



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms K Bacon

v (1)

Advanced Fire Solutions Ltd
(In Administration)

(2) Mr Graham Ellis

Heard at: Norwich

On: 10, 11, 12 and 13 February 2020
14 & 21 February 2020 (Discussion Days – no parties in attendance)

Before: Employment Judge Postle

Members: Ms L Daniels and Mrs L Gaywood

Appearances

For the Claimant: Miss Bradbury, Counsel.

For the First Respondent: Did not attend and were not represented.

For the Second Respondent: In person.

RESERVED JUDGMENT

1. The claims against the first respondent are stayed pending the claimant's administration and consent being obtained by the claimant/solicitors to continue with the action.
2. The claimant's claims against the second respondent under the Equality Act 2010 for Direct Discrimination are not well founded.
3. The claims against the second respondent for Direct Marital Discrimination and Victimisation are well founded.

REASONS

1. This was a claim by the claimant originally against the first and second respondents in respect of claims under the Equality Act 2010 for the protected characteristic of sex, marriage and civil partnership together with a claim for unfair dismissal under the Employment Rights Act 1996 with a claim for notice and holiday pay.
2. The specific factual issues were set out at a case management hearing on 28 June 2019 by Employment Laidler and they are to be found at pages 82-91 of the bundle at the same time the hearing was listed for 5 days beginning on 10 February 2020 and concluding on 14 February 2020.
3. However, on the 7 February 2020 the claimant's solicitors were notified by email quite out of the blue by the respondents' solicitors that they had been "dis-instructed" by both respondents and in fact the first respondent were about to go into Administration and were therefore requesting the Tribunal stay the proceedings against both respondents. The claimant's solicitors fully accept a stay would have to be granted against the first respondent however they objected to the stay against the second respondent as the claimant was entitled to continue the claim in so far as was relevant against the second respondent.
4. On 7 February the respondents' solicitors sent notice to the claimant's solicitors that the first respondent was now being placed in administration together with a copy of the sealed court order which actually put the first respondent in administration on 5 February 2020 and that no one from the respondents' solicitors would be attending the hearing.
5. The hearing commenced on Monday 10 February 2020 with the Tribunal considering the claimant's application to continue against the second respondent. The Tribunal was satisfied there were matters that could properly be determined against the second respondent. However, the second respondent, a director had not attended this morning's hearing. The Tribunal therefore adjourned the matter until Tuesday 11 February 2020 at 10am. In the meantime, the claimant's solicitors were ordered to make reasonable efforts to inform the second respondent that the hearing was going to proceed against him on the morning of Tuesday 11 February and that it would be in his interests to attend the hearing.
6. On Tuesday 11 February Mr Ellis duly attended the hearing and made representations that he did not wish to participate in the proceedings protesting that as there was a stay against the first respondent this would also act as a stay against himself. Mr Ellis believing that the administration of the first respondent in some way protected him against the claim proceeding against himself.

7. The Tribunal informed Mr Ellis that the Tribunal were entitled to continue the proceedings against the second respondent in so far as they were not matters which were the responsibility of the first respondent or carried out by the first respondent. Secondly, it was in Mr Ellis' interest to participate in the proceedings and defend the claims against himself otherwise he would have to accept the outcome of the Tribunal without his input and that might well be considered a risky strategy. The Tribunal confirmed there was authority from the Employment Appeal Tribunal that a claim against the second respondent notwithstanding the first respondent were in administration could still be proceeded with Ince Gordon Dadds LLP & Others v Mrs Tunstall & Others UKEAT/0141/19. In particular the Insolvency Act 1986 did not require an Employment Tribunal to continue a stay in relation to other respondents who were not in administration.
8. Furthermore, the Tribunal pointed out to Mr Ellis that up until 7 February 2020 he had had the benefit of legal advice, throughout the proceedings and witness statement had been prepared by his then solicitors. In those circumstances the Tribunal were therefore satisfied on balance it was fair to proceed given also the back ground to the case which involved clearly a very contentious divorce/financial relief dispute within the divorce proceedings between the claimant and Mr Bacon who was a Director of the first respondent.
9. It was also confirmed for the avoidance of doubt the claim against the second respondent in relation to direct sex discrimination would involve the following (following list of issues from the Case Management Hearing, page 85 in bundle):-
 - (a) Not pursued;
 - (b) Not pursued;
 - (c) Reporting the claimant to the Police;
 - (d) Threatening and then commencing legal proceedings to recover iPads etc (said to be gifts used by the family);
 - (e) Placing a tracker on the claimant's car;
 - (f) Failing to tell the claimant that the Police were no longer investigating;
 - (g) Disregarding the claimant's grievance;
 - (h) Using the claimant's solicitors letter for marital proceedings;
 - (i) Not pursued;
 - (j) Not pursued; and

