



EMPLOYMENT TRIBUNALS

Claimant: Miss D Tupou

Respondent: Alchemy Facilities Ltd T/A Enviroserve UK

Heard at: Leeds

On: 6, 7 and 8 February 2018
28 March 2018 (Reserved)

Before: Employment Judge Keevash
Mr T Downes
Mr M Taj

Representation

Claimant: In person

Respondent: Ms J Hill, Solicitor

RESERVED JUDGMENT

- 1 The Claim Form is amended so as to substitute Alchemy Facilities Ltd T/A Enviroserve UK as the correct name of the Respondent.
- 2 The Claimant's application to strike out the Response is refused.
- 3 The complaints of race discrimination fail.

REASONS

Background

1 By her Claim Form the Claimant complained of race discrimination. By its Response the Respondent resisted the complaints.

2 At a Preliminary Hearing on 11 October 2017 the Claimant confirmed that she identified as Samoan British and that she relied on her white British colleagues as comparators. The Employment Judge spent a considerable amount of time in listing her allegations of direct discrimination which numbered eighteen in total.

Issues

3 The Tribunal noted that the issues for determination had been identified at the Preliminary Hearing.

Hearing

4 At the outset of the Hearing the Tribunal was informed that the Claimant had refused to accept the Bundle prepared by the Respondent. The Claimant explained that Ms Hill had refused to include some of her documents in the Bundle and, therefore, she had prepared her own. The Tribunal expressed its disappointment at the lack of co-operation between the parties. However, in the circumstances it decided that it had no alternative other than to allow each party to use its own Bundle. This inevitably slowed down the proceedings.

5 On day 2 of the Hearing Ms Hill informed the Tribunal that Mary Sykes and Nneamaka Nwafor would not be attending to give evidence. The Tribunal was concerned because their witness statements had been read by the Members (but not by the Employment Judge). Ms Hill explained that she had only discovered the previous evening that Ms Sykes had stated that she would not be coming. Ms Nwafor was unwell. Since all the allegations were addressed by the other witnesses, she was content to proceed without them. In the circumstances the Employment Judge stated that the Members would put the two statements out of their minds. The Claimant raised no objection to this course of action.

6 The Claimant gave evidence on her own behalf. Thomas Hickey, manager, and Kevin Severn, former Operations Director, gave evidence on behalf of the Respondent. The Tribunal also considered the two Bundles of documents prepared by the parties.

Facts

7 The Tribunal found the following facts proved on the balance of probabilities:-

7.1 On or about 15 January 2016 the Claimant was employed by the Respondent as a Cleaner. She was allocated to work at Thornton Medical Centre. At the material time she worked six hours a week.

7.2 The Respondent operates as a cleaning company.

7.3 On 14 January 2016 the Claimant signed a Declaration which stated “I agree that I have read and agree to the terms conditions and company policies”. This was countersigned by Mr Hickey.

7.4 By an email dated 26 April 2016 the Claimant informed Mr Hickey about an incident at work involving her colleague, Mark.

7.5 On or about 7 September 2016 Mr Hickey sent a text message to the Claimant stating that the Respondent’s holiday year ran from April to April. The Claimant told her work colleagues that she had lost annual leave because holidays could not be carried forward to the next annual leave period and she was told that their contract of employment stated that the leave year ran from December to December. On 12 September 2016 Mr Hickey sent a text to the Claimant stating that her holiday year ran from January to December.

7.6 By a text message dated 2 December 2016 the Claimant informed Mr Hickey:-

“... do I get a letter like michelle and mark got about outsourcing our wage in January because I still haven't got mine and we're starting to speculate if I'm coming back in January because I didn't get a contract as well and the other two did although michelle did say that the contract she's got is actually mark's which she photocopied.”

7.7 By an email dated 13 December 2016 the Respondent's payroll department informed the Claimant that after an update of their systems they had noticed that some of the required documents about her were missing from their files. They could not pay her until they had the documents. A similarly worded email was sent to other employees.

7.8 By an email dated 13 December 2016 the Claimant informed the Respondent that she had provided all necessary documents at her interview with Mr Hickey and that she was concerned about identity theft. She also confirmed that she had changed address in May of that year.

