



EMPLOYMENT TRIBUNALS

Claimant: Miss P Macarthur

Respondent: Remote Watch Monitoring Limited

Heard at: Leeds **on** 14 and 15 December 2021
11 January 2022 (reserved decision in chambers)

Before: Employment Judge Cox

Members: Ms M Cairns

Ms N Takla-Wright

Representation:

Claimant: Ms Mellor, counsel

Respondent: Mr Sangha, counsel

RESERVED JUDGMENT

1. The claim of wrongful dismissal by failure to follow the correct disciplinary procedures is dismissed on withdrawal by the Claimant.
2. The remaining claims all fail and are dismissed.

REASONS

1. The Claimant presented her claim on 12 February 2021 after a period of early conciliation by ACAS that lasted from 2 December 2020 to 12 January 2021.

The allegations and issues

2. The Claimant worked for the Respondent as a CCTV operative from 7 January 2020 until she was dismissed without notice on 18 November 2020. At a Preliminary Hearing for case management on 15 April 2021, at a time when the

Claimant was not yet legally represented in these proceedings, she clarified that she was alleging that her dismissal amounted to an act of direct discrimination. That is, she claimed that, in dismissing her the Respondent had, because of her sex, treated her less favourably than it treated, or would have treated, a man in circumstances that were not materially different (Section 39(2)(c) read with Sections 13 and 23 of the Equality Act 2010 – the EqA). The Claimant alleged that a male employee, Mr Alasdair Kennedy, had done something similar to what she had done but had not been dismissed. The issue for the Tribunal was whether the Respondent's decision to dismiss the Claimant was in fact because of her sex.

3. The Claimant was dismissed without notice. She claimed that she was entitled to notice pay, that is, damages to compensate her for the Respondent's breach of her contractual right to notice of dismissal. The issue in relation to this aspect of her claim was whether the Respondent was entitled to dismiss her without notice because she had acted in very serious breach of her contract of employment. If she had, then the Respondent was released from its obligations under her contract, including the need to give her notice of dismissal.
4. The claim form also included a claim of wrongful dismissal by failure to follow the correct disciplinary procedures but at the Hearing the Claimant confirmed that she was not pursuing that aspect of the claim. That allegation is therefore dismissed under Rule 52 of the Tribunal's Rules of Procedure.
5. The Claimant also wanted to allege that she had been victimised and subjected to sexual harassment. At the Hearing, the Claimant's representative accepted that these claims were not in the claim form. The claim had been managed since the Preliminary Hearing on 15 April 2021, however, on the basis that they were: the Claimant had been ordered to provide further details of them and the Respondent had provided an amended response to them. The Claimant applied to amend her claim to include them and the Respondent did not resist that application. The Tribunal decided to give the Claimant leave to amend her claim to include them, for reasons given orally at the Hearing.
6. The allegation of sexual harassment consisted of a comment made to the Claimant by Mr James Uddin, her team leader, during a night shift they worked together in March 2020. During the shift, Mr Uddin had accused her of doing no work and told her that if she did not do any work he would have her sacked. The Claimant alleged that she "took this humorously" but Mr Uddin's response was: "If you don't shut up I will come over there and shove my dick down your throat to shut you up". In these reasons, this phrase is referred to as "the dick comment". The Respondent accepted that, if this comment was said, it would amount to unwanted conduct of a sexual nature that had the purpose or effect of creating a hostile environment for the Claimant, and would therefore be unlawful under Section 40(1)(a) read with Section 26 EqA.