- (k) Not pursued.
10. In relation to Direct Marital Status Discrimination in which the claimant relies on a hypothetical comparator, the claimant relies on the following matters (again from list of issues at page 85 of the bundle):-
- a. Mr Ellis taking sides with the husband and agreeing to exclude and ultimately dismiss the claimant;
 - b. Mr Ellis fitting a tracker to the claimant's car;
 - c. Mr Ellis following her on occasion under Mr Bacon's directions;
 - d. Mr Ellis removing the claimant as a director without notice or consultation;
 - e. Mr Ellis withholding dividend payments;
 - f. Mr Ellis stopping the claimant's share loan repayments and diverting them to Mr Bacon;
 - g. Mr Ellis allowing Mr Bacon to use company funds to pay for his divorce proceedings;
 - h. Mr Ellis disregarding the claimant's grievance;
 - i. Mr Ellis reporting the claimant to the Police for theft; and
 - j. Mr Ellis using the claimant's legal documents from divorce proceedings;
11. The Tribunal would not be dealing under this head with dismissing the claimant and hearing the appeal against dismissal.
12. Under the victimisation claim (the protected act being the claimant's grievance) the Tribunal will consider court proceedings to recover family iPads and the financial hardship that the second respondent put the claimant under.
13. In this Tribunal we had the benefit of a bundle of documents consisting of 513 pages.
14. The Tribunal heard evidence from Mr Ellis, Managing Director of the first respondent, and Mr Bacon also a Director of the first respondent and the claimant's husband.
15. There was a witness statement on behalf of the respondents from Kelly Bater, she did not attend the hearing on behalf of the respondents nor was she an employee of the respondents.

16. There was a further witness statement on behalf of the respondents by Matthew Service, not employed by the first respondent whose evidence in any event confirmed contrary to the second respondent Mr Ellis and Mr Bacon's assertion that mobile phones had been compromised by the claimant, this statement in fact confirmed that no compromises were found and he was unable to forensically analyse the server and make a report as the first respondent was unwilling to fund the analysis of the server which Mr Ellis and Mr Bacon had asserted had been the subject of a cyber attack either by the claimant or someone acting on her behalf. In any event, Counsel for the claimant confirmed that she would not in any event need to cross examine that witness. All the witness statements were typed.
17. For the claimant she gave evidence also through a typed witness statement and supplementary witness statement.

Credibility

18. It is important at this stage to comment on this aspect of the hearing. The claimant the Tribunal found was a straightforward consistent witness and indeed her evidence reflected the documentary evidence.
19. Whereas Mr Bacon and Mr Ellis, their evidence was on occasions contradictory even when the documentary evidence on a particular point showed their evidence to be contradictory, a particular example of this is paragraph 27 of Mr Bacon's evidence which states:-

“On 5 September 2017, as requested, Ashley attended the company's office and ran a full diagnostics test on the network. This established that at 7.34am on 4 September 2017, a memory stick had been inserted into one of the company's computers. This was odd as the first member of staff, Avril Stafford did not arrive until 8.30am and this is evidenced by the access code report at **page 166** and the email from Sally Harradence at Hethel Engineering Centre at **page 431**. Ashley informed me that the access logs showing who had logged in and logged off of the company's IT system had been deleted by software that was contained on the memory stick.”