7.9 By a text message dated 13 December 2016 sent to the Claimant and other colleagues Mr Hickey provided details of the Respondent's Christmas party.

7.10 By an email dated 17 December 2016 addressed to Mr Hickey the Claimant stated:-

“Hi I was just wondering, mark and michelle got invites to the enviroserve's xmas party but I didn't get one. I'm not bothered, I know how busy you are, it just got me wondering if you've definitely got my new address now? My mobile still works its just I can't send texts or make phone calls but I can receive them.”

7.11 By an email dated 17 December 2016 Mr Hickey informed the Claimant:-

“... I sent a text message to all our staff within the Environserve regarding the Xmas party, if you are saying you do now not have a phone to receive this, unfortunately this is how the invite was sent ...”.

7.12 By a text message dated 29 December 2016 the Respondent's payroll support team asked the Claimant to confirm her details and stated “We will be unable to pay you until these details have been confirmed”. Neither Mark nor Michelle received such a text message

7.13 By a text message dated 3 January 2017 the Respondent's payroll support team informed the Claimant that they had received her details. They stated that she had to accept a PAYE contract.

7.14 By an email dated 7 February 2017 Ms Sykes, patient service manager, informed Mr Hickey:-

“Can we arrange to meet up I would prefer for the cleaner to be involved in the meeting ... I know we have discussed and dismissed the last few events that have taken place but I have real concerns re messages I am receiving from your staff member ...

I do feel I can't ignore these statements she is coming to me with and on asking staff members here at the practice also the other cleaners nobody is aware of these points ...

She mentioned your staff fighting and arguing in the waiting area ? again none of this rings true and I have spoken to staff who are here late in the evening one of

them has mentioned the staff member does shout at the others and then will come apologizing to staff in a way that she is the innocent one and they have said clearly this is not the case ...”.

7.15 By a text message dated 2 March 2017 Mr Hickey informed staff including the Claimant:-

“Hi all. Short notice but confirming Amaka won’t be in tonight or tomorrow ...”.

7.16 By a text message dated 2 March 2017 the Claimant informed Mr Hickey:-
“You’re putting my life at risk.”

7.17 By a text message dated 2 March 2017 Mr Hickey informed the Claimant:-
“I’ll be following that up with an investigation and you’ll be invited to a formal meeting with myself and my director.”

7.18 By a text message dated 2 March 2017 the Claimant informed Mr Hickey:-
“It’s funny how you’re quick to investigate me for begging you for help & yet asking you to investigate the perpetrator who is Mark is like pulling teeth.”

7.19 By a text message dated 2 March 2017 Mr Hickey asked the Claimant whether she would be able to attend an investigatory meeting on 9 March 2017.

7.20 By a text message dated 2 March 2017 the Claimant informed Mr Hickey:-
“What is meeting for what did I do wrong exactly?”

...

I can’t make the meeting. I’m in the process of doing my complaint against mark because you’re discriminatory against me & it’s not fair that I’m the victim facing the sack for complaining against violence intimidation & bully (sic) against me by Mark.”

7.21 By a text message dated 3 March 2017 the Claimant informed Mr Hickey:-
“And Tom please could you tell mark to stay away from me & that if I go into a room to avoid him can you ask him not to follow me in there.”

7.22 By an email dated 9 March 2017 the Claimant informed Mr Hickey:-
“I wish to make a formal complaint against my colleague Mark for harassment and terrorisation of me at work”. She the outlined six incidents involving Mark and herself.

7.23 By a text message dated 9 March 2017 the Claimant informed Mr Hickey:-
“I don’t know if you’re still ignoring me but I’ve sent my complaint in. I had a traumatic experience at work last night which kept me awake all night and made me sick this morning. I’m not sure that I’d be able to go in to work this evening I still feel traumatised.”

7.24 By a text message dated 9 March 2017 Mr Hickey informed the Claimant:-
“Hi. Firstly there has been no ignoring on my side. Secondly me and my director will coming (sic) over to meet you there at 6pm this evening. Can you confirm that you will be present.”