7. The first issue the Tribunal had to decide was whether it had jurisdiction (that is, power) to deal with this aspect of the claim, given that the alleged comment was made in March 2020 and the time limit for presenting a claim is three months beginning with the date of the act of discrimination or such other period as the Tribunal thinks just and equitable (Section 123(1) EqA). The extension of the time limit to allow for a period of early conciliation through ACAS did not apply in relation to this allegation because the Claimant did not approach ACAS until December 2020, nine months after the date of the alleged harassment. The Claimant did not argue that this allegation should be viewed along with the allegation relating to her dismissal as conduct extending over a period, so the provisions of Section 123(3) did not apply. (The Tribunal is also satisfied that it could not be viewed as such. This allegation was of a different type of discrimination, alleged to have been committed by a different individual and on a date several months earlier.)
8. If the Tribunal had power to deal with this allegation, the second issue was whether the comment was in fact made.
9. The allegation of victimisation was that the decision to dismiss the Claimant was unfavourable treatment because she had complained to Mr Wayne Robinson, the Respondent's General Manager, about what Mr Uddin had said to her. It is unlawful to subject an employee to a detriment because she has done a protected act (Section 39(4)(c) read with Section 27 EqA). A protected act is defined to include alleging that a person has breached the EqA (Section 27(2)(d) EqA). A time limit issue arose in relation to this aspect of the claim also, since the dismissal occurred on 18 November 2020 but the application to amend was not made until 14 December 2021. If the Tribunal had power to deal with this aspect of the claim, the next issues were whether the Claimant had in fact done a protected act and, if she had, whether the Respondent dismissed her because of that.

The evidence

10. At the Hearing, the Tribunal heard oral evidence from the Claimant and Mr Kennedy, who worked for the Respondent from 5 November 2018 as a CCTV operative and then team leader until his resignation on 23 September 2021. The Claimant also submitted a witness statement from Mr Craven, who worked for the Respondent as a CCTV operative from October 2020 until he resigned in August 2021. She invited the Tribunal to give this statement what weight it considered appropriate, given that Mr Craven did not attend and so was not available to be cross-examined on his evidence.
11. For the Respondent, the Tribunal heard evidence from Mr Robinson, who as General Manager had responsibility for staff management and made the decision to dismiss the Claimant, and Mr Karl Walters, the Respondent's Managing

Director. Mr Uddin, who still works for the Respondent although now demoted to CCTV operative from team leader, did not give evidence.

12. On the basis of that evidence and the documents in the Hearing file to which the Tribunal was referred, it made the following findings.

Background facts

13. The Respondent provides monitoring and surveillance services to private individuals and businesses. It has 21 employees. The business has a monitoring room that is staffed by operatives 24 hours a day, working on day or night shifts. There are 13 or 14 operatives. At the time the Claimant was employed, only two of the operatives were women: the Claimant, who worked on the night shift, and another individual who worked part-time on day shifts and at weekends. Operatives are supervised by team leaders, but subject to full line management by Mr Robinson.
14. Mr Robinson joined the business in 2014 and has overall responsibility for staffing matters, including recruitment and discipline. He is relatively inexperienced in managing people, this being his first managerial role. He accepted in evidence that he was “very much on a learning curve”. (This is apparent from the fact that all the documentation in the Hearing file relating to disciplinary matters he had dealt with shows him describing all alleged disciplinary offences as “gross misconduct”, regardless of their actual severity, because he believed this would allow him more flexibility in what sanction to impose.)
15. The system that the Respondent operates detects when there has been an alarm triggered at the client’s site and relays that information to an operative in the monitoring room. The operative then reviews the camera footage on their screens and makes a judgment call as to whether to call the police and/or the client’s keyholders. The system also alerts the monitoring room when there is a line fault, that is, when the Respondent’s electronic communication with the client’s site has gone down. This might be due to a fault with the technology, but it might also mean that someone has cut the line to disable the alarms and cut off the CCTV feed to allow them to break into the premises.
16. Operatives are required to respond instantaneously when notified of an alarm or line fault, given the potential consequences of delay. They must call the police and/or the keyholder, not send an email. This is particularly important on the night shift, because an email will not wake a client’s keyholder if they are sleeping. If an operative does not comply with the Respondent’s alarm handling procedure by escalating the fault as required, the Respondent will investigate the matter and invite the operative to a disciplinary hearing. Any breach of the alarm handling procedure is treated seriously because if the appropriate action is not taken the client’s site may be burgled, with serious ramifications for the

Respondent's business, not just in terms of potential loss of the client's business and potential claims from the client for its losses, but also because the Respondent might lose its National Security Inspectorate accreditation and the loss of potential future business that might flow from that.