20. Whereas the document referred to, nowhere does it substantiate or confirm that evidence, and Mr Bacon's explanation was the document at page 166 was cut off at the end and would show the above to be true. However, this is the respondent's own document, and again at page 431 clearly states from Sally Harradence in an email of 10 August 2018:-

“Following our conversation today I write to confirm that a full investigation into the security of office 3 took place following allegations into a possible attempt to access the office held by AFS in September 2017. Both the access control logs and the security camera footage was analysed and no evidence to support a breach was found.

The centre has fully supported two further investigations into the alleged breach, one by Blue Lights Digital and one by Suffolk Constabulary. The data was once again analysed by both organisations and to my knowledge no breach was proven.”

21. That is simply quite contrary to what is being asserted by Mr Bacon in paragraph 27 of his witness statement.
22. In the case of Mr Ellis, evidence at one stage under cross examination in relation to the repayment of his shares to Mr and Mrs Bacon, was again contradictory. As he indicated he stopped making payments in June 2018 as Mr Bacon had said he had not received any money for his shares, whereas paragraph 7 of his witness statement said that Mr Ellis had been paying £250 to each of them separately since October 2017. Mr Ellis then referred to a letter from the claimant dated 4 July 2018 at 3.30 suggesting that the tensions between the parties was the cause of him stopping payment.
23. There was also another example in which Mr Ellis suggests he did not report the claimant to the Police or attempt to mislead the Police, whereas clearly he was a party to the document reporting the matter to the Police, indeed attended the Police station at Wymondham and in one of the reports suggests that the claimant had actually resigned her directorship and been suspended which at the time was a blatant untruth and was repeated in the report to the Police at least four occasions at pages 437 on 12 January 2018 and 258 shows Mr Ellis a signatory again in a report to the Police.
24. It has to be said that Mr Bacon and Mr Ellis on occasions have found the truth to be an alien concept, in those circumstances where there was a conflict of evidence the Tribunal often preferred that of the claimant, particularly if it was supported by documentary evidence.

Findings of Fact

25. It is clear the claim in the proceedings is set against a background of a very acrimonious divorce between the claimant and her husband. Mr Bacon who was formerly the Managing Director of the first respondent and though subsequently resigned from his position although carried on in the business in an active director role continuing to own the majority of the shares. Mr Ellis joined the company in October 2012 becoming a director in 2013 at which he agreed to purchase 10% of the first respondent's share capital, 5% from the claimant and 5% from Mr Bacon as set out in the share purchase agreement at page 435/6. In that agreement Mr Ellis was to pay £40,000, i.e. 10% value of the company. Mr and Mrs Bacon would receive £20,000 each for their respective 5% shares. Repayment of £40,000 was by way of a loan from the company to Mr Ellis by way of 60 instalments of £500 per month by way of deduction from his salary.
26. It is clear that Mrs Bacon placed the money no doubt with the knowledge of Mr Bacon in a high interest bank account in Mrs Bacon's name and that was then used for the family finances, holidays from that date to 2017 with the knowledge of Mr Bacon until the parties separated. At which point Mr Bacon tries to assert he was not aware, he had not received his half share of the repayments from Mr Ellis which frankly is absurd as had he

not received them during that lengthy period one would have expected him to have raised the matter with Mr Ellis, particularly where is my money for the purchase of the shares he never did question repayments until after the parties' separation.