7.25 By a text message dated 9 March 2017 the Claimant informed Mr Hickey:-
“Please could you to deal (sic) with my complaint first before sacking me for complaining about mark. I still feel traumatised from what happened last night so

I don't feel that I can, I'm still throwing up. Sorry." The Claimant began a period of absence from work.

7.26 By an email dated 9 March 2017 the Claimant informed Mr Hickey:-
"Tom. I know you were itching for my complaint to go in so that you can sack me for sending it in. You've indicated as to its outcome before submission when you said it's hearsay ...".

7.27 By an email dated 9 March 2017 Mr Severn informed the Claimant:-
"Due to the serious nature of your allegations Tom has passed this email from you to me to deal with as you have also accused him.

He also tells that you have declined to meet him for an investigation meeting this evening despite you not being at work and it being perfectly safe for you to do so with both Tom and I present.

In light of this I would like to meet with you ... 15 March at 6pm your normal start time at the surgery to investigate all the allegations you have made and see if there are grounds for disciplinary action against any member of staff involved...".

7.28 On 9 March 2017 Mark and Michelle signed statements about what had happened at work the previous evening.

7.29 On 15 March 2017 Mr Severn attended the Claimant's work premises and interviewed Mark and Michelle.

7.30 On 15 March 2017 the Claimant attended work. Mr Hickey asked her to attend a meeting with Mr Severn. After Mr Severn asked the Claimant questions, she became annoyed and stood up making to walk out of the room. Mr Severn told her that she was at work, attending a formal grievance hearing, and that, if she walked out, she would effectively dismiss herself. As she was leaving, he shouted "stay away". After the meeting Mr Severn continued his investigation. He read relevant documentation including text messages and emails.

7.31 By a text message dated 16 March 2017 the Claimant informed Mr Hickey:-
"... Kevin the director said last night as I was leaving to "stay away". Could you confirm if I've been sacked from my position & if so, could this be put in a letter & sent out to me please & could you confirm by text if I have been sacked if not I will go in as normal but I won't be seeing Kevin."

7.32 By a text message dated 16 March 2017 Mr Severn informed the Claimant:-
"Following last night's meeting where you came to work then attended our investigation meeting and you subsequently walked out of this meeting I am formally suspending you which means you cannot enter the surgery premises. A decision on your employment status subsequent to this will be discussed with our HR team today and you will be notified of the outcome in due course."

7.33 By a letter dated 16 March 2017 Mr Severn informed the Claimant:-
"We have provided you with every opportunity to put over your views into the numerous allegations and complaints you have made by text and by e-mail to the company. The first investigation meeting on the 9th of March with Tom to which you failed to attend and then leaving the meeting on the 15th with myself prior to all issues having been investigated we feel we have given you every opportunity to provide your views and opinion.

We have now investigated all the matters you have raised and can find no substance to any of the complaints you have raised. Indeed, our investigations have led to complaints about yourself which we were as you are aware due to also investigate last night after the investigation into your grievances a fact I made plain at the start of the meeting.

Having now investigated all these matters thoroughly, we can find no evidence that would support your complaints and have dismissed your grievance thereby ending this investigation process.”

7.34 By a letter dated 17 March 2017 Mr Severn informed the Claimant:-
“I regret to inform you that following the issues detailed below

- 1) As you walked out on your shift on the 15th of March at Thornton Medical Centre
- 2) Also, following several documented displays of aggressive attitude and behaviour to various people including surgery management, Enviroserve management and your colleagues.

I have little option but to terminate your employment with Enviroserve.

You will of course be paid in full until the 22nd of March ...”.

Law

8 Section 13(1) of the Equality Act 2010 (“the 2010 Act”) provides:-

“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.”

Section 23(1) of the 2010 Act provides:-

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

Section 39(2) of the 2010 Act provides:-

“An employer (A) must not discriminate against an employee of A’s (B) –

- (a) ...
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.”

Section 136 of the 2010 Act provides:-

“(1) ...