17. The Respondent recruited the Claimant on 7 January 2020. On recruitment, she was given the Respondent's alarm handling procedures, which laid down how she was required to respond to alarms and line faults.

Sexual harassment: time limits

18. The allegation of harassment became part of the claim when an application was made to amend the claim to include it on the first morning of the Hearing on 14 December 2021.
19. The Tribunal considered the length of and reasons for the delay in presenting this aspect of the claim. The Tribunal considers that, in assessing whether this allegation has been presented within a just and equitable period, it should not have regard to the period between 15 April 2021, from which date the Tribunal proceeded on the basis that the allegation was already part of the claim, and 14 December 2021. It would not be just to hold it against the Claimant that she took no action during a period when she could reasonably assume that this allegation had been accepted as being part of the claim. It is still necessary, however, to consider why the allegation was not included in the claim form, which was presented on 12 February 2021, already 11 months after the date of the alleged harassment. All the details in the claim form related to alleged discriminatory treatment of the Claimant by Mr Robinson. The only reference in the claim form to sexual harassment is that Mr Robinson had treated the Claimant unfairly by ignoring her complaint about her report of "sexual harassment from my team leader". There was no complaint about, or details of, the sexual harassment itself.
20. The Claimant's evidence was that she had not brought her claim of harassment to the Tribunal earlier because she did not want to risk losing her job and thought Mr Uddin's comment might be a one-off incident. She would bring a claim if the conduct continued. The Tribunal did not find this a credible explanation for the delay. Immediately after the incident, on the Claimant's own account, she felt able to complain to Mr Robinson about what Mr Uddin had said, so she clearly did not feel inhibited about making a complaint. By the time she presented her claim, her employment had already terminated, so there was no question of her continued employment being put at risk by making a claim.
21. In cross-examination, the Claimant said that she did not know about Tribunals at the time when Mr Uddin made his comment. She clearly did, however, by the time she approached ACAS in December 2020. Whilst the Claimant was not officially legally represented in her claim until the date of a Preliminary Hearing

on 29 June 2021, she was aware of the concept of sexual harassment when she presented her claim, because she mentioned it in the claim form, and of sex discrimination, because that was what she was claiming. In the further details of her claim, which she sent to the Tribunal on 5 May 2021, she said: "During my time I was a victim of sexual harassment in contravention of the Equality Act 2010 Section 27 by my team leader James Uddin". From the language the Claimant used in her claim form and these further details, it is apparent that she was receiving some form of legal advice even before she formally became legally represented. The Tribunal is satisfied that even at the time she presented her claim the Claimant knew, or could reasonably have been expected to know, that sexual harassment was a form of sex discrimination and was unlawful.

22. The Tribunal concludes that there was no good reason why the claim of sexual harassment by Mr Uddin could not have been presented earlier, by the date of the original claim if not before.
23. The Claimant argued that the Respondent was not prejudiced by the Tribunal accepting jurisdiction to hear the claim, since Mr Uddin was still working for the Respondent and so it was in a position to defend the claim by asking him to give evidence. The Tribunal accepts that the Respondent was in a position to ask Mr Uddin to give evidence. The Tribunal was not told why he did not give evidence. If he had done so, however, he was being asked to remember what he said to the Claimant 21 months previously. Whilst it might be expected that he would remember if he had used the offensive language he was accused of using, regardless of the passage of time, it is also possible that the lapse of time might have affected his ability to remember what exact words he had used. Indeed, it was the Claimant's case that he was accustomed to making offensive remarks.
24. The Tribunal also took into account that, if it accepted that the claim had been presented within a just and equitable period, the Respondent would effectively lose the advantage of the primary three-month time limit even though there was no good reason for it not having been met. On the other hand, while the Claimant would lose the opportunity to pursue this allegation if the Tribunal concluded that it had no power to consider it, she would still be able to pursue the allegation that was clearly the focus of her claim form, that is, that Mr Robinson had treated her in a discriminatory way by dismissing her.
25. The Tribunal concludes that the claim of sexual harassment has not been presented within three months beginning with the date of the alleged harassment nor within a just and equitable period. For that reason, the claim is dismissed.