27. Upon Mr Bacon suggesting he had received no repayment from Mr Ellis, confusingly Mr Ellis then stated in October 2017 that Mr Bacon was suggesting no repayments of sums for the company or to Mr Bacon, so Mr Ellis without informing Mrs Bacon changed the repayment schedule to £250 to each of them.
28. Yet in June 2018 Mr Ellis decided that he was suspending the share loan repayments to the company given the serious issues he was facing managing the company as a result of the parties' divorce. Yet he had been paying to Mr and Mrs Bacon certainly since October 2017 (page 327).
29. In the meantime, Mr Ellis had been appointed Managing Director in August 2017.
30. Mrs Bacon joined the company in 2005 and at that stage she was not married to Mr Bacon, she joined as a bookkeeper and married Mr Bacon in August 2008 acquiring her shares in March 2008. She became a Director in March 2008. Both the claimant and Mr Bacon received a salary but much of that income was derived from dividends for tax reasons. The claimant working in the company throughout save for periods during maternity leave.
31. Throughout 2008 to 2016 the claimant received end of year dividend payments. In 2016 despite the agreement to pay dividend, that dividend was not paid to the claimant. The claimant had previously resigned as a director in October 2016 and had been re-instated as a director in October 2017. The claimant appears to have worked part-time in the company following maternity leave, working two days per week.
32. The claimant had originally resigned as a director to concentrate on bringing up her children still working on a part-time basis much of the time working from home.
33. In August 2017 the claimant informed Mr Bacon she wished to separate. Notwithstanding that the claimant continued to work in the business having assured Mr Ellis she could continue in her role without difficulty. It would appear the claimant did take some time off in August 2017 to focus on her marriage and children but returned by the end of August at which point Mr Bacon insisted the claimant continued to take time out of the business to save the marriage. Staff were informed that the claimant was off sick for the time being and would return when fully recovered.

34. Without informing the claimant Mr Ellis on 1 September advised the company accountants by email at page 387 that the claimant would no longer be working for the respondent and to remove her access from the first respondent's accounting software Xero.
35. On 7 September 2017 at a counselling session Mr Bacon informed the claimant she could come back to work when she was ready. However, on 13 September the claimant picked up a message from the company banking manager at HSBC that she had now been removed as a signatory on the account by Mr Ellis and Mr Bacon. On 9 October Mr Bacon reiterated to the claimant her job was still available and was to be reinstated as a director of the company (at pages 171A and 173). On 16 October the claimant was duly reinstated as a director at Companies House (page 174).
36. On 1 November the claimant confirmed she wanted to proceed with the divorce, at that point Mr Bacon informed the claimant that the dividends voted by the company in 2016 were all his and that the claimant's shares were now worthless. The claimant was also told that Mr Bacon would not now be paying the balance of her shareholders loan account. This was despite the fact that Mr Ellis admitted in evidence that in May 2018 he received a dividend of £23,000 notwithstanding his original evidence, paragraph 27 of his witness statement, were he tried to assert that no such dividend was paid.
37. On 2 November the claimant's position within the company was advertised (page 200) and on 9 November the claimant without her approval or knowledge at the time was removed from the position of director and her name was taken off the list at Companies House.
38. On 18 January 2018 the claimant received a letter (page 220) on company note paper from a Kelly Bater (who had not been employed by the respondents) she was an HR consultant apparently acting on behalf of the first respondent at which the claimant was notified she had been suspended on full pay pending an investigation. The investigation was described as misuse of company IT, email system and misuse of confidential and financial information.
39. There were no specifics of the allegations against the claimant. In the letter referred to above the claimant was asked to return personal IT equipment, iPhone, iPad, iMac, Macbook Pro, keyboard case, Dell printer, signology, network drive, company files and documentation. All of which the claimant maintained had been purchased through the company for the benefit of the family and for her when working from home. There is some dispute between the claimant and Mr Ellis and Mr Bacon as to whether they were company property or had been gifted by Mr Bacon to the family. Ultimately, they were returned by the claimant to the company after Mr Ellis had threatened legal action to recover the same.

40. It would appear that reports had been made to the Police on 2 October 2017 (page 145) by Mr Bacon that a Mr Simpson whom Mr Bacon was accusing as having an affair with his wife was also accusing him of accessing the respondent's IT network. It would appear following investigations by the Police nothing came of this accusation as the Police took no action.
41. Then in April 2018 Mr Bacon and Mr Ellis signed a letter again addressed to the Police requesting that the Police take further action by way of investigation into an alleged cyber breach, unauthorised access to the office email, sending to the claimant's personal email company information.
42. The Police responded on 12 April (page 266) again indicating that no further action was to be taken. Notwithstanding the fact that the Police were taking the matter no further neither Mr Ellis or Mr Bacon informed the claimant that the Police were no longer investigating the claimant for any alleged offences. That fact is clear from the claimant's letter to Miss Bater (page 293) dated 4 May 2018. Furthermore, despite Mr Bacon's assertion that at 7.34 on 4 September 2017 the memory stick had been inserted into one of the company's computers and alleged evidence of someone gaining access to the respondent's offices showing that the first member of staff arrived at 8.30am the respondent's own evidence at page 166 from the centre manager that looked after the respondent's premises and others and Blue Light Digital said:

"Data was once again analysed by both organisations and to my knowledge no breach was proven. It is clear having analysed the access logs and security camera footage no evidence to support a breach was found."
43. It is accepted that Mr Bacon fitted a tracker to the claimant's car in November 2017 for reasons best known to himself and that Mr Ellis was not involved in assisting with the fitting of the tracker to the claimant's car.
44. In Autumn 2017 Mr Ellis had appointed Kelly Bater to provide HR Consultancy Services to deal with administration and HR matters and then subsequently investigate the claimant following her suspension. Indeed, Mr Ellis had discussed with her in November 2017 about the options for the claimant particularly if her employment was to be terminated.
45. The claimant raised a grievance with the company in relation to harassment and victimisation in March 2018. This was particularly in the light of specific information in relation to the reasons for her suspension (pages 237-238). The claimant was concerned that Miss Bater was not an independent person given that she had suspended the claimant and was investigating her and wanted another person outside the company to conduct the investigation into her grievance as clearly neither Mr Ellis nor Mr Bacon could or should be involved. Ultimately the grievance remained unresolved as Miss Bater was left by Mr Ellis to undertake the grievance.

46. It is clear Mr Ellis allowed Mr Bacon to fund his divorce proceedings via the company, to pay his legal costs and such an opportunity was not offered to the claimant. That is on Mr Ellis' own admission.
47. The claimant was unwilling to meet with Miss Bater in relation to the investigation following her suspension until such time as she had received detailed specific allegations as to exactly what she was being accused of (page 306). By a letter of 31 May 2018 the claimant again expressed these concerns, indicating that once she had clear and specific allegations she would consider writing a witness statement. Miss Bater responded on 1 June 2018 (page 308) which amongst other things simply stated:-

“Please find enclosed the evidence that would have been discussed at the investigation meeting for your response this evidence is as follows:

1. Office 365 report showing email sent, received and read on 20 November 2018 (2017?).
2. Email sent from Kirsty Bacon AFS email address to Miarsemyle@gmail.com on 20 November 2017.
3. Mills and Reeve letter dated 6 December 2017.

I look forward to receiving your witness statement in the meantime and should you have any queries please do not hesitate to contact me at kellybater@kbaterconsultancy.com.”

48. Interestingly enough the letter from Miss Bater despite saying she was an independent consultant was written on the first respondent's note paper as if she was in fact an employee of the first respondent.
49. The claimant was extremely concerned to note the company had sight of and appeared and intended to use the solicitors letter from the claimant's solicitors relating to her matrimonial affairs. The claimant was still concerned by the letter written by Miss Bater as from that she was unable to clearly understand exactly what it was that the respondents were alleging she had done.
50. The claimant again responded on 15 June (page 319) with her concerns about the use of private correspondence relating to matrimonial affairs and using her solicitor's letter and further that given the lack of clarity in relation to the allegations she was still unable to respond to those allegations.
51. Without further correspondence or communication the claimant then received on 29 June 2018 (page 328) a letter of dismissal signed by Mr Ellis which read:-

“Dear Kirsty, I write further to recent communications with regard to the ongoing investigation into a number of IT breaches that occurred at AFS. As you are aware you were suspended on 18 January 2018 to allow a full investigation to take place into the alleged misconduct. However, since that date you have consistently refused to co-operate with the investigation and have delayed the

investigation and attempted to present numerous barriers to prevent the investigation from progressing, including the failure to return company property despite numerous requests which in itself is a disciplinary matter.

As you are aware, an allegation of this type is potentially gross misconduct and based on the facts and evidence we have in our possession along with your refusal to co-operate in any way with the investigation, I am writing to confirm the company have no alternative than to conclude to its reasonable satisfaction that you were involved with the alleged misconduct.

The letter therefore gives formal notification of the summary termination of your employment.

Your dismissal will take effect as of today's date 29 June 2018. All terms and benefits associated with your employment will cease as at the end of today. Any outstanding monies owed, including holiday pay, will be paid on 28 July 2018 and your P45 will be issued shortly after.

You have the right to appeal against the decision to summary dismiss you on the grounds of gross misconduct if you wish to appeal you should do so in writing within 5 working days of being informed of the termination of your employment stating the grounds of your appeal.

Yours sincerely

Graham Ellis
For and on behalf of Advance Fire Solutions"

52. The claimant subsequently appealed against her dismissal on 3 July 2018 directing the letter towards Mr Ellis (page 329). The claimant wished for the appeal to be conducted by correspondence.
53. That was responded to by Mr Ellis on 9 July in which his response was as follows:-

"...

You were informed of the alleged misconduct within letters dated 18 January 2018, 28 May 2018 and 1 June 2018. You were offered the opportunity to attend an investigation meeting to discuss the allegations, review the evidence and for you to provide a response to these. However you refused to attend the meeting. You did offer a witness statement and the evidence that you would have provided at the investigation meeting was sent to you to enable you to do this however you failed to provide the said statement.

You have also failed to return company property despite numerous requests which has been assumed a deliberate attempt to prevent the company from continuing with its investigation.

As a result the company believed it had no alternative than to summarily dismiss you based on the evidence and facts that are available.

After careful consideration of all the surrounding circumstances of your case your failure to co-operate with the process and lack of supporting evidence provided

with your appeal I have decided that the company will uphold the decision to dismiss you. Your dismissal will be effective from the original date communicated to you in the dismissal letter dated 29 June 2018.

I would add that there is no further appeal against that decision.

Yours sincerely

Graham Ellis
For and on behalf of Advanced Fire Solutions”

54. It would appear despite the claimant writing to Mr Ellis on 18 July (page 334) setting out the payments said to have been made to the share loan repayment due from Mr Ellis, that to date the claimant has not received any further payment. Further the claimant has not received her dividend that had originally been voted as a dividend in 2016 subsequently Mr Ellis/Mr Bacon has retained the sum from the claimant’s shareholder loan account and not paid it out to the claimant. Finally, on 31 October 2017 the company accountant proposed a dividend to the claimant for the year ending 31 July 2017 of £31,560 apparently that dividend has not been paid over to the claimant. This is set against the background where seemingly large payments have been made since this date to both Mr Ellis and Mr Bacon.

The Law

s.13 Direct Discrimination

55. In subsection 1 – a person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than (A) treats or would treat others.
56. In subsection 4 – if the protected characteristic is marriage and civil partnership, this section applies to a contravention of part 5 (work) only if the treatment is because it is (B) who is married or a civil partner.

Burden of Proof - s.136

57. In subsection 1 – this section applies to any proceedings relating to a contravention of this Act.
58. In subsection 2 – if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
59. In subsection 3 – but subsection 2 does not apply if (A) shows that (A) did not contravene the provision.

60. The burden of proof therefore requires the Tribunal to go through a two-stage process. The first stage requires the claimant to prove facts from which the Tribunal could apart from this section conclude in the absence of an adequate explanation that the respondent had committed, or is to be treated as having committed the unlawful act of discrimination against the complainant. The Tribunal is therefore required to make an assumption at the first stage which may be contrary to reality the plain purpose being to shift the burden of proof at the second stage so that unless the respondent provides an adequate explanation, the complainant will succeed.
61. If the second stage is reached and the respondent's explanation is inadequate the Tribunal will conclude that the complaint should be upheld. In effect the respondent must show that the conduct was completely unrelated to the protected characteristic.
62. In these proceedings the claimant has relied upon a hypothetical comparator.

Victimisation – s.27

63. In subsection 1 – a person (A) victimises another (B) if (A) subjects (B) to a detriment because:
 - a. (B) does a protected act; or
 - b. (A) believes that (B) has done or may do a protected Act.
64. The protected act relied upon by the claimant is the grievance that she raised in March 2018.