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

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

Submissions

9 At the end of day 3 the Tribunal Ordered that the parties send to the Tribunal and to each other (a) written submissions and (b) written comments on the submissions. The Respondent complied with the Order. The Claimant informed the Tribunal that due to a bereavement she needed an extension of time. She then asked to be excused from making a submission. She was prepared to comment on the Respondent’s submissions. The Respondent did not object to that request. The Tribunal granted the request and asked her to send comments on the Respondent’s submissions. The Claimant sent comments to the Tribunal.

Discussion

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey did not give her a copy of her contract of employment.

10 The Claimant gave evidence that when she started employment she signed a contract. Mr Hickey took it away and told her that he would provide her with a copy. She did not receive a copy despite asking for one on several occasions. She was the only employee on site not to be given a contract.

11 The Tribunal accepted Mr Hickey's evidence. It found that whenever the Claimant asked for a copy of her contract he asked the Respondent's office staff to send her one. He acknowledged that this happened on about four occasions. He believed that his requests had been carried out. The Tribunal also found that Michelle, the Claimant's colleague who was white British, did not have an employment contract.

12 The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. The Respondent's failure to provide the Claimant with a copy of her contract of employment was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when in April 2016 Mr Hickey did not investigate the allegation against her colleague, Mark.

13 The Claimant gave evidence that Mark made physical contact with her in an aggressive manner after he took from her work area Easter eggs which had been provided by a doctor for members of the surgery staff.

14 The Tribunal accepted Mr Hickey's evidence. It found that given the nature of the allegation he did not consider that there were sufficient grounds to conduct a full investigation or disciplinary hearing. He spoke informally to Mark, Michelle and the Claimant and he was given different versions of the events. He told them to "grow up". He explained to the Claimant what he had said to Mark and that in the absence of any corroboration he could not take any other action. The Claimant accepted this.

15 The Tribunal found that Mr Hickey did respond to the Claimant's text and investigate the incident, albeit on an informal basis. It noted that at the end of her text the Claimant referred to her conversation with Mark and stated:- "I said if it happened again then I'm going straight to tom and he said it won't happen again". It was clear that at the time of the incident the Claimant did not want Mr Hickey to take any action against Mark. Mr Hickey would have behaved in the same manner if he had received a similar text from a white British employee reporting that the Claimant had done what she alleged Mark had done. The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Hickey's conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey provided her with wrong information about her holiday entitlement and year.

16 The Claimant gave evidence that Mr Hickey informed her that the Respondent's holiday year ran from April to April. She felt that he deliberately singled her out because of race so that she would lose her remaining holiday entitlement while her colleagues were allowed to have their full holiday entitlement.

17 Mr Hickey gave evidence that he did give the wrong information to the Claimant. At the time he was out of his office and had no access to the contracts of employment. As soon as he returned to the office, he examined the contracts of the Claimant and her colleagues and provided the correct information.

18 The Tribunal accepted Mr Hickey's explanation that he innocently misinformed the Claimant. While he was out of the office, he responded to the Claimant's query about holiday pay. He managed about 150 employees directly across thirty locations, whilst indirectly managing a further 200 employees through assisting with contracts. For some of those employees the holiday year started in January and for others it started in April. Until he checked the contracts he genuinely believed that the Claimant and her colleagues were in the former group. The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Hickey's conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when it informed her that some of her documents were missing from her file and that it could not pay her until it had them.

19 The Claimant gave evidence that she received an email from the Respondent stating that some of her documents were missing and that it could not pay her until it had them. She was told that neither Mark nor Michelle received this.

20 Mr Hickey gave evidence that the Respondent's managing director decided to outsource the Respondent's payroll to CS Outsourcing ("CS"). CS wanted information from each employee as to their identity and bank details. The Respondent contacted all employees whose date was either missing or out of date.

21 The Tribunal accepted Mr Hickey's evidence. It found that the Claimant was one of many employees who were contacted by the Respondent's payroll department. It decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Its conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when it did not invite her to the Christmas party.

22 The Claimant gave evidence that she did not receive an invitation to the Christmas party.

23 The Tribunal accepted Mr Hickey's evidence which was corroborated by contemporaneous documentary evidence including the text message. It found that he sent a text to the Claimant and other employees providing information about the party. If the Claimant did not receive the message, it was likely that this was because of her mobile telephone which might not have been receiving text messages at the time. Mr Hickey was unaware of any problem with the mobile

telephone. The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Its conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when it did not inform her that payment of wages was being outsourced to an agency and when CS Solutions sent her a text stating that she would not be paid unless she confirmed her details with them.