Direct discrimination in dismissal

26. The Claimant's performance was not good. In the 10 months during which she was employed, Mr Robinson had reason to question her actions in a disciplinary capacity on four occasions, a high incidence compared to other staff. She was

absent from work without authorisation on four occasions. She admitted to breaching the Respondent's procedures and on two occasions had confrontational arguments with different team leaders because she refused to comply with their requests to follow procedures. On 4 August 2020 she was issued with a formal warning for not working when on shift. She was issued with a verbal warning on 13 August 2020 for failing to follow the Respondent's policy on mobile 'phones, having refused to put her 'phone in the box in which staff were required to deposit their 'phones whilst they were working.

27. There were also seven incidents of failure to follow the Respondent's alarm handling procedure for which the Claimant was investigated, some of which resulted in a disciplinary sanction. The first, on 10 March 2020 resulted in no disciplinary action. The second, on 18 March 2020, resulted in no sanction but she was given advice on how her performance needed to improve. For the third incident on 7 May 2020, there was again no sanction, but she was given advice. For the fourth incident on 12 April 2020, she was issued with a formal written warning. For the fifth incident, on 21 May 2020, no sanction was issued but the Claimant was given advice.
28. The sixth and seventh incidents most immediately preceded the Claimant's dismissal. The sixth related to premises in Gosforth. A line fault was indicated. In breach of procedure, the Claimant did not 'phone the keyholder but emailed instead. In her evidence to the Tribunal, she accepted that she should have 'phoned. The client's installer informed the Respondent that it had not been told about the line fault. The Respondent began an investigation. The Claimant said she had reported the fault, by email. Mr Robinson asked for proof. The Claimant sent him the email she had sent. Mr Robinson did not see it at the time, not having appreciated what it was from the subject field. In any event, the correct procedure was for the fault to be reported by calling the keyholder, not sending an email.
29. In the meantime, Mr Robinson asked the Claimant to attend another investigation meeting to discuss a seventh breach in alarm handling procedure, involving a business centre premises.
30. On 18 November Mr Robinson conducted a disciplinary meeting with the Claimant to discuss the Gosforth incident. Having heard what the Claimant had to say, Mr Robinson decided that she had indeed failed yet again to follow the alarm handling procedure. She had had words of advice and warnings before and her performance had not improved. Her attitude towards her work and attendance was also poor. He was unable to identify any mitigating factors. He decided to dismiss the Claimant.

Findings in relation to the comparator

31. The Claimant alleged that Mr Kennedy had also not followed the alarm handling procedure but had not been dismissed. In March 2021 Mr Kennedy was issued with a warning for not following procedure in relation to a line fault. He too had failed to 'phone the correct person to report a fault. The Tribunal accepts Mr Robinson's evidence, however, that there were significant differences between the material circumstances of the Claimant's case and Mr Kennedy's. Mr Kennedy was an experienced operator who had been with the Respondent since November 2018 but had not been formally disciplined for failing to follow the alarm handling procedure before. Unlike the Claimant, he had attempted to 'phone the client to report the fault but had called the wrong number by mistake and left a message. Unlike the Claimant, he was an employee who accepted and acted on criticism of his performance. His work rate and work ethic were better than the Claimant's and were enough to justify his later promotion to team leader.
32. The Tribunal finds that for all these reasons, the material circumstances in Mr Kennedy's case were very different to those in the case of the Claimant. There is nothing about his case that establishes or even indicates that a male employee who was in fact in the same or not materially different circumstances as the Claimant would not have been dismissed.

Allegations said to support an inference of discrimination

33. The Claimant made various allegations that she said supported her claim that the decision to dismiss her had been made because of her sex.
34. The Claimant said that at her recruitment interview Mr Robinson had told her that it was unusual for the Respondent to hire female employees. After the Claimant accepted the job, he told her that he had mentioned the lack of female recruits out of concern that she was a parent with a young child and the working environment was all-male and she might "have difficulty coping with the lads". The Tribunal finds, as Mr Robinson himself accepted, that he did ask the Claimant whether she would be comfortable working in a male-dominated environment. He also asked whether she would be comfortable working late shifts. He knew that she had a young child and, as a father of five himself and a former CCTV operative, he knew how difficult it was to get uninterrupted sleep during the day when there are children in the home.
35. The Tribunal accepts that Mr Robinson would have been unlikely to have made these comments to a male applicant for the role. He made the comments because he wanted to be fair to the Claimant by making sure she knew what she was taking on. If he made the comments because he was antagonistic towards the idea of employing women, it would be difficult to explain why he decided to recruit her. His comments were paternalistic and ill-judged, but the Tribunal does not accept that they support an inference that he would be likely later to treat the

Claimant less favourably than a man in disciplinary matters because she is a woman.

36. The Claimant said that Mr Robinson had ignored her complaint that she had been sexually harassed by Mr Uddin, and that this indicated he was hostile towards her as a woman.
37. The majority of the Tribunal does not accept that the Claimant ever told Mr Robinson that Mr Uddin had made the dick comment. Her own witness statement is not clear on what she told Mr Robinson at the time, and the complaint form that she completed at Mr Robinson's request did not contain the comment. The form read as follows (with the text the Claimant entered in manuscript indicated in bold text):

*Dear Paisley,
After our brief discussion, post shift, last week, where you stated that your team leader, had threatened you with dismissal and had used foul language, directly at you. We have made the decision, that should you wish formally log a complaint, that we will investigate further and have James answer for his actions.*

Should you not wish this matter to go further, please sign below, however, should you wish for us to take action, Could you please narrate a brief account of what occurred during the shift and some of the issues you had, with the way James spoke to you. Could you also provide details of any witnesses that were present at the time?

*. . .
I **Paisley Macarthur** would like further investigation to be performed in reference to the issues mentioned as below:*

Summary of events

*I was talking to **Alasdair** [Mr Kennedy] and **James** [Mr Uddin] shouted "**Paisley do some _____ (foul language) alarms**"*

*I responded with "**James why dont you do some alarms**"*

*James then said "**the last person to speak to me like that was sacked so carry on Paisley and see what happens**"*

*Name of Witnesses: **Alasdair Kennedy***

38. In her witness statement, the Claimant said that she apologised to Mr Robinson for the form being brief but she did not feel comfortable putting what Mr Uddin

said to her down on the form and leaving it on Mr Robinson's desk without speaking to him about it. She offered to amend the form but he told her it was not necessary as he would deal with it. In cross-examination the Claimant said that she had told Mr Robinson orally about the dick comment. She said that she had left a gap on the form after "Paisley do some _____ (foul language) alarms" so that she could insert the exact comments if Mr Robinson had wanted her to do so. She had not wanted to put the dick comment on the form in case someone had an opportunity to read it while it was lying on Mr Robinson's desk.

39. The majority of the Tribunal does not accept this evidence as credible. It considers it significant that the Claimant said only in cross-examination that she had told Mr Robinson exactly what Mr Uddin had said; she did not say this in her witness statement. The majority prefers Mr Robinson's evidence, which was that the Claimant only ever told him that Mr Uddin had said what the Claimant recorded on the form. The first he knew about her allegation that Mr Uddin had made the dick comment was during the course of these proceedings, when she provided further details of her claim. When Mr Robinson interviewed Mr Uddin about whether he had said what the Claimant put on the complaint form, he accepted that he had, and that it was not appropriate language for a team leader to be using. Mr Robinson issued him with a disciplinary warning. The majority of the Tribunal considers that, if the Claimant had told Mr Robinson about the dick comment, she would have included it on the complaint form, substituting the offending phrase with "(foul language)", as she had with the other offensive word Mr Uddin had used. If she had decided, as she alleged she had, to leave a gap for the dick comment, she would have left the gap after her comment "James why don't you do some alarms", because that was what, in her evidence to the Tribunal, she said the dick comment was in response to. Further, the Tribunal accepts the evidence of Mr Robinson and Mr Walters, that if she had told the Respondent that the dick comment had been made, the Respondent would have acted much more decisively against Mr Uddin. Mr Robinson would have been very surprised if Mr Uddin would still have been working for the company.
40. The member in the minority (Mrs Takla-Wright) accepts the Claimant's evidence that she did tell Mr Robinson about the dick comment. She considers that it is unlikely that the Claimant would make this up and considers the Claimant's evidence on the point to be more credible than that of Mr Robinson.
41. In summary, the majority of the Tribunal finds that the Claimant never told Mr Robinson about the dick comment and that Mr Robinson followed up on her complaint about the comments she did tell him Mr Uddin had made. The Tribunal is in any event unanimous in its conclusion that no inference can be drawn from the way in which Mr Robinson handled the Claimant's complaint against Mr Uddin that he later treated her less favourably than he would have treated a man when deciding to dismiss her.

42. The Claimant said that Mr Robinson indicated that he did not want to be “bogged down” by women’s issues and that he was biased against women because he did not offer the Claimant support when she had a miscarriage.

43. At around 6am on 29 June 2020 the Claimant texted Mr Robinson as follows:

Hi Wayne, I found out over the weekend I’m having a slow miscarriage and I’m going to be quite unwell for the next couple of weeks. I started feeling ill around 4am and I left work as soon as Jason arrived and Alan has stayed to cover. Hopefully I’ll start to get better after my hospital treatment on Thursday but just wanted to let you know I might have to have a few sick days over the next couple of weeks depending on how unwell it makes me but I will try my best to make sure I’m there. I haven’t told anyone in the office the reason I’m ill I would like to keep it as private as possible please although I understand if you have to let Karl [Mr Walters] know.

44. At 2.28pm she texted Mr Robinson again: “Hi, I haven’t slept and I’m still really unwell so I won’t be able to make it in tonight.” Mr Robinson’s texted in reply: “OK”.

45. The Tribunal accepts that this was an entirely inadequate response to the Claimant’s texts: Mr Robinson clearly should have been more supportive in his response to the Claimant’s news that she was having a miscarriage, even taking into account that he was managing a busy monitoring room. Whilst the Tribunal accepts that Mr Robinson’s response may be evidence of his serious shortcomings as a manager of people, it does not accept that it provides evidence that he is intolerant of women: it is more likely than not that he would have had a similarly brusque response to an employee needing time off for some other deeply personal matter such as the death of a partner or close relative. The Tribunal notes that Mr Robinson had on previous occasions allowed the Claimant to take time off with no or short notice to deal with family matters when they arose.

46. The Claimant said that she was the only person to be disciplined for taking her mobile ‘phone into the monitoring room. She accepted that she knew that it was against the Respondent’s policy for her to do so, but she said that Mr Uddin and Mr Kennedy had their ‘phones with them in the monitoring room on the day in question and they had not been disciplined. The Tribunal accepts that the other two employees did have their ‘phones on their desks on the day in question and were not disciplined: the Claimant’s evidence to that effect was not challenged. The Tribunal also accepts, however, Mr Robinson’s evidence, which was unchallenged and supported by documentary evidence, that two other members of the Claimant’s team, both men, had been disciplined on other occasions for having their mobile ‘phones with them in the monitoring room. Mr Walters’s own son was disciplined for not following the policy. The evidence was insufficient to

satisfy the Tribunal that Mr Robinson was displaying sex-based bias against the Claimant in disciplining her for having her mobile 'phone with her in the monitoring room.

47. The Claimant alleged that she was the first employee to have a request for holiday refused by Mr Robinson. On 2 July 2020, Mr Robinson texted the Claimant to say: *“Unfortunately. No one has come forward to cover your holidays for 14th through 17th July, therefore these holidays can not be used and will have to be rearranged. You will be expected in for your shifts.”* 2 July was the date on which the Claimant had told Mr Robinson that she would be receiving treatment in hospital.
48. The Tribunal accepts Mr Robinson’s evidence, which was supported by emails the Tribunal saw from him to various staff members, that he allows holidays that have been requested to be entered on the staffing rota, but subject to the Respondent being able to find cover for the relevant shifts. If someone volunteers to provide cover, the holiday is confirmed. If no cover can be found, the holiday may not be approved. Although Mr Robinson regrets having to refuse holiday, he has on occasion done so, for both male and female employees, if no cover arrangements can be made. Mr Robinson accepted in cross-examination that he has on occasion allowed employees to take leave even when no cover was available. Whether he was prepared to do so depended on whether there were experienced staff on the shifts in question and how busy the shifts were expected to be. The Tribunal accepts that when Mr Robinson told the Claimant she could not take the holiday she had booked he failed to consider her circumstances on the day in question, namely that she was receiving hospital treatment after her miscarriage, and that amounted to very poor people management, even taking into account that he was managing a busy monitoring room. The Tribunal had insufficient evidence, however, on the sex of the individuals who had been granted holiday when there was no cover and the material circumstances of their cases to draw any inferences that Mr Robinson refused the Claimant’s request for holiday on this occasion because she is a woman. The Claimant’s representative accepted that in her submissions.
49. The Claimant said that the Respondent deducted £470 from her final instalment of pay to recoup sums paid by the Respondent for a Security Industry Authority licence and training. This was in line with an agreement she had signed authorising such a deduction if she left the Respondent’s employment within two years of receiving the licence and training. Initially, she said that no such deduction was made from Mr Kennedy’s final instalment of wages at all, even though the Respondent had also paid for his licence and training and he had not been working for the Respondent for two years when he resigned.
50. The Tribunal finds, and the Claimant accepts, that the Respondent did in fact make a deduction from Mr Kennedy’s final instalment pay, albeit for a lesser sum of £235. The Tribunal accepts Mr Walters’s evidence that this was because he

had decided that it was not fair to deduct the full sum from an employee's wages if they had worked for a significant time after receiving the licence and training. As Mr Kennedy had worked for the Respondent for 13 months after receiving the licence and training at the point when he left the company, Mr Walters decided that only half of the costs should be deducted from his final instalment of wages. The Claimant, on the other hand, had worked for only around three months after the expenses had been incurred at the point when her employment ended. That was why the full sum was deducted from her wages, not because she was a woman. The Claimant's representative made no submissions to the contrary.

51. Mr Craven was recruited in around October 2020 as a full-time operative. In his witness statement, he said that Mr Robinson told him to tell everyone he had been recruited part-time, even though this was not true. When Mr Craven asked for clarification, Mr Robinson told him not to worry, it would all become clear in a few weeks' time, and gave him work providing holiday cover to make his hours up to full-time. Later, after the Claimant had been dismissed, Mr Robinson allocated Mr Craven the hours that the Claimant had formerly worked. This, the Claimant argued, showed that Mr Robinson recruited Mr Craven as the Claimant's replacement, knowing that he was going to dismiss her.
52. The Tribunal prefers Mr Robinson's evidence to that of Mr Craven on this issue, given that his evidence was subjected to cross-examination and that of Mr Craven was not. Mr Robinson's evidence was that Mr Craven was in fact recruited to replace another operative who had told the Respondent he was leaving. Mr Craven did not work part-time hours; after his induction he was placed full-time on the same shift as the Claimant, Mr Uddin and Mr Kennedy.
53. In summary, the Tribunal finds that these allegations are either not established on the evidence or are not supportive of any inference that the Respondent dismissed the Claimant because she is a woman.

Direct discrimination: conclusion

54. Taking into account all these findings, the Tribunal is satisfied that the reason Mr Robinson decided to dismiss the Claimant was because she had been seriously negligent in not following the alarm handling procedure, in spite of having been advised and warned on several previous occasions of what was expected of her. The Claimant's sex played no part whatsoever in his decision to dismiss her.
55. As the Tribunal is satisfied that the Claimant was dismissed for reasons entirely unrelated to her sex, the claim of direct sex discrimination fails and is dismissed.

Notice pay

56. The Claimant was not entitled to notice of dismissal if she had in fact been guilty of a very serious, or fundamental, breach of her contract of employment. The

Tribunal accepts the Respondent's evidence that the Claimant had failed to contact the Gosforth premises keyholder by 'phone when she should have understood the importance of doing so and had already received repeated "words of advice" and warnings about the importance of following the correct alarm handling procedure. The consequences for the Respondent of the Claimant's actions had already been serious at the time Mr Robinson took the decision to dismiss: he knew that the line fault had in fact been triggered by a break-in at the Gosforth premises and that the client might make a claim for compensation for its losses. It later transpired that the Respondent lost the client's business, worth between £50-60,000, and the client did inform the Respondent that it would be making a claim for compensation against it for the losses it had incurred.

57. The majority of the Tribunal considers that the Claimant had acted in fundamental breach of her contract of employment. Her response to the Gosforth incident amounted to gross negligence, given the repeated "words of advice" and warnings she had received in the past for not following the correct procedure. Although the Claimant was allowed to carry on working for six weeks after the date of the Gosforth incident before she was dismissed, that was because Mr Robinson was not going to decide whether to dismiss her for it until he had conducted a disciplinary hearing. He was not by that delay in any way accepting that her conduct had been acceptable. Taking all the circumstances into account, the majority of the Tribunal is satisfied that the Claimant had breached not only the implied term that she would perform her duties with reasonable skill and care but also the implied term, which is fundamental to any contract of employment, that she would not, without reasonable and proper cause, act in a way that was calculated or likely to destroy or seriously damage the relationship of trust and confidence between herself and the Respondent. By her repeated failure to follow the alarm handling procedure, she had destroyed the Respondent's confidence in her as an employee.
58. The minority member (Mrs Takla-Wright) considers that the delay of six weeks between the incident and the decision to dismiss indicates that the Respondent had not in fact lost trust and confidence in the Claimant and that she had not been in fundamental breach of her contract of employment. She bases this conclusion on her belief that, had the Respondent genuinely lost all trust and confidence in the Claimant, it would have suspended her over the six-week period before the disciplinary hearing.
59. As the majority of the Tribunal is satisfied that the Claimant had fundamentally breached her contract of employment and so was not entitled to notice of termination, her claim for notice pay fails.

Victimisation: time limits

60. As explained above in relation to the allegation of sexual harassment, the Tribunal considers that, in assessing whether the allegation of victimisation has been presented within a just and equitable period, it should not have regard to the period between 15 April 2021, from which date the Tribunal proceeded on the basis that the allegation of victimisation was already part of the claim, and 14 December 2021, when the application to amend was made. It is still necessary, however, to consider why the allegation was not included in the claim form, which was presented on 12 February 2021, within three months of the dismissal.
61. The Claimant gave no evidence to explain why, if she believed that she had lost her job because of a complaint she had made eight months earlier about sexual harassment by her line manager, she did not say so in her claim form. Nothing in it indicates that that was her belief. The Tribunal considers that the Respondent should not be deprived of the benefit of the primary three-month time limit when the Claimant can provide no good reason why she did not raise this allegation in the claim she presented on 12 February 2021. The Tribunal takes into account in balancing the prejudice to the parties that, even if the Tribunal concludes that she has not presented this aspect of her claim within another just and equitable period, she has still been able to pursue her claim of direct sex discrimination which, from her claim form, she clearly believed to be the reason for her dismissal.
62. The Tribunal concludes that the claim of victimisation has not been presented within three months or within another just and equitable period and it is dismissed for that reason. It will be apparent from the majority of the Tribunal's finding that the Claimant never told the Respondent about the dick comment that the majority does not accept that the Claimant did a protected act. Her victimisation claim would therefore have failed on its merits even if the Tribunal had had power to consider it.

Employment Judge Cox
Date: 18 January 2022