



EMPLOYMENT TRIBUNALS

Claimant: Miss V Donaldson
Respondent: Rolfe Contracting Ltd

Heard at: Watford (by CVP) **On:** 24 & 25 May 2021
Before: Employment Judge Skehan (sitting with members)
Mr Bury
Mrs Handley-Howorth

Appearances

For the claimant: In person
For the respondent: Mr Magee (Counsel)

RESERVED JUDGMENT

1. The claimant was not unfairly dismissed. The claim for unfair dismissal contrary to the Employment Rights Act 1996 is not well-founded.
2. The claimant's claim for sex discrimination contrary to the Equality Act 2010 is not upheld.

REASONS

Introduction & Background

1. This was a claim for unfair dismissal and direct discrimination on the grounds of sex brought by the claimant by an ET1 form issued on 11 October 2018. At the beginning of the hearing the tribunal revisited the claimant's claims and the list of issues as agreed between the parties before Employment Judge Alliott on 15 May 2019 and referred in the deliberation section below. The tribunal explained the importance of the list of issues to the parties and it was agreed that the list was a comprehensive list of the issues to be determined by the tribunal at this hearing. As this was both an unfair dismissal and direct discrimination claim, the tribunal requested that the respondent's evidence be heard first.
2. Prior to the commencement of the evidence, the claimant informed the tribunal respondent and that she would be only available to attend the hearing on the first day. The claimant said that she would be unavailable on any other hearing day other than for short periods of time during her lunch break, due to her work commitments. The claimant was not applying for an adjournment but wished

for the case to be dealt with in her absence. The tribunal noted and considered the circumstances:

- a. The tribunal reminded the claimant that this was her case. The claim had been set down for four day final hearing since 2019. Unfortunately, the initial trial date was postponed due to the Covid pandemic, however the claimant had received notification of the hearing dates on 23 March 2020.
 - b. The claimant confirmed that she had not at any time prior to the hearing in any way brought her unavailability to the attention of the respondent or the tribunal.
 - c. The tribunal told the claimant that should the claimant request that her claim be dealt with in her absence, she may be unable to provide oral evidence to the tribunal and/or there may be nobody present to cross-examine respondent witnesses. This is likely to prejudice her claims and she must be aware of that fact.
 - d. The tribunal told the claimant that it could and would, on request from the claimant, make a witness order, requiring her employer to allow her leave to attend the hearing.
 - e. The tribunal told the claimant that it was open to the claimant to apply to postpone the hearing due to her unavailability, however the claimant must be prepared to attend any relisted hearing and any successful application to postpone the hearing may result in consideration of a costs order relating to the wasted costs incurred by the respondent in attending tribunal today.
2. The claimant told the tribunal that she did not wish for the tribunal to make a witness order for her, nor did she wish for her claim to be postponed. The claimant requested that the tribunal continue to determine her claim, however she reiterated that she would not be present as she had indicated.
 3. In light of the claimant's position, the tribunal decided to hear the claimant's evidence first. The tribunal heard the entirety of the evidence provided by the claimant and Mr East on day one of the hearing. Further, the tribunal heard part of the evidence provided by Mr Rolfe and the claimant had a short opportunity to cross-examine Mr Rolfe. The claimant informed the tribunal that she would be available on day two of the hearing at 2:15pm only. The tribunal informed the claimant that the hearing would proceed in her absence however the tribunal would wait until 2:15 PM to hear any final oral submissions the claimant wished to make.
 4. On day two of the hearing the tribunal heard an application from Mr Magee on behalf of the respondent that the remainder of Mr Rolfe's evidence should be accepted as the claimant had abandoned the cross examination exercise. The tribunal declined to grant this application. The tribunal noted that the claimant's cross examination of Mr Rolfe had concluded however the tribunal had in accordance with Rule 41 of the Employment Tribunal Rules and its normal practice some questions for Mr Rolfe to clarify its understanding of the evidence and could see no reason to deviate from this practice regardless of the absence of the claimant. A further application was made by Mr Magee to dismiss the claimant's claim at this stage due to her non-attendance under the provisions of Rule 47. The tribunal considered this application and declined it concluding that it would not be in line with the overriding objective to do so and the tribunal elected to proceed with the hearing in the absence of the claimant as it had indicated to the claimant on day one of the hearing. Mr Magee had helpfully prepared written skeleton submissions that were sent to the claimant and provided oral submissions to the tribunal in the claimant's absence. The claimant provided written final submissions

to the tribunal and respondent and logged into the video hearing at 2:15pm on day 2 of the hearing from her mobile phone. The claimant had the opportunity to review Mr Magee's written submissions and said that she had no further comment to make. In light of the claimant's anticipated absence, the tribunal reserved its decision.

The Law

5. The statutory basis for an unfair dismissal claim is found in section 98 of the Employment Rights Act 1996 (ERA). For a dismissal to be fair, the employer must have a potentially fair reason for dismissing the employee. There are five potentially fair reasons for dismissal set out in S98 ERA, one of which is redundancy and another being 'some other substantial reason'. In order for a dismissal for redundancy to be fair the respondent must establish that redundancy (or in the alternative some other substantial reason being reorganisation) was the real reason for the dismissal. The redundancy definition relied upon by the respondent is contained within S139, ERA. It defines a redundancy dismissal as where the dismissal is "wholly or mainly attributable to" the employer having a reduced requirement for employees to carry out work of a particular kind or to carry out work of a particular kind at the place where the employee was employed to work.
6. We must consider whether the decision to dismiss the claimant was within the range of conduct that a reasonable employer could have adopted ("the band of reasonable responses test"), having regard to *section 98(4)* ERA and the principles of fairness established by case law. In *Williams and others v Compair Maxam Ltd [1982] IRLR 83*, the EAT emphasised that tribunals should not impose their own standards and decide whether, had they been the employer, they would have acted differently. This is referred to as a tribunal adopting the "substitution mindset"; in other words, the tribunal should not substitute its view for that of the employer. Rather, they must ask whether the employer's decision fell within the band of reasonable responses. The leading case on reasonableness in relation to redundancy is *Polkey v A E Dayton Services Ltd [1987] IRLR 503* in which the House of Lords held that an employer will normally not act reasonably (and a dismissal will therefore be unfair) unless it:
 - a. Warns and consults employees, or their representative(s), about the proposed redundancy.
 - b. Adopts a fair basis on which to select for redundancy. An employer must identify an appropriate pool from which to select potentially redundant employees and must select against proper criteria.
 - c. Considers suitable alternative employment. An employer must search for and, if it is available, offer suitable alternative employment within its organisation.
7. In *Langston v Cranfield University [1998] IRLR 172*, the EAT held that the issues in *Polkey* are so well established that a tribunal is normally obliged to take them into account when considering an unfair redundancy dismissal claim, whether or not they have each been raised by the employee. The EAT noted that the burden of establishing unreasonableness does not fall on a claimant but is one for the tribunal to consider on a "neutral" basis. It held that, unless the parties have agreed otherwise, it is implicit in an unfair redundancy dismissal claim that the tribunal must consider each of the three main issues of consultation, selection and suitable

alternative employment, even if these points have not been raised by the claimant. The employer would normally be expected to lead some evidence as to all of these issues.

8. The statutory basis for a claim of direct discrimination is provided for within section 13 Equality Act 2010 (EqA). The question for direct discrimination is whether, because of sex the respondent has treated the claimant less favourably than it has treated or would treat others. For the purposes of direct discrimination, the employment tribunal needs to consider a comparator. Section 23 EqA tells us that there must be no material difference between the circumstances of the claimant and the comparator other than the protected characteristic. In the absence of any actual comparator the tribunal will consider a hypothetical comparator in materially similar circumstances to the claimant.