24 The Claimant gave evidence that Mark and Michelle told her that they had received letters from the Respondent stating that their wages were being outsourced to CS Solutions (“CS”). She did not receive such a letter.

25 Mr Hickey gave evidence that the Respondent decided to outsource its payroll to CS. In late December 2016 CS contacted the Claimant and asked for her details so that they could pay her. She was informed that she would not be paid unless she provided those details. She did provide the details and she was paid.

26 This complaint to some degree overlapped with that discussed under paragraphs 19 to 21 above. The Tribunal found that by letters dated 16 November 2016 the Respondent informed all employees including the Claimant that CS would be delivering the payroll service from January 2017. It was likely that the Claimant’s letter was sent to her previous address. She changed her address and in May 2016 she informed Mr Hickey. However, it was likely that the Respondent did not update its records. The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Its conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey provided her with wrong information about her holiday entitlement.

27 The Claimant gave evidence that she requested reduced hours. It was agreed that this would start on 11 January 2017. On 9 January 2017 she asked Mr Hickey about her holiday entitlement. He told her it was 12 days. She checked online and found that it should be 16.8 days.

28 Mr Hickey gave evidence that he made an error. Subsequently he confirmed that the Claimant was correct.

29 This complaint to some degree overlapped with that discussed under paragraphs 16 to 18 above. The Tribunal accepted Mr Hickey’s evidence which was supported by contemporaneous text messages. The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Hickey’s conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey sought to entrap her into dishonesty by overpaying her after an error.

30 The Claimant gave evidence that in January 2017 the Respondent did not pay her for two hours work. The Respondent rectified the situation but in doing so it overpaid her.

31 Mr Hickey gave evidence that the Respondent simply made two errors in relation to the Claimant's pay.

32 The Tribunal accepted Mr Hickey's evidence which was supported by contemporaneous text messages. It found the Respondent made two genuine mistakes; one an underpayment and the other an overpayment. It was hardly credible that it would seek to entrap the Claimant over a relatively small amount of money. Subsequently there were no other errors with her pay. The Tribunal decided that the Claimant had not shown any less favourable treatment. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when on 11 January 2017 Mr Hickey put her to work in Mark's area despite knowing of previous complaints.

33 The Claimant gave evidence that Mr Hickey informed her that she would be working with Mark despite the fact that he had been aggressive towards her.

34 Mr Hickey gave evidence that at the material time the Respondent had not received any formal complaint about Mark from the Claimant.

35 The Tribunal accepted Mr Hickey's evidence which was supported by contemporaneous text messages. It found that at the material time the Claimant had not made a formal complaint about Mark. There was no need to separate her from Mark. The Tribunal decided that the Claimant had not shown any less favourable treatment. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey did not investigate when she reported the 25 January incident.

36 The Claimant gave evidence that on 25 January 2017 Mark was aggressive towards her.

37 Mr Hickey gave evidence that he did not receive any complaint from the Claimant about this incident.

38 The Tribunal considered the text messages which were sent by the Claimant to Mr Hickey on 27 and 30 January 2017. It found that the Claimant did not inform Mr Hickey that Mark had been aggressive towards her. She told him about "a few teething problems"; he responded and she appeared satisfied. There was no evidence that she told him anything which warranted investigation. The Tribunal decided that the Claimant had not shown any less favourable treatment. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when on 8 February 2017 Mr Hickey did not ask her to do overtime.

39 The Claimant gave evidence that on 8 February 2017 Mr Hickey asked Mark and Michelle to work overtime. He did not ask her.

40 Mr Hickey gave evidence that he asked all staff to do overtime when this was required. They were randomly selected. On other occasions he asked the Claimant to do overtime and not Mark and Michelle.

41. The Tribunal noted that this was not a complaint that the Respondent favoured Mark and/or Michelle when allocating overtime during the Claimant's employment. There were no overtime records to allow any comparison to be made. The Tribunal accepted Mr Hickey's evidence. There was documentary evidence to support his contention that he gave the Claimant overtime. That did not appear to be in dispute. Although Mr Hickey did not give the Claimant overtime on 8 February 2017 the Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Hickey's conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey did not investigate Mark after she raised concerns with the surgery on 1 March 2017.

42 The Claimant gave evidence that on 23 February 2017 she told Mr Hickey that Mark had been aggressive towards her. He said that anything she said about Mark would be treated as hearsay. There was another incident on 24 February. She told Mr Hickey about this and he told her to put in a formal complaint.

43 Mr Hickey gave evidence that he sent her a text message on 24 February telling her that, if she wished to pursue an official grievance, he needed it to be put in writing with her account of what happened. The Claimant replied by text stating "I might not now ...".

44 The Tribunal accepted Mr Hickey's evidence which was supported by contemporaneous documentary evidence. It found that the Claimant brought to his attention allegations about Mark's behaviour towards her. Mr Hickey asked her to put her account in writing and request that it be dealt with as a grievance. The Tribunal decided that this was an appropriate response. The Respondent's Grievance Procedure provided for resolution of issues in an informal manner. However, it recognised that on occasions the issue would be too serious to be dealt with at an informal level. In such cases the formal procedure had to be used and the employee had to put her grievance in writing to her immediate supervisor. Mr Hickey formed the opinion that the matters raised by the Claimant were too serious to be dealt with on an informal basis. In the Tribunal's judgment, that was a correct opinion. The Claimant did not put in a written grievance. The Respondent did not investigate because there was no written grievance. The Tribunal decided that the Claimant had not shown any less favourable treatment. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Hickey did not send her to a different site on 1 March 2017.

45 The Claimant gave evidence that on 1 March 2017 she asked Mr Hickey if she could work with Amaka instead of Mark. He agreed to this request but only on a temporary basis, Subsequently he went back on that agreement and sent Amaka to a different site.

46 Mr Hickey gave evidence that there was a change of circumstances which required him to send Amaka to another site. Amaka had worked previously at that site; she was familiar with the premises, locks and security arrangements.

47 The Tribunal accepted Mr Hickey's evidence which was supported by contemporaneous documents. It found that but for the change in circumstances the Claimant would have worked with Amaka as agreed. He had to send Amaka

to another site. He did not send the Claimant to that site to work with Amaka. The Claimant did not request that she be sent to that site. It followed that Mr Hickey did not refuse any request. The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Hickey's conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when on 2 March 2017 Mr Hickey decided to hold an investigation into her conduct.

48 The Claimant gave evidence that on 2 March 2017 Mr Hickey sent her a text informing her that there would be an investigation and that she would be invited to a formal meeting with him and a director.

49 Mr Hickey gave evidence that he did not decide to hold an investigation into the Claimant's conduct.

50 The Tribunal accepted Mr Hickey's evidence. It found that, when the Claimant sent the text message informing him that he was putting her life "at risk", he decided that it was necessary to investigate the matter. He did not decide to investigate the Claimant's conduct. Since the Claimant appeared to be complaining about him, he acted correctly in discussing the matter with Mr Severn and passing it onto him. Mr Severn's email to the Claimant dated 9 March 2017 demonstrated that as at that date he wished to investigate the Claimant's allegations and to conduct a meeting as part of that process. The Tribunal decided that the Claimant had not shown any less favourable treatment. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when on 15 March Mr Severn told her off and did not investigate her complaints about Mark.

Complaint the Respondent treated the Claimant less favourably because of race when Mr Severn shouted "stay away" at her and then suspended her.

51 The Tribunal considered that it was appropriate to consider these complaints together.

52 The Claimant gave evidence that at the meeting discussed her texts to Mr Hickey and told her that it was not her job to tell her colleagues what to do. It was Mr Hickey's job. He then accused her of theft. She believed that he had no intention of dealing with her formal complaint. She stood up to leave. He tried to stop her. As she continued towards the door, he shouted "stay away".

53 Mr Severn gave evidence that he asked the Claimant questions about some of the matters which had been raised by the Claimant in her grievance. He wished to investigate her complaints about Mark. However, as the meeting continued he found it increasingly difficult to maintain a structure within which he could effectively investigate the grievance. Eventually the Claimant became annoyed and stood up making to walk out of the room. Mr Severn told her that she was at work, attending a formal grievance hearing, and that, if she walked out, she would effectively dismiss herself. He accepted that, as she was leaving, he shouted "stay away". She left the premises. The next day he suspended her by text message.

54 The Tribunal accepted Mr Severn's evidence. It found that at the meeting he wished to investigate her complaints about Mark. He began asking her questions and she interpreted these as criticisms of herself. The meeting became out of hand and the Claimant left before he was able to conclude his questions.

55 The Tribunal decided that Mr Severn "told off" the Claimant because he understandably believed that it was not for her to criticise her colleagues as she had done – for instance, by raising matters directly with the Respondent's client. That was indeed a matter for Mr Hickey.

56 The Tribunal decided that the Respondent had to meet with the Claimant in order to investigate her complaints before deciding whether to take any action against Mark. It was not possible to conclude what would have been the outcome of Mr Severn's investigation because it was incomplete. The Claimant formed the opinion that she would be dismissed and, when leaving the meeting prematurely, in effect she prevented the Respondent from fully investigating her complaints. Mr Severn decided to suspend her because she walked out of the meeting.

57 The Tribunal decided that Mr Severn shouted "stay away" at the Claimant because he had become annoyed. He lost his temper out of frustration. For her part the Claimant was also frustrated because she believed that Mr Severn was conducting a disciplinary hearing. Although it might have made no difference, with the benefit of hindsight, it would have been better if Mr Severn had better clarified the purposes of the meeting in his letter of invitation.

58 The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Severn's conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Complaint the Respondent treated the Claimant less favourably because of race when dismissing her.

59 The Claimant gave evidence that she left the premises because Mr Severn shouted "stay away". On the next day she was suspended. She believed that the Respondent used her complaint about Mark's aggression in order to make a false allegation against her.

60 Mr Severn gave evidence that he dismissed the Claimant "principally" for walking out of the meeting in an aggressive manner together with her aggressive and rude behaviour towards work colleagues and surgery management.

61 The Tribunal found Mr Severn's evidence on this matter to be somewhat confusing. He accepted that he had shouted that the Claimant should stay away. He intended that she should leave the premises and she did so. On the next day she enquired as to whether she had been dismissed. He confirmed that she was suspended. In those circumstances it was difficult to understand how walking out of her shift could be a ground for her dismissal. However, it would have been understandable if he had relied on the fact that, in his opinion, he had walked out of the meeting in an aggressive manner. Further the Tribunal found that Mr Severn made his decision because he genuinely believed that the Claimant had behaved rudely and aggressively towards colleagues and surgery management. He formed that belief after he had conducted his investigation. There was evidence to support that belief.

62 The Tribunal decided that there were no facts from which it could decide, in the absence of any other explanation, that the Respondent had discriminated against the Claimant. Mr Severn's conduct was to no extent influenced by race. Accordingly the complaint under this head failed.

Other matters

63 By an email dated 10 February 2018 the Claimant made an application to strike out the Response. She contended that (1) the Respondent should have produced Ms Sykes and Ms Nwafor as witnesses (2) Mr Hickey and Mr Severn gave contradictory evidence.

64 When the Tribunal met to make its Judgment, it first considered the Claimant's application. In accordance with the overriding objective it decided that it was not in the interests of justice or proportionate to grant the application. The Tribunal had heard three days of evidence and it had to determine the complaints on the basis of that evidence. Neither of the Claimant's grounds warranted the draconian course of action she requested. Accordingly the application was refused.

65. Lastly when considering the evidence, the Tribunal decided to accept the evidence of Mr Hickey and Mr Severn. On the whole their evidence was consistent and credible. The contradictions highlighted by the Claimant in her application and in her comments on the Respondent's submissions were not sufficient to persuade the Tribunal otherwise.

Employment Judge **Keevash**

Date: 25 April 2018