning of the Equality Act 2010.

51. There was no dispute that these comments were made.

52. The claimant did not want to hear what was communicated by these comments and therefore we are prepared to find that they were unwanted.

53. We find that the comments had no relation whatsoever to the claimant's sex or race and instead were related to Mr Pacey's view of the requirements imposed by the CJRS and the needs of the business and for employees at that time.

54. Further, we do not accept that the comments had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading,

humiliating or offensive environment for the claimant. Even if they did it was not reasonable for them to have that effect.

55. We have considered the guidance set out in Richmond Pharmacology v Dhaliwal [2009] IRLR 336 *"(violating is a strong word which should not be used lightly)*. The case law emphasises the critical importance of context." and *Betsi Cadwaladr University Health Board v Hughes and others UKEAT/0179/13*:

"12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence."

56. We accept that the claimant was genuinely hurt by the comment and it seems that it spoke to some insecurity she had. However, the comment on the face of it and taken in the context of the whole conversation and the situation persisting at that time do not reach the threshold of intimidating or violating etc. They are neutral comments on the face of it and when all the circumstances are taken into account.

Victimisation

57. It was not disputed that the claimant carried out a protected act which was the grievance on 22 April 2020.

58. The claimant asserts that the following two acts were detriments:

58.1. Andy Pacey delayed in sending a response to the grievance.

58.2. Andy Pacey lied to the Claimant saying he had sent a response on 6 May 2020, which had been returned to sender.

59. In relation to the first alleged detriment we find that there was no delay in sending the grievance response to the claimant. The claimant made a grievance on 22 April 2020. The respondent says that it sent her a response on 6 May 2020 and she says that she did not receive a response until 12 May 2020. We accept that for whatever reason the claimant did not receive a response to her grievance until 12 May 2020. This was a period of approximately three weeks. Frequently employees do not receive the response to their grievance for many months. We consider that the claimant's expectations in this regard were unrealistic and that there was no delay. Therefore there can be no victimization.

60. In relation to the second allegation we are not satisfied on the evidence that Mr Pacey lied about the response being sent on 6 May 2020. The evidence we have that the letter was sent on 6 May 2020 is a franked opened envelope. There is no mark from the Royal Mail that it has been returned to sender. There was evidence that this was on the back of the envelope but we have not seen an image of the envelope. Therefore we are prepared to accept that the letter was not received by the claimant on 6 May 2020 for whatever reason. We do not accept that the claimant not receiving the letter shortly after 6 May and Mr

Pacey stating that it was returned to sender but without more proof of this establishes that Mr Pacey lied. There are numerous explanations as to why a letter was not posted or received when it should have been which do not lead to a conclusion that Mr Pacey lied about it being sent.

61. As we have not found that Mr Pacey lied to the claimant we cannot find that that the alleged act of victimisation occurred.

62. Even if we had found that that act had occurred we would have found that there was no detriment to the claimant. This is because on 24 April 2020 it was communicated to the claimant that she could go on furlough if she wanted to and she declined to do so. Therefore any delay had no effect on the furlough situation. Further, the claimant was promptly, the day the non-receipt by the claimant was communicated to the respondent, sent a repeat response to her grievance. We accept that this response altered the date of the letter and the date by which the claimant needed to lodge an appeal. This was not a detriment to the claimant because she still had the same number of days in which to lodge her appeal. The claimant felt that altering the date was a nefarious act but it was to her benefit because it gave her the correct amount of time to appeal.

63. Further, even if we had found that the detriments had occurred we would not have found that there was any connection between the protected act and the acts. The delay was minimal. Mr Pacey gained no benefit by sending the response sooner or later. Sending a response to the grievance to the claimant was inherently linked to the grievance but we do not find that the alleged detriments were because the claimant carried out a protected act. This was simply part of the procedure of dealing with the grievance which can and did have some problems and delays.

Conclusions

64. The claimant's claims for direct sex and/or race discrimination under section 13 of the Equality Act 2010 fail.

65. The claimant's claim for indirect sex or race discrimination under section 19 of the Equality Act 2010 fail.

66. The claimant's claims for harassment under section 26 of the Equality Act 2010 fail.

67. The claimant claims for victimisation under section 27 of the Equality Act 2010 fail.

Employment Judge Bartlett

Date 16 March 2022

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE