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# THE EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Miss N Moukaideche**

**v**

**Credit Agricole CIB**

**Heard at:** London Central

**On:** 14-17, 20-22 November 2017 and 2  
January 2018 in Chambers

**Before:** Employment Judge J Wade

**Members:** Miss J Killick  
Mr D L Eggmore

**Representation:**

**Claimant:** Mr G Vallet, Friend  
**Respondent:** Miss L Bone, Counsel

## RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the Respondent did not:-

- (a) Discriminate against the Claimant because of her sex, contrary to Section 13 and 39 of the Equality Act 2010;
- (b) Harass the Claimant contrary to Section 26 or
- (c) Victimise her contrary to Section 27.

## REASONS

- 1 Ms Moukaideche worked for the Respondent for two years under a fixed term contract. She was part of the VIE Programme run by the French Government, which enables skilled graduates to gain work experience

abroad in one year fixed term roles. She claims that during her employment in London, she suffered direct sex discrimination, harassment and victimisation.

## Interlocutory Issues

- 2 A number of interlocutory issues arose during the hearing and we briefly record the outcome.

### *The Claimant's amended List of Issues*

2.1 The list of issues was agreed at the start of the hearing and the version which we worked from had been finalised by Ms Bone but it reflected the Claimant's list of issues of 21<sup>st</sup> July 2017. During the Hearing, the Claimant produced a revised version which we were unable to agree and which the Respondent opposed. Our reasons were that it is vital that the List of Issues is agreed before the witness statements are finalised and that the trial is prepared on the basis of known issues. The Claimant fully participated in the preparation of the List of Issues of 21 July and there was no unfairness in not allowing her to change her mind mid hearing.

### *Supplementary Statements from the Respondent*

2.2 We agreed to these being admitted because they dealt with matters which arose during the cross examination of the Claimant. Rather than ask supplementary questions of her witnesses, which would have been allowed, Ms Bone argued that their evidence should be seen in writing. Particularly given that neither the Claimant nor Mr Vallet speak English as a first language, we thought it was fair on them to see the additional points in writing thus enabling them to prepare the cross examination in advance.

### *The Claimant's Attendance at the Hearing*

2.3 At the start of the Hearing the Claimant told us through her representative that she would not be present for most of the Hearing. She did not see this as a problem because Mr Vallet knew the full case. She then amended her position to say that she would stay for the remainder of the week but not the following week. We indicated that, whilst we would not order her to remain, this was a surprising request given that it was her case and that she would not be available to give instructions. The reasons she gave for not being able to stay for the whole time was that she was needed to get back to work. In the end, she stayed for the whole hearing.

### *The Claimant's Request for Disclosure*

2.4 On 16<sup>th</sup> November the Claimant requested a disclosure order in respect of all of the emails between herself and Ms Estelle Moreau. The

Respondent had disclosed a couple of such emails which had come up during the disclosure exercise using key words, but which had not been put in the bundle because they did not show that the Claimant and Ms Moreau had discussed harassment. The Claimant's response was that if she saw all of the emails she might find some that *did* discuss harassment. We did not agree to this approach because it was a classic example of a fishing expedition. The disclosure process was complete and an additional exercise would be disproportionate. This was especially so given that the Claimant had mentioned this name because she claimed she had made complaints to Ms Moreau and yet had not done anything to try to locate the evidence before the Hearing began. Also, because all the emails would need to be translated from French to English this would be time consuming and expensive.

#### *Witness orders*

2.5 We also refused witness orders for two former colleagues of the Claimant, Messrs Beecroft and Jouan. Although they were mentioned in the Claimant's witness statement she did not suggest that they were going to be relevant witnesses. Their attendance would therefore be part of a fishing expedition and it would not be proportionate to summons them particularly since the tight timetable would be disrupted if they were summonsed. Also, at the time we refused the witness order, the Claimant had told us that she would not be present when they attended and so it would be impossible for Mr Vallet to know what questions to ask. There were already witness statements in the bundle from the grievance enquiry as well as the "live" witnesses and so we already had access to a considerable amount of evidence, running to four lever arch files. Mr Beecroft is ill and neither witnesses wanted to attend and so the value of their evidence would, in our experience, be limited.

#### *The Claimant's Additional Disclosure and Supplementary Statement*

2.6 The Claimant applied on 20 November to add additional disclosure. She had already supplied the Tribunal with various media reports about the sexism in the banking industry which, being very general, are not of assistance. We decided that this material was not revelatory and therefore it was not proportionate to admit it. In terms of the supplementary statement, the Claimant's position was very different from the Respondent's where the supplementary statements had been supplied before the witnesses gave evidence. The Claimant's statement came after she had finished her evidence which meant that if we were to admit it we would have to reopen her evidence and she would have to be cross examined again. The Respondent would need to give instructions on the statement which would disrupt the timetable.

2.7 We understand that the Claimant, although represented by Mr Vallet, is a litigant in person in that neither he nor she are legally qualified and we tried our best to explain our decisions to her.

### **The Relevant Law**

3 Our task in this case is to make findings of fact relevant to the agreed List of Issues. The three legal issues are as follows. The precise alleged detriments are set out in the Conclusions below and will not be repeated here.

### **Direct Sex Discrimination Equality Act 13 (1) and 39 (2) (b) and (d)**

4 The Claimant says that she suffered less favourable treatment because of her sex, both during her employment and in the respondent's failure to recruit her to permanent roles.

### **Harassment**

5 The Claimant says that she was harassed contrary to Section 26. Harassment is defined as unwanted conduct related to her gender which had the purpose or effect of violating her dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Section 26 (4) says that in deciding whether conduct has the effect referred to above, the following must be taken into account:-

- (a) The perception of the Claimant;
- (b) The other circumstances of the case;
- (c) Whether it is reasonable for the conduct to have that effect.

### **Victimisation**

6 It is agreed that there was a protected act, namely the grievance which the Claimant submitted on 21 September 2016. The question is whether because of that protected act the Respondent subjected the Claimant to detriment.

### **Time**

7 Some of the alleged detriments are out of time and the Tribunal must consider whether it is just and equitable to extend time.

### Reasonable Steps Defence

8 The Respondent defends the action under Section 109 (4) on the basis that it has taken all reasonably practicable steps to prevent the detriments.

### The Evidence

9 For the Claimant, we heard evidence from herself and from her representative Mr Gregory Vallet.

10 For the Respondent, we heard from:

10.1 Bharatti Crack, Head of HR in London,

10.2 Hemal Mistry, the Claimant's former Team Leader and Credit Middle Office Global Coordinator at the Respondent's Office in London,

10.3 Alexis Salvaro, former VIE and colleague of the Claimant, in Mr Mistry's Team,

10.4 Gwenael Rosec, HR Business Partner,

10.5 Matthieu Bernard, at the time Head of Capital Markets Middle Office London, Mr Mistry's Manager's Manager,

10.6 Mark Nord, at the time Deputy Head of Capital Markets Middle Office, the Claimant's Manager's Manager,

10.7 Katy Gamble, at the time HR Advisor,

10.8 Anne Jacquier, at the time Head of Central Compliance (UK), who heard the grievance,

10.9 Sivajini Kanesarajah, HR Business Partner and

10.10 Karen James, Chief of Staff for the Global Markets Sales Division who dealt with the grievance appeal.

11 We read the pages in the bundle to which we were referred.

### The Facts

12 Having considered all the evidence, we make the findings of fact set out below on a balance of probabilities.

- 13 The narrative begins with the employment of Mr Vallet as a contractor for the Respondent. His association with the Respondent ended on 14 September 2012. He worked in IT but knew the Middle Office Team in which the Claimant eventually worked. He gave evidence of a number of matters relevant to the issues, however, since his employment terminated 2 years before the Claimant's began, it was of little assistance. Not only was he the Claimant's representative but he was her former partner and with the best will in the world it would have been difficult for him to be entirely objective.
- 14 Also before the Claimant began work, a predecessor VIE, Alexis Salvaro was made permanent in the team on 30 September 2014. He had been very successful in this fixed-term role and when a vacancy arose he applied and was recruited to a permanent position.
- 15 On 10 October 2014, the Claimant was recruited as a VIE and interviewed by Mr Mistry. Having been interviewed by Mr Mistry she was offered a temporary one year role under the VIE scheme. It should be noted that Mr Mistry had a choice at this point whether to recruit or not and decided to give her the role. This indicates that he was not prejudiced against the employment of women in his team as alleged.
- 16 The witnesses told us that there is a historic problem in what is known as the Middle Office in terms of gender profile. Of the 32 VIE students who worked in London during the Claimant's time, only nine were female and 23 male. HR witnesses gave evidence that they were making efforts to try to recruit women into this line of work but constantly struggled.
- 17 We conclude that the fact that there was only one or at times two women working on Mr Mistry's team was because of the recruitment problems rather than because of Mr Mistry's choices. As we have said, the problem was common across the whole office.
- 18 Of the 32 VIE recruits, five achieved a permanent job at the end of their contracts, one female and four male. Although statistically this indicates that less women than men got permanent jobs, the numbers are so small that it is not safe to draw conclusions from them. The above information shows that the Claimant is quite wrong to assert that it was common for VIE contractors to move from their fixed term status into a permanent role in the Bank and that the fact that she did not get a permanent role indicates gender discrimination.
- 19 The Claimant originally alleged that the fact that she was located a little way away from her team in the first few weeks after she joined was discrimination. However, she accepts that the seating plan was out of Mr Mistry's hands and it cannot be said that there was discrimination there.
- 20 From the beginning of her employment, the Claimant joined in with the team's boisterous humour. She herself agrees that she gave as good as she

got, joking about Mr Salvaro's English accent and gossiping with colleagues by email on subjects such as colleagues "hitting on" her, colleagues being "a bit hom" (this means gay), using the term "lol" (laugh out loud) regularly, joking about a Creole accent and the looks of an older colleague.