The Evidence

9. We heard evidence from the claimant on her own behalf. On behalf of the respondent, we heard evidence from Mr East, who dealt with the dismissal and Mr Rolfe, the respondent's managing director. These witnesses gave evidence under affirmation. Their witness statements were adopted and accepted as evidence-in-chief and the witnesses were cross-examined.
10. As is not unusual in these cases the parties have referred in evidence to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party, or deal with it in the detail in which I heard, it is not an oversight or an omission but reflects the extent to which that point was of assistance. We only set out our principal findings of fact. We make findings on the balance of probability taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.
11. The respondent is a construction, engineering and facilities management business. the claimant was employed as a contract/project administrator by the respondent from 19 May 2008. The claimant describes a good working relationship with 'very few problems' prior to January 2018. The claimant says within her claim form that she had the respect of the directors and staff within the respondent.
12. The claimant refers in her claim form to a challenging relationship with her colleague Ms Ryan, alleging that Ms Ryan was aggrieved that staff would come to the claimant over her. Within her witness statement, the claimant elaborates on the difficulties experienced with Ms Ryan. The claimant says that in January 2018, she emailed the respondent requesting clarity on her role and Ms Ryan's role. Following this, Ms Ryan, 'put in a grievance against me as I had queried why she is working outside of her remit in regards to tenders, increased approval values, invoices etc.'. We were provided with 7 pages of notes of the investigation meeting held with the claimant on 18 January 2018. The outcome of the grievance raised by Ms Ryan was a 'letter of concern' sent by the respondent to the claimant on 26 January 2018. During the course of cross-examination the claimant told the tribunal that she did not accept that there was a poor working relationship between herself and Ms Ryan and that she did not accept that Ms Ryan voluntarily raised a grievance. The claimant said that her relationship with Ms Ryan was 'fine', but that it was a fabricated grievance against the claimant put forward at Mr Rolfe's request.

13. The claimant responded to the letter of concern by email dated 30 January 2018 where she questions the inclusion of the word 'harassment' arguing that the allegation should refer only to bullying. The claimant alleges that she is treated differently by Ms Ryan because of her age and warns, 'if this continues would amount to harassment'. The claimant refers to the 'duty of trust and confidence' and alleges that the respondent's actions have impacted upon this obligation. As the respondent has found insufficient evidence to proceed with disciplinary action against her, the claimant concludes that the claims were either vexatious, old or brought in a malicious manner. The claimant asks for clarification as to her behaviour that is deemed to have fallen short of expectations and refers to case law in support of her request. The claimant refers the respondent to the ACAS guidelines and concludes by saying that just because it was Ms Ryan who raised the initial grievance this does not mean that it was the claimant who has been the cause of disruption. We were referred to a detailed response from the respondent to the claimant's letter of 2 February 2018.
14. The claimant sent a further email to the respondent on 16 February 2018, responding to their letter of 2 February 2018. Within this further email the claimant quotes the Equality Act 2010 and quotes further case law to the respondent relating to the obligation of trust and confidence and other matters. There is no mention within any of the documentation relating to an allegation that Mr Rolfe was the instigator/source/supporter of this grievance.
15. There was an exchange of emails between the claimant, Mr Rolfe and Mr Kendrick on 20 February 2018. These emails related to invoices and are not set out herein. The claimant had alleged that these emails were unfriendly and unprofessional and constituted direct sex discrimination. During the course of cross-examination, the claimant revisited each individual email and conceded that the emails were a mundane exchange of information relating to invoices and that she had misrepresented those emails as unfriendly and unprofessional.
16. The claimant alleged that she had received an abusive telephone conversation from Mr Rolfe on 20 February 2018 in which he swore at her. The claimant did not provide any further evidence in relation to this call and it is not mentioned within her witness statement. We do not know the gist of the conversation or the words alleged to have been used by Mr Rolfe. Mr Rolfe's evidence is that no such call took place.
17. On 16 February 2018 Mr Rolfe proposed that the claimant temporarily change her place of work. The respondent's Ford site had requested a site administrator and the respondent proposed that the claimant relocate to the client site for an initial period of three months. It was envisaged that the claimant would attend the normal office address for normal start time, travel to the site and return to her normal workplace for the end of the day for her normal finish time. On 21 February 2018 the claimant responded to the request and explained that due to her family responsibilities she was unable to be further away from her home than absolutely necessary, she concludes that, '..I am just not able to risk my safety of my family that anything should happen when it has never been before the requirement of my role'.
18. The claimant complains that Mr Rolfe did not invite the claimant to a meeting on 22 June. During the course of cross-examination, the claimant agreed that the meeting in question was that of 25 June 2018 and the minutes were contained

within the bundle. Mr Rolfe told us that this meeting was in Solihull. Both Mr Rolfe and the claimant say that the claimant had attended these types of meetings previously. Mr Rolfe said that the claimant had already told him that she did not want to travel any great distances and at that time he was aware that the claimant's family commitments were unchanged. He did not ask the claimant to travel to Solihull for that reason. Mr Gray, employed as an assistant project manager, was asked to take more of a project administration role for this project.

19. The claimant complains that Mr Rolfe did not invite the claimant to progress meetings on site in 2018. The claimant did not provide any details of any other meeting to which she was not invited. The claimant accepted during the course of cross-examination that she did not wish to attend the Ford plant site. The Ford plant site was closer to the claimant's normal workplace than the majority of the other client sites. The claimant told us that not being invited to site meetings was different from her refusal to relocate to the Ford site, and she didn't refuse to go to site meetings. The claimant accepted that the respondent understood her position as that she did not wish to travel to client sites and was not requested to do so by the respondent.
20. The claimant complains that Mr Rolfe in, or around June or July 2018 said words to the effect to the claimant, that he would prefer to have a male doing her job. The claimant does not address this allegation in her witness evidence. The claimant gives no information as to the words used by Mr Rolfe nor does she provide any further context to the discussion. Mr Rolfe denies that he made any such remarks to the claimant. He says that the respondent is an equal opportunities employer with approximately 50% of the workforce, many of those attending client sites, being female.
21. The claimant complains that on 2 July 2018, Mr Rory Grey was tasked with assisting the claimant. The claimant alleges that Mr Rolfe wanted Rory Grey doing her job, and said in the witness statement that this was because Mr Gray is a man and perceived by Mr Rolfe as being able to visit sites, as a man, or just that a man will be easier to manage. No further information is provided by the claimant. Mr Rolfe denies this allegation. He told the tribunal that there are female operatives on site and the claimant's allegation does not reflect the reality. Mr Gray was employed as an assistant project manager. He was site-based not office-based as the claimant was. He was provided with a company van and expected to visit sites. Mr Gray had a technical background, having a degree in mechanical engineering. Mr Rolfe says that Mr Gray was reassigned from the project management division to assist the claimant with site visits and technical support that was required since she was not prepared to travel to sites.
22. The claimant complains that Mr Rolfe on or about 9 July instructed the claimant to move her desk away from the project team, into the FM department, thereby isolating the claimant from the project team. Mr Rolfe told the tribunal that due to an uncomfortable atmosphere in the office between the claimant and Ms Ryan, Mr Rolfe sought to provide the claimant with a happier working life. The claimant, along with the person sharing her workstation was moved to a different section of the office described by Mr Rolfe as 'a few desks away'. The claimant also told the tribunal that at a later date she was requested to return to her original office position but declined to do so.

23. Mr Rolfe's witness statement makes various references to potential performance issues relating to the claimant. Mr Rolfe says that as the projects carried out by the respondent became more complex in execution the respondent received more client complaints, normally via telephone call to Mr Rolfe, about the quality of the administrative information being passed to them. Mr Rolfe says that it became apparent that the claimant was not successfully keeping up with the responsibility required of her and explains that the additional work was created by the increased emphasis placed by the respondent on document control by their clients. However, Mr Rolfe's statement is somewhat confused in that he also appears to say that the problems experienced by the respondent's clients were due to a lack of communication and essentially a poor system implemented by the respondent rather than any poor performance on the claimant's part. Mr Rolfe notes that the respondent was falling behind with audits, detailed project administration and health and safety requirements which were all critical in maintaining the company's assurance compliance and ability to tender procure future works, due to a lack of site visits. The claimant disputed any allegation of poor performance on her part. There was no documentation within the bundle referencing any allegation of poor performance made by the respondent during the course of the claimant's employment.
24. Mr Rolfe told the tribunal that the decision to terminate the claimant's employment was taken by Mr East that he had no input into that decision.
25. During the course of cross-examination the claimant informed the tribunal that her allegation was that the respondent had identified her personally rather than her role for removal from the company. She considered that the redundancy situation was a sham to dismiss her. The claimant told us that she did not consider the process followed by the respondent relating to the redundancy procedure to be unfair of itself.
26. It was acknowledged that the claimant was informed of a potential redundancy situation at a meeting on 27 July 2018, followed up by letter of the same date. The business case for the redundancy scenario is said to be, 'as the company has evolved, the role of project managers has also evolved. The continuing strategy is for the project managers to completely manage the whole project, end to end. Their knowledge of the individual projects is comprehensive and therefore it makes sense for them to manage the whole process rather than trying to disseminate the information to a coordinator/administrator.' The claimant acknowledged during the course of cross-examination that the respondent could decide that this was the best way to manage its services to its clients however the claimant contended that the project managers would never agree to do admin duties and the respondent's proposed way of dealing with the administration side of projects was not a practical way. The claimant confirmed that hers was the only project administrator role within the respondent.
27. A consultation meeting was arranged for 31 July 2018 and we were provided with the notes of the same. The claimant made no comment on the proposed redundancy situation she identified no alternatives and made no suggestions to the respondent. The claimant's only question was related to the timing of redundancy payments and conclusion of the process. There were no alternative opportunities available within the respondent organisation.

28. The claimant was invited to a final consultation meeting on 6 August 2018 and we were provided with the notes of this consultation meeting. As before, the claimant made no comment, confirmed she had no questions, nor did she have any alternative suggestions to redundancy. The claimant's redundancy was confirmed at this meeting and set out in writing by letter of the same date. The claimant was paid in lieu of her notice.
29. The claimant was offered the opportunity to appeal the decision to terminate her employment on the grounds of redundancy. The claimant did not appeal the decision.
30. The claimant requested and was provided with what can reasonably be described as a very good reference dated 2 August 2018 by Mr East relating to the claimant's professional competence and her personal attributes.
31. The claimant is referred to correspondence from December 2018 from the respondent to Mr Wilkins relating to the offer of a site coordinator position. The claimant alleged that this was proof that her position was not redundant and that Mr Wilkins had been recruited to fill her old role. Mr Rolfe and Mr East both allege that this was not the case. The tribunal was referred to the job title being 'site coordinator' and told that this role was a site-based role as opposed to the claimant's former office based role.
32. It was noted that the claimant made no complaint or mention of any of the allegations of sex discrimination to the respondent prior to the issue of proceedings. The claimant told the tribunal that there was no point in raising any of the matters or putting in a grievance. The claimant felt that she was being ignored and mentally, she had had enough.

Findings & Determination

33. We have carefully examined the available evidence in relation to the grievance raised by Ms Ryan of early 2018. The gist of the allegation from the claimant is that this was an attempt by Mr Rolfe to remove her from the business and should be taken into account by the tribunal when considering whether the redundancy situation said to be responsible for the claimant's eventual dismissal, was a sham. There is considerable contemporaneous documentation available to the tribunal relating to the grievance. It is recorded within this documentation that the circumstances giving rise to the grievance caused Ms Ryan considerable upset. The claimant entered into lengthy correspondence with the respondent at the time alleging age discrimination and breach of the implied duty of trust and confidence and citing a considerable volume of case law. At no time did the claimant suggest that the grievance was made under the direction of Mr Rolfe. Further, the outcome of the grievance is a 'letter of concern' issued to the claimant. The respondent did not seek to pursue any formal disciplinary action against the claimant. Taking the entirety of the evidence into account we conclude that:
 - a. There were difficulties in the working relationship between the claimant and Ms Ryan. Ms Ryan utilised the formal grievance procedure to address issues with the claimant in early 2018.
 - b. The respondent carried out an investigation and concluded that blame for the deteriorating relationship between the two staff members lay predominantly with the claimant. For this reason, the claimant was issued with a 'letter of concern'.

- c. Nothing to do with this grievance can reasonably be attributed to Mr Rolfe. Ms Ryan's grievance was not an attempt by Mr Rolfe to have the claimant removed from the business as she has alleged.
- d. The claimant had prior to the grievance process enjoyed a good and positive relationship on the whole with her employer. The grievance process and the issue of the 'letter of concern' by the respondent caused considerable upset to the claimant and this marks a deterioration in the relationship between the claimant and the respondent.

34. We turn to the allegations of direct discrimination because of sex contrary to the provisions of s13 EqA. We first examined whether the claimant was subject to the treatment as alleged and find as follows:

Allegation 1

Mr Rolfe not inviting the claimant to a meeting on 22 June: This allegation refers to the meeting of 25 June 2021. It is common ground that the claimant was not invited to this meeting.

Allegation 2

Mr Rolfe not inviting the claimant to progress meetings on site in 2018: It is common ground that the claimant was not invited to progress meetings on site in 2018.

Allegation 3

(i) Being sent an unfriendly and unprofessional e-mail from Mr Kenrick on 20 February 2018 and (ii) receiving an abusive phone call from Mr Rolfe on the same date in which he swore at the claimant. We conclude that the emails referred to between the claimant and Mr Kenrick on 20 February 2018, are mundane in nature and cannot reasonably be described as unfriendly and/or unprofessional. The claimant has provided very little evidence in support of her allegation that Mr Rolfe made an abusive call to her in which he swore at the claimant. We note that this exchange is said to have happened on 20 February 2018. On 16 February 2018 the claimant had written to the respondent again complaining about matters relating to the letter of concern. At no time prior to the issue of proceedings did the claimant raise this allegation with the respondent. While we note the claimant's stated reasons for failing to raise this with the respondent, we find it unusual that should the claimant consider herself to have been discriminated against on the grounds of sex at that time, that she did not raise this matter prior to the termination of employment. Taking the entirety of the available evidence into account we conclude that the claimant has not shown on the balance of probability that she received an abusive phone call from Mr Rolfe on 20 February 2018 in which he swore at her.

Allegation 4

Mr Rolfe in, or around June or July 2018, in the office saying words to the effect, to the claimant, that he would prefer to have a male doing her job. The claimant does not address this allegation within her witness statement. We do not know what words Mr Rolfe is alleged to have used, the context of any discussion or for example whether anyone other than the claimant and Mr Rolfe was said to be present. Mr Rolfe denies that this exchange happened. When weighing up this allegation we note that no complaint was made about this exchange by the claimant prior to the issue of proceedings. While we have taken the claimant's reasons for not raising the matter mainly that she felt she was being ignored, there was no point and mentally she had had enough, the claimant's lack of action in highlighting these matters when she was clearly aware of and had previously quoted to the respondent the provisions of the Equality Act, weighs against her. Taking the entirety of the evidence into

consideration we conclude that the claimant has not shown on the balance of probability that Mr Rolfe on around June or July 2018 said words to the effect that he would prefer to have a male doing her job.

Allegation five

it is accepted by the respondent that on around 2 July 2018, Rory Grey was tasked with assisting the claimant. We find that Mr Gray was tasked with assisting the claimant in relation to site visits and technical support.

Allegation six

It is common ground between the parties that Mr Rolfe on or about 9 July instructed the claimant to move her desk away from the project team, into the FM department.

Allegation seven

It is common ground that the claimant was dismissed and/or selected for redundancy.

35. The next step for the tribunal is to consider:

- a. Where we have found that the respondent has subjected the claimant to the above treatment, whether that treatment was "*less favourable treatment*" i.e. did the respondent treat the claimant as alleged less favourably than it treated or would have treated others. For this task we need to identify a comparator who is in not materially different circumstances. We have carefully examined the circumstances of Mr Gray. Mr Gray was site-based and provided with a work van. This meant that he was expected as part of his job to visit sites. Further, Mr Gray had a technical qualification being a degree in mechanical engineering and employed as an assistant project manager. The claimant was office-based with no technical background. The claimant had previously informed the respondent that she did not wish to travel to client sites due to her family commitments and did not wish to be further than necessary away from her home. The claimant sought to make a distinction between her refusal to attend the Ford site and a lack of a general refusal to attend client site meetings. However, the claimant accepted that the respondent understood her position as that she did not wish to travel to client sites. Considering the entirety of the available evidence, we conclude that the respondent's genuine understanding of the claimant's position during 2018 was that she did not wish to visit client sites because she did not wish to be further away from her home than absolutely necessary due to her family commitments. In the circumstances we do not consider that Mr Gray is an appropriate comparator. In the absence of actual comparator we consider a hypothetical comparator. The circumstances of the hypothetical male comparator are:
 - i. that they are office-based;
 - ii. that they do not have a technical background;
 - iii. that they had informed the respondent that they are unable to attend client sites;
 - iv. that they have been the subject matter of a grievance raised by a colleague where the conclusion reached by the employer was that blame for the deteriorating relationship between the two staff members lay predominantly with the comparator and a letter of concern was issued to the comparator.
- b. Where we find less favourable treatment, whether this was because of the claimant sex.

36. We consider each allegation in turn:

Allegation 1 & Allegation 2

The respondent not inviting the claimant to a meeting on 25 June 2018 and not inviting the claimant to progress meetings on site in 2018. The meeting of 25 June was at a client site in Solihull. We conclude that the reason for the claimant not being invited to the meeting on 25 June 2018 and also progress meetings on site during 2018 was because she had indicated to Mr Rolfe that she did not wish to attend meetings on site due to her family commitments. We conclude that the failure to invite the claimant to such meetings cannot be reasonably described as less favourable treatment. We note that if we are wrong, the claimant was previously invited to these meetings. The claimant's previous inclusion within these meetings would lead us to conclude that any exclusion of the claimant in 2018 was, even if it could be considered less favourable treatment, was not because of her sex.

Allegation 3 and 4; these allegations have fallen away due to our findings of fact above.

Allegation 5

On or around 2 July 2018, Rory Grey was tasked with assisting the claimant. Mr Rolfe says that Mr Gray was tasked with assisting the claimant in relation to site visits and technical support. We repeat our findings above in relation to the claimant's unwillingness to carry out site visits and note both the increasing level of complexity of the respondent's projects and the claimant's lack of technical understanding. In the circumstances we conclude that the respondent's request for Mr Gray to assist the claimant cannot be reasonably considered as less favourable treatment of the claimant. We note that if we are wrong, we conclude that the reason for this treatment was because the claimant did not wish to visit sites and did not have a technical background. In the circumstances we find that a male comparator would have been treated in a similar fashion.

Allegation 6

Mr Rolfe on or about 9 July instructed the claimant to move her desk away from the project team. We repeat our findings in respect of the grievance matter as referred to above. The claimant had a difficult relationship with her colleague Ms Ryan and it was the respondent's genuine belief that the claimant was predominantly to blame for the strained relationship. Mr Rolfe told the tribunal that the change of the claimant's desk was a move within a relatively small space and an attempt on the respondent's part to improve the working environment. Taking the entirety of the evidence into account we conclude on the balance of probability that there was a continued strained relationship in the office between the claimant and Ms Ryan. The reason for the respondent moving the claimant's desk was due to her strained relationship with Ms Ryan. The claimant is not shown on the balance of probability that this move was an attempt by Mr Rolfe to isolate the claimant from the project team. We conclude that a male comparator would have been treated in a similar fashion.

Allegation 7

It is common ground that the claimant was dismissed and/or selected for redundancy. We repeat our findings set out below in relation to the unfair dismissal claim. We have found that the reason for the claimant's dismissal was redundancy. We conclude that a male comparator would also have been dismissed for redundancy in similar circumstances.

37. Any allegation of direct race discrimination prior to 14 June 2018 is potentially out of time. In light of our findings above we do not comment further on limitation.

38. Turning to the claim for unfair dismissal. It was common ground between the parties that over time the nature of the respondent's business had evolved from smaller to larger projects. By 2018 the respondent was dealing with larger more complex projects that required an on-site project manager. The claimant accepted during the course of cross-examination that the larger jobs undertaken by the respondent involved greater coordination between contractors, subcontractors clients and other people on site together with hourly or daily adjustments to scheduling.
39. We have carefully considered the available evidence relating to the claimant's performance and conclude that there were no performance issues raised with or in existence in relation to the claimant's performance. We also conclude the balance of probabilities that the respondent had through client complaints and falling behind with audits, detailed project administration and health and safety requirements identified that its existing arrangement for administration was failing. This was an issue with the respondent's system rather than the claimant personally. The increasing complexity and size of projects resulted in the need for greater responsiveness and increased communication on site in terms of admin support. The respondent decided that the admin function was to be absorbed by Project Managers on site who were in regular contact with all parties on site and best placed to respond. We acknowledge that the claimant's relationship with the respondent had deteriorated prior to the redundancy situation due to the grievance raised by Ms Ryan. We have considered the deterioration in the claimant's relationship with the respondent however we conclude that the decision to terminate the claimant's employment was taken by Mr East. We note that Mr East also provided a very positive reference for the claimant on 2 August 2018 during the redundancy process. We conclude on the balance of probability that Mr East had no animosity towards the claimant. There is no evidence to support the claimant's allegation that the redundancy situation was a sham. We have also considered the subsequent recruitment of Mr Wilkins as set out above. We conclude on the balance of probability by reference to the respondent's evidence and the job title of 'site co-ordinator', that Mr Wilkins role was intended to be a site based role as claimed by the respondent and substantially different to that of the claimant's previous office based role. Taking the entirety of the evidence into account, we conclude that the claimant's dismissal was wholly or mainly attributable to the respondent having a reduced requirement for employees to carry out office-based project administration we conclude that the principal reason for the claimant's dismissal was redundancy as claimed by the respondent.
40. We have considered whether the dismissal was fair in accordance with section 98, ERA. We repeat our findings above and conclude that the respondent had a genuine belief in the reason, based on reasonable grounds that a redundancy situation existed. When looking at the process followed by the respondent it is clear from the evidence set out above that the respondent set out its rationale for the redundancy in writing to the claimant and thereafter had two separate consultation meetings. While there was little participation from the claimant within the redundancy consultation meetings, we conclude that the respondent both warned and consulted with the claimant prior to the termination of her employment. The claimant told us that hers was the only project administration role within the respondent. In the circumstances the claimant's role was a stand-alone role and there was no requirement for the respondent to identify selection criteria. We accept the respondent's evidence that there were no alternative roles available

within the respondent at that time. We conclude that the procedure followed by the respondent fall within the band of reasonable responses of a reasonable employer. Considering the entirety of the evidence we conclude that the respondent's decision to terminate the claimant's employment by reason of redundancy fell within the band of reasonable responses of a reasonable employer.

41. The findings set out above are all made by the tribunal on a unanimous basis. For the reasons set out above the claimant's claim for both direct discrimination on the grounds of sex and unfair dismissal fail and are dismissed.

Employment Judge Skehan

Date: 10 June 2021

Sent to the parties on:

21st June 2021

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For the Tribunal:

THY