- 21 The Claimant says that she was only trying to be friendly when she joined in this banter but did not have an answer for us when we asked why she actively participated in and prolonged the conversations. Neither we nor those who interviewed her during the extensive grievance process found her to be shy or inarticulate and there is no reason why she did not challenge or at least try to damp down the chat that was going on if she found it offensive.
- 22 We were surprised to hear the Claimant challenging the translations of some of her emails at the hearing. At considerable expense, the respondent had obtained professional French interpretations of the emails and the Claimant had been sent them and had not raised any objections. It did appear to us that when she could not explain why she had said certain things, she made the choice to challenge the translation instead, which was an unattractive tactic. For example, she challenged the translation of an acronym to "pissing myself laughing" as she probably realised it was rather crude but provided no coherent explanation as to what she had actually meant.
- 23 Particularly relevant to the Claimant's alleged distress at comments by colleagues about the use of prostitutes is an email conversation that she had with her Paris colleague Benjamin Nakache. He said to her on 18 November 2015 that "when I got back from holiday, the guy informed on me like a whore ...". The Claimant replied "I am laughing my head off here, but those guys are real arseholes. When I am sick I don't even bring a certificate. I don't care, I don't have to justify myself, especially since I often don't see the Doctor because I can't move lol ... those guys are really and truly arseholes". Of course in this context the word whore is not being used literally but the Claimant's response shows that she has absolutely no objection to this type of language and replies with her own bad language. Note her comments about sick leave which become relevant later.
- 24 The Claimant claims that she was sexually harassed by her team members in a number of ways. Some do not really lend themselves to an allegation of sexual harassment such as burping, passing wind, talking about drugs and throwing balls. Others do, in that the Claimant says that her colleagues had weekly open conversations about prostitutes. She also said that they made misogynistic jokes but did not give us a single example of what that meant.
- 25 The Claimant also gave us no example at all of specific conversations that she recalled about prostitutes and so we had no idea what she meant. She provided no notes, text messages or emails to anybody she knew recording what she had heard or her feelings about it.

- 26 Ironically, therefore, the information that we have about references to prostitutes comes from the Respondent's witnesses. Notably, Mr Salvaro explained that the Claimant had said to him that she did not like the jokes that her colleagues were making about running out of money at the end of the month because the money had all been spent on "brasses and drugs" ("brass" being another word for a prostitute).
- 27 Mr Vallet, perhaps predictably given his involvement, says that the Claimant complained to him every day about the harassment she was suffering because it was very serious, but he neither recorded nor recalled specifics and did not encourage her to complain it about to anybody else. Perhaps the Claimant was more robust at work than she was in her personal relationship.
- 28 Based upon the evidence we have, we conclude that these tasteless comments were indeed jokes which were not made all the time. We conclude this because:
1. By their very definition, being jokes connected to running out of money at the end of the month, these jokes probably did not happen regularly as alleged.
  2. The Claimant never challenged them direct.
  3. She never discussed problems with other women on her floor formally or informally.
  4. They were not aimed at her and it does not seem that she thought they were.
  5. The jokes seemed to have revolved around Mr Sharman who was rather a loud member of the team and who, Mr Salvaro says, the Claimant did not like, so the fact that she was fed up with the jokes does not necessary mean that she felt humiliated or degraded as a woman as opposed to finding Mr Sharman irritating. There was also a joke between Mr Sharman and Mr Mistry about their wives' cooking, crass but not humiliating.
- 29 The one other comment that the Claimant managed to recall was a one-off. She says that Mr Mistry had asked a colleague from another team who was pregnant if the baby was planned and that then someone had commented that this employee could not control herself. Mr Mistry agreed he had asked about the baby and said "my words came out all wrong, the lady in question scolded me about it". This seems to have been a minor event which was dealt with appropriately at the time. None of the witnesses recall the other part of the conversation and we can take it no further. It was not alleged to have been offensive to the claimant.



- 30 The Claimant also complains that during this time, Mr Mistry kept her under close surveillance. However, she provided no specific information about this and we did not find any circumstantial evidence to corroborate this allegation. Mr Salvaro denied that this had happened or that Mr Mistry declined to communicate direct with the Claimant.
- 31 The Claimant had actually started work on 4 December 2014 and Prasad Hewa, another VIE graduate, started in the team on 1 January 2015. It transpired that in Mr Mistry's view Mr Hewa's performance was rather better than the Claimant's. Whilst she was happy to undertake basic tasks, she did not have an appetite for the more complex and those which meant staying late. This was a disappointment. She was never challenged by Mr Mistry over this but he was never really sure how to manage her because whenever he asked to do anything or tried to discuss things with her, she just responded with "ok" and the conversation did not open up. The impression we got, not just from Mr Mistry but from other witnesses too, was that he was to a great extent controlled by the claimant rather than the other way around. Her emails disclosed that she did indeed have a scornful attitude towards her managers.
- 32 Through this time, the Claimant was very sociable and seemed to enjoy the social side of life at the Bank. We did not see any evidence that she was excluded from social events, although there was what you would call a "laddish" culture, derived from the fact that there were so many men working together on the floor. One symptom of that is that most of her male colleagues on the team were included in a private WhatsApp group where they exchanged information about football, arranged fixtures to play other teams and occasionally posted pictures of naked or partially clad women. Mr Salvaro, our only source for this level of detail, confirms that there was no hard porn in this group at all.
- 33 The Claimant, however, was part of a poker school, just herself and a few colleagues. There is also evidence of her signing up for a quiz team for an event being organised by Mr Mistry in March 2015 so exclusive groupings did exist in the team.
- 34 In June 2015 on Mr Nord's instigation a wellbeing survey was carried out amongst staff on the Claimant's floor. The Claimant did not raise any issues even though the survey was anonymous so there would have been no direct consequence in doing so. The survey was repeated in 2016 and again she did not raise any issues.
- 35 When an issue was raised by another team, Mr Nord treated it very sensitively and sent out an email to all asking anybody who had any concerns to speak with him. This was a perfect opportunity for the Claimant to test the water by anonymously raising concerns and then, having seen how sensitive Mr Nord was, to progress it, but she did not do so.

- 36 At the work summer party in June 2015, there was a serious altercation between the Claimant and her guest, Mr Vallet. It is alleged that when Mr Mistry subsequently commented on the Claimant's unexpected absence from work and suggested that the Claimant might have been harmed by Mr Vallet this was an act of harassment. This may have been idle gossip and we do not accept that Mr Mistry was genuinely concerned for the Claimant's safety as he did not contact the Police or take any other measures, but it was founded on the fact that the Claimant and Mr Vallet had had a very public and aggressive row and was not related to gender. Furthermore, Mr Mistry was instrumental in ensuring that although the Claimant had behaved badly at the party, the matter was not escalated to HR for disciplinary action.
- 37 Towards the end of the Claimant's one year fixed term contract the team knew that it needed to extend one of the VIE contracts and Mr Mistry preferred to extend Mr Hewa's. Unfortunately, he decided that he needed to return to Paris and therefore Mr Mistry had to decide whether to keep the Claimant on instead. He discussed this with his managers and agreed that although the Claimant was not a great performer it was less disruptive to the team for her to remain than for someone else to be recruited. He met with the Claimant and told her honestly, as he had been advised to do, that she was the second choice but that the opportunity was there. She agreed to remain for a second year. This is evidence that she did not find the role unsustainable due to her experience in the team. It also shows that Mr Mistry did not use the end of her first year fixed term as a perfect opportunity to get rid of the woman who he did not wish to work with.
- 38 During the end of 2015 and into 2016, the Claimant was applying for jobs. This was not appropriate in that the VIE policy states that individuals may not apply for jobs until the last 12 weeks of their VIE contract. This indicated that she was careless of the rules, focussed on looking after herself and also that she was not particularly dedicated to the Middle Office Team that she worked in.
- 39 The job hunting also shows that the Claimant was well aware that she needed to keep in touch with the "my Jobs" website which was the internal and external recruitment website for the Respondent. She set her alerts according to her job preferences and so it cannot be said that she was under the impression that the thing to do was to wait to be offered jobs rather than actively apply.
- 40 During this time, the Claimant seems to have taken various challenges on organisational matters as examples of harassment. For example, there is an email from her of 8th February 2016 complaining that work is doing her head in and that it is making her ill both psychologically and physically. The reason was that she had been told off for being late.
- 41 Another example of the Claimant's attitude to her work was an email she wrote to Mr Hewa on 8 February 2016 saying "given that I don't intend to stay here, I don't give a crap". This email indicates a very confident attitude

and is not consistent with her argument that she did not dare to raise concerns about harassment because she was in some way scared.

- 42 It is important to note that the Bank's efforts to promote and retain women included a diversity week which took place in March 2016. The Bank had an active women's network called "Spring" which the Claimant did not take part in. Her view, expressed at the hearing, was that she did not have a problem in working in a team with mainly men and did not really see the need for a women's network. This rather contradicts her testimony that she was feeling too vulnerable to complain.
- 43 In April and May 2016, two colleagues on the team left. The Claimant knew that they had left and of course saw their physical absence on the bank of desks where she sat. She did not go onto the "My Jobs" website to check whether there was a vacancy and took no steps to try to apply for the roles. She had recently told Mr Hewa that she did not intend to stay. Therefore we have to say that her protestations that she was discriminated against when Mr Mistry did not take active steps to slot her into those roles is opportunistic. Mr Patel, who worked in the team as a temp, was promoted to one of the permanent roles and someone called Jonny Sharman got the other role. He was a friend of Mr Mistry and had worked as a contractor in the team before, so whilst he was told that the job was on the market, he applied through the normal channels and was appointed. This included interviews not just with Mr Mistry but also with Mr Bernard and HR.
- 44 Also in the summer of 2016, Rosanna Abdul joined the team. The Claimant says that Mr Mistry complained that he could no longer make dirty jokes with Ms Abdul in the team. If that was the case, which he denies, it shows that he realised that the Claimant was not offended by such jokes as of course she was already there. Whilst it is true that Mr Mistry does not really understand why it is inappropriate (if it is) to comment on a female colleague's personal appearance, he did not offend Ms Abdul and when she was interviewed by HR in relation to the Claimant's complaints, she did not provide any evidence of adverse behaviour.
- 45 Another event which the Claimant complains about is Mr Mistry emailing his team, including the Claimant, reminding them to complete compulsory international sanctions training otherwise bonuses might be reduced. She suggests that this was part of his sexist behaviour which is odd given than he emailed the whole team and he was correct that instructions from above were that this could affect the bonus. Also since the Claimant did not qualify for the bonus it is hard to see how she could have seen this as a detriment.
- 46 The Claimant was absent from work allegedly due to ill health between the 7<sup>th</sup> and the 14<sup>th</sup> September 2016. A pattern had emerged whereby she tended to take sick leave just before or just after booked holidays, and sometimes both. She did not comply with the sickness policy and, as we have seen from her emails, she did not care to do so.

- 47 On 7<sup>th</sup> September she told Mr Mistry by email that she would “not be in today” and then he had no contact from her at all for 8 days, he telephoned her and found that he was getting a foreign ring tone and on 15<sup>th</sup> September she told him that she would be back the following Tuesday. This was no way to behave and the length of sickness was such that the sickness policy required her to have produced a sick note. She did eventually produce a sick note but only after she had raised her grievance and in a discussion with HR.
- 48 This is clear evidence that she had no respect of Mr Mistry’s management and did what she wanted in terms of her absences. Mr Mistry took advice from HR about what to do because this was a difficult situation for him and he was advised to challenge her, the only thing in the circumstances that he could possibly have done.
- 49 Meanwhile, on 15 September Mr Mistry started to organise a desk swap between the Claimant and Mr Patel. This would mean the Claimant moving from sitting between Mr Mistry and Mr Sharman to sitting on the other side of the bank of desks, not very far away. There were operational reasons for this since Mr Patel had now been made permanent and needed some training. The Claimant tells us that this was an act of discrimination but we are surprised because since she did not like Mr Sharman and if she considered that Mr Mistry was discriminating against her, a move should have been welcomed.
- 50 The Claimant returned to work after her alleged sick leave on 20 September and Mr Mistry spoke to her. He reminded her, correctly, about the Bank’s sickness absence notification requirements and he had asked not only HR but also Mr Nord for advice.
- 51 The next thing that happened was that the Claimant sent a grievance letter to HR. This contained allegations of discrimination so it was a protected act for the purposes of the Equality Act Section 27.
- 52 The Respondent says that as the Claimant’s contract was coming to an end she had nothing to lose, she wanted revenge against Mr Mistry for his challenge to her absences and so she filed the grievance.
- 53 Certainly, she was getting towards the end of her contract and therefore had nothing to lose in putting in all of her concerns into the grievance. She told us in evidence that she knew that once she put in the grievance there was no going back and this was the end of her association with the Respondent (the Respondent does not necessarily agree with this and says that it takes grievances very seriously and wishes to support those going through the grievance process).
- 54 On 21 September, Katy Gamble of HR met with the Claimant to discuss the grievance and she commented to us that she found the Claimant quite rude,

particularly as she was doing her best to approach the meeting sensitively. What came back was that the Claimant told her that she knew that she could sue the Bank and Mr Mistry. We note that although the Claimant did not file a claim until February 2017, she was already aware of the availability of litigation. This point is relevant to the issue of the time limit.

- 55 We find that Ms Gamble made it clear to the Claimant that if she did not feel able to come into work she could take time off. The Claimant never asked for time off or for a desk move but after this date did not spend much time in the office before her contact ended on the 30<sup>th</sup> November. During this time she did not produce any sick notes from a doctor.
- 56 The Claimant alleges that once Mr Mistry had been told that she had raised a grievance he took all his team out of the area to discuss the grievance with them. Mr Bernard noticed that the team were absent on that day but when he checked at the time he found that they were in different places and not talking together. Also, the gate records indicate that the team were dispersed around the building. Mr Vallet makes the point that the gate records can be manipulated but whilst we are sure he is perfectly capable of analysing them, he did not try to demonstrate that the records in fact showed the opposite to what the Respondent asserts.
- 57 Ms Gamble further supported the Claimant in arranging for her to see a GP and Occupational Health Doctor.
- 58 There followed an extensive process of information gathering. Ms Gamble interviewed Mr Mistry, Mr Nord, Mr Sharman, Mr Salvaro, Mr Patel, Mr Kartanas, Ms Abdul to put together a dossier for Ms Jacquier who had been appointed to hear the grievance. The most detailed statement was from Mr Salvaro who did recall jokes about colleagues having spent money on prostitutes if they ran out of money at the end of the month. Mr Kartanas recalled “sometimes boyish behaviour, but that is normal ... if you see a nice looking girl, then someone might make a comment. This is human nature”.
- 59 Mr Beecroft was not interviewed but we are satisfied that it was not necessary for everybody in the team to be interviewed. We are not aware that he had any particular evidence to give.
- 60 On 4<sup>th</sup> October 2016, the day before the grievance hearing, the Claimant emailed someone she was close to at another company, B N Paribas, saying “I just can’t wait to move on to another job”. She did not mention that she was in the middle of a big harassment problem.
- 61 The grievance hearing took place on 5 October 2016. The Claimant was present along with Anne Jacquier, who was secretary to the Spring group and not connected to the Claimant’s team and with Gwenael Rosec from HR.

- 62 The Claimant raised her concerns about the prostitute comments but Ms Rosec was very struck by the fact that she was unable to provide any specific detail at all.
- 63 She had not mentioned concerns about her colleagues watching pornography in her grievance which is very strange given that this was by far the most significant and troubling allegation. She raised it for the first time at the grievance hearing but was unable to give any precise examples. Though she must have known it at the time, she was referring the private group which Mr Salvaro had told us about and the only way she could have know about it was that he, her friend, had told her about it. He told us that she had not been exposed to the content and that anyway the content was not very serious, it was most certainly not a WhatsApp group set up to watch and exchange porn.
- 64 A few days after the grievance hearing the Claimant signed up for a quiz night event with her colleagues and Mr Salvaro said that all seemed well. Her complaint that she had not been protected from this environment by HR seems rather hollow in the circumstances.
- 65 After the grievance hearing, Ms Jacquier requested that HR interview a few more witnesses and people from other teams were interviewed to see if they had witnessed anything. This was because it is an open plan floor and the inappropriate culture would not necessary stop at the end of the Claimant's team's bank of desks. Only one witness, Mr Marzouki raised concerns about jokes about women which he thought were inappropriate. He did not provide detail.
- 66 Ms Rosec does not doubt that there were jokes about women and sex but her conclusion was that they were not intended to harm and did no harm in fact, they were of the level of bad language, not worse.
- 67 On 10 November, Ms Rosec interviewed Kristel Pana who also mentioned that the team makes silly jokes about women.
- 68 On 18 November 2016, the grievance outcome was emailed to the Claimant. Ms Jacquier upheld the complaint that there had been unprofessional behaviour and so the Claimant was partly successful. She has behaved throughout this process as if the Respondent entirely rejected her complaints.
- 69 Ms Jacquier did not, however, think that the Claimant had been harassed because she did not think that the jokes about women, whilst unprofessional, had either been intended to harm or had the effect of harming to the level of sexual harassment. Ms Jacquier is aware of the definition of sexual harassment. She also did not think that there had been racist comments against French people.

- 70 Because there had been jokes which had had the potential of offending, although they did not do so in this case, Ms Jacquier believed that there needed to be better training than existed already and recommended that Mr Nord go to sit with Mr Mistry's team so that he could help it change its culture and also that there should be extensive face to face training on diversity and how to behave in a professional manner. Mr Mistry also needed to be trained on communication because Ms Jacquier believed that "even if those comments were meant as jokes, these should not be tolerated and even less encouraged by a manager". Finally, she said that management should email all staff about expected behaviour, the prohibition of use of mobile phones on the trading floor and the escalation process to follow in case such rules were not respected.
- 71 The question about use of phones on the trading floor arose because some of the Respondent's witnesses said that it was quite impossible for the Claimant to have witnessed pornographic material on personal phones because they were banned on the trading floor. However, it transpired that she could of course have seen messages in break out areas and that although phones were not used as telephones on the trading floor sometimes they were looked at when messages came in, so this was rather unimportant point in the end.
- 72 The Claimant notified HR that she was appealing the decision. She set out her grounds in writing on 2 December, her contract having terminated on 30 November. In fact the appeal was out of time but the Respondents allowed her to pursue it anyway. In the appeal she raised for the first time the concern that she had been denied a permanent job by Mr Mistry. Her reason for not putting it in her original grievance was that she had not thought about it before!
- 73 The Claimant declined to attend the grievance meeting and also to discuss her grievance on the telephone with the appeal manager, Karen James.
- 74 The appeal took the form of a review and both Ms James and her HR Support Ms Kanesarajah were content that the Jacquier process had been thorough and satisfactory. They were surprised that the Claimant did not make the effort to come to the appeal and considered that this was symptomatic of her lack of real engagement in the issues. Ms James in her position of Chief of Staff is known on the floor as someone who supports young people and young women in particular and she did not accept that the Claimant would not feel comfortable in coming to speak to her before she raised the grievance or in speaking to her face to face during the appeal. We agree that we consider that the Claimant's credibility was undermined by the fact that she did not take the opportunity to speak to any female colleagues of whatever seniority, including her peers about her concerns. In fact, Ms James thinks that Ms Jacquier went further than was needed because as soon as Mr Mistry was challenged about his behaviour he started to change and took on board that whilst he was not always quite sure about how to behave it was best to keep silent if in doubt.

- 75 The Claimant lodged her Tribunal claim on 14 February 2017.
- 76 Mr Bernard and Mr Nord addressed the Claimant's grievance in Mr Mistry's annual appraisal commenting that the behaviour of his team had been a problem during the year. We have to say that whilst Mr Mistry was most certainly the butt of the Claimant's complaints, his behaviour has not been the focus of the evidence which we have considered. We have not identified that he said anything inappropriate himself, but perhaps his mistake was to tolerate over boisterous behaviour of his team and not to lead by example.
- 77 The diversity training did not take place until 27 September 2017, which is rather disappointing in that there was a considerable delay. This was explained by the fact that careful planning was necessary and in the end 30 people attended the training and it was said to be very useful. The number one lesson for Mr Mistry as a result of the training was that everyone was encouraged that if somebody took offence at something they should raise it. It is notable that the Claimant never raised concerns.
- 78 Since her contract ended, the Claimant has been working. She has in fact had three jobs, one with Natixis which she seems to have left suddenly under a bit of a cloud. Her second job was with EY, this was a very much more junior job and she left after a month; again her employer was not happy.
- 79 As at the time of this hearing she was working for a third employer. At the start of the hearing Mr Vallet announced that the Claimant would only be at the hearing for a couple of days because she had to get back to work. This rather contradicted her assertion in her statement that this employment had been fatally jeopardised by the fact that somebody at the Respondent had given a negative reference.
- 80 The Respondent's official policy is only to give factual dates of employment references. If a personal reference was given it must be correct that the view that the Claimant's standard of work was alright but not stellar was factually correct.

## Conclusions

- 80 Most of our conclusions appear in the text above, but to summarise:

### **Direct Sex Discrimination Equality Act 13 (1) and 39 (2) (d)**

- 81.1 The Claimant says that she suffered less favourable treatment because of her sex. The alleged detriments, amended slightly during the course of the Hearing and as drafted by Mr Vallet, appear below in italics with our conclusions following on:

- (a) *She was excluded from all team events organised by Hemal Mistry.*



This is clearly not true and we have recorded that she was invited both by Mr Mistry and by other colleagues.

- (b) *There was little or aggressive communication by Mr Mistry: Mr Mistry did talk to the Claimant very rarely, and instead chose on numerous occasions to pass via one of the Claimant's colleagues to ask her something rather than speak directly to the Claimant. The communication was difficult as recorded above.*

Mr Mistry struggled to work out how to manage the claimant and in the end had to seek HR advice. the claimant had no respect for him and often seemed to have the upper hand. This explains the lack of a fluent working relationship. There is no evidence at all of him communicating aggressively, just of him doing his job.

- (c) *The Claimant was not considered for two permanent positions in the team despite her spotless performance and the fact that she later trained the people hired for those roles.*

The performance was not spotless as the claimant knew being the second choice to remain for a second year. We are not aware of training that she provided. The claimant did not apply for any permanent positions towards the end of her contract and it surprising that she should make this allegation given that she knew the recruitment policy perfectly well.

- (d) *A gender balance in the team largely biased against women as a result of Hemal Mistry's authoritarian hiring decisions, supported by the Management and HR Departments.*

This in itself is not discrimination against the claimant although it might be evidence supporting a claim. There is in fact no evidence that Mr Mistry particularly disliked employing women, for example he recruited her and then renewed her contract for a second year which he did not need to do. It is unfortunate that there is such a poor gender balance in the organisation and we note that the respondent is working hard to address that.

**Direct Discrimination in Recruitment, Equality Act Section 13 (1) and 39 (2)  
(b)**

81.2 Discrimination in recruitment.

- (a) *By failing to consider the Claimant for two permanent positions in the Credit Middle Office Team.*
- (b) *By Mr Mistry failing to suggest that the Claimant applied for those positions;*

- (c) *By Mr Mistry deliberately choosing to hide the information that the two permanent positions were available.*

See above. The claimant did not like working for the team and so it would have been surprising if she had decided she wanted to stay on. She knew of the vacancies when she saw her colleagues leaving and these were not hidden from her. It was her choice not to apply. Also she was not allowed to apply until the last twelve weeks of her contract. Mr Mistry did not think that highly of the claimant so any lack of encouragement was consistent with that.

## Harassment

82 The alleged acts of harassment are:-

- (a) *Disgusting behaviours by the Capital Markets Middle Office Credit Team such as burping, passing wind, misogynist jokes and remarks about women, weekly open conversations about prostitutes and drugs.*

As Anne Jacquier found this sort of behaviour did happen and was unprofessional but was not related to the claimant's gender and so not harassment. There were jokes about women and prostitutes which Ms Jacquier also thought were unprofessional but not harassment. We agree with the distinction that she made. The jokes about wives' cooking and spending money on prostitutes were bad taste and to be avoided but they fell well below the threshold of harassment because:

- i. The claimant never told them that the jokes were unwanted and what was said was not obviously unwanted, particularly given the claimant's manner and active participation in the social life at work.
- ii. They were jokes and part of a laddish, but not a threatening culture. It would not be reasonable to find them to be harassment in this context.
- iii. They were not as frequent as alleged as they related to the month end.
- iv. There was no real possibility that the men were using prostitutes and they therefore did not and could not go into detail (and the use of prostitutes is a fact of life not in itself an act of harassment). We say this because providing lurid detail could be unwanted.
- v. The claimant "gave as good as she got", actively participating in some distasteful conversations. There is no evidence that the

claimant was upset at the time although she was upset by having to account for her sick leave.

- vi. The fact that the claimant did not get involved in Spring or talk to senior women on the floor indicated both that she was robust and also that she did not feel vulnerable at the time.
- vii. The timing of the grievance complaint after the claimant had been finally challenged about her sick leave and as her contract was coming to an end makes the allegations more likely to be opportunistic.

(b) *Pornographic videos and images exchanged on the desk between the team.*

The conclusions in (a) above apply, and in addition:

- i. The claimant did not complain of this in her original grievance but only mentioned it at the grievance hearing, itself indicating that what might have been considered that might have been the worst allegation was only at the back of her mind.
- ii. Also, she was shown the photos by Mr Salvaro and did not complain about him at all, there is no known link to Mr Mistry although he was in the group.
- iii. The content was exaggerated by the claimant. Mr Salvaro gave compelling evidence that it was not porn, more nudity intermingled with football fixtures and so participation in the group at work may have been unprofessional but not intimidating.
- iv. This material was not forced upon the claimant, rather she was briefly shown a WhatsApp private group by her friend in a private setting.

(c) *Ball games played in the office by the team, including on one occasion when the Claimant was accidentally hit.*

Nobody, including the claimant, can seriously contend that this was related to gender albeit that the extent of the activity was unprofessional.

(d) *Mr Mistry put the Claimant under close surveillance and immediately interrupted her every attempt to communicate with the other team members.*

We saw no evidence of this, see above.

- (e) *Mr Mistry admitted on several occasions that he wished the Claimant would quit and once spread rumours that she may have been murdered by her boyfriend.*

This was not related to gender. To the extent that he behaved this way, it was related to fact in that Mr Mistry did not think she was very good and she had been in a violent argument with her boyfriend.

So, in conclusion, the claimant seems to have been happy enough to go along with the boisterous behaviour of the team and also happy to and capable of engaging in salacious gossip herself. She was not someone with a susceptibility to this kind of low level behaviour. We are reminded time and again in cases such as *Sanderson* that we must not confuse minor behaviour with unlawful harassment.

### **Victimisation**

83 The Claimant alleges that victimisation occurred:-

- (a) *When Mr Mistry allegedly informed the team of the Claimant's grievance despite the confidentiality of the process.*

There is no evidence of that.

- (b) *By leaving the Claimant at her desk without any change in a stressful and potentially dangerous environment after her grievance; as well as not keeping her updated of the progress of the investigation.*

The opposite was true. Ms Gamble offered her the chance to go home and was very solicitous. HR and management took the complaints very seriously.

- (c) *By failing to address the findings of their investigation in a timely manner if at all.*

There is no evidence that the delay was aimed at the claimant. Indeed, why would it be as the claimant had already left.

### **Time**

84 Those detriments falling before 24 October 2016 are out of time. There was no continuing act and it would not be just and equitable to extend time. The claimant was a robust individual and had the determined support of Mr Vallet. There is no evidence that she was not able to bring a claim sooner.

She even told Ms Gamble in September 2016 that she knew she could sue them, see paragraph 56. This means both that she could have acted well before she did and that she did not think she had to wait until the grievance was over to bring a claim.

***Reasonable Steps Defence***

84 *The Respondent defends the action under Section 109 (4) on the basis that it has taken all reasonably practicable steps to prevent the detriments.*

The fact that there was unprofessional behaviour going on which could at times be called sexist and that Ms Jacquier decided that equal opportunities training was required means that this defence would probably not have been successful.

85 It is our overall conclusion that the claimant and Mr Vallet put together a dossier of all the things she did not like about her work or which might have been unlawful and opportunistically labelled it discrimination, harassment and victimisation. Some unprofessional behaviour did take place, and some of that would rightly be labelled sexist, but we are unanimous in finding that it was not unlawful.

Employment Judge Wade on 3 January 2018