Conclusions

Direct Marital Status Discrimination

Taking sides with the husband and agreeing to exclude and ultimately dismiss the wife.

65. It is not difficult for the Tribunal to unanimously conclude that following the claimant's separation from Mr Bacon, Mr Ellis distancing himself from the claimant. It would appear he ceased to speak to the claimant, there appears to be no emailing between Mr Ellis and the claimant following the separation. It is further clear that Mr Ellis informed the company accountant to remove access from the first respondent's Xero as soon as possible. It is further clear that Mr Ellis allowed Mr Bacon a loan from his share dividend account to pay his matrimonial legal costs his solicitor, and there is no evidence that was advanced before this Tribunal that it had ever been repaid. That opportunity was clearly not offered to Mrs Bacon.

66. Mr Ellis' own admission in evidence that he believed everything he was told by Mr Bacon without question. The fact that he removed the claimant's directorship without informing her and apparently relying upon Mr Bacon to tell the claimant which he did not.
67. The fact that he was complicit with Mr Bacon in urging the Police to investigate the claimant and Mr Simpson in alleged breaches of IT or cyber attacks on the company and then not informing the claimant the Police investigation had been concluded.
68. It is clear that the claimant was being subjected to less favourable treatment on the grounds of her marital status and Mr Ellis simply has no other explanation for that treatment other than he was siding with Mr Bacon whom he no doubt felt was where his future lied within the company rather than that with Mrs Bacon. The reason for that treatment was clearly the claimant's marital status to Mr Bacon.
69. Therefore, the claimant has been subjected to less favourable treatment on the grounds of her marital status.

Fitting a tracker to the claimant's car

70. In relation to the allegation that Mr Ellis was involved in fitting a tracker to the claimant's car. Whilst Mr Bacon admits fitting the tracker, on the balance of probabilities it was difficult to conclude Mr Ellis was an active participant and therefore this claim is not well founded.

Following her on occasion under Mr Bacon's directions

71. In relation to the claim that Mr Ellis followed the claimant at Mr Bacon's direction, this has in fact been withdrawn by the claimant's counsel during closing speeches.

Removing the claimant as a Director without notice

72. This claim, actually it is unclear from the evidence who was responsible and therefore this claim is not well founded.

Withholding dividend payments

73. It is clear that despite dividends being declared that Mr Ellis as Managing Director clearly was active in not authorising the payment to the claimant for these sums. There is no adequate explanation from Mr Ellis, the inference being that it was because of the claimant's marital status to Mr Bacon and the claim is therefore well founded.

Stopping the claimant's share loan repayments and diverting them to Mr Bacon

74. It is clear from the evidence that Mr Ellis did so from his notification in June/July 2018 and did so at the request of Mr Bacon and those payments seemed to have been then diverted to Mr Bacon to the effect that Mrs Bacon did not receive any further repayment. Clearly that is less favourable treatment. What is the reason for it? The claimant being married to Mr Bacon. There is simply no other reason advanced by Mr Ellis other than the fact that he was doing so because they were married and in the middle of a separation.

Allowing Mr Bacon to use company funds to pay for his divorce proceedings

75. In relation to allowing Mr Bacon to use company funds to pay for his divorce proceedings, again that is not in dispute. It is clear that Mr Ellis allowed Mr Bacon to use company funds to pay his solicitors divorce matrimonial costs, those were not repaid and that opportunity was not afforded to the claimant. Clearly less favourable treatment and the reason for that treatment was the fact that Mrs Bacon was married to Mr Bacon and effectively Mr Bacon was pulling Mr Ellis' strings.

Disregarding the claimant's grievance

76. In relation to the allegation of disregarding the claimant's grievance, it is clear the grievance was not addressed. It certainly was not addressed by Mr Ellis or Miss Bater. The Tribunal asked what was the reason for that, and the reason was the claimant's separation from Mr Bacon. That was therefore less favourable treatment on the grounds of her marital status and that claim is well founded.

Reporting the claimant to the Police for theft

77. In relation to the allegation of reporting the claimant to the Police for theft, again the only explanation for this is the dispute that was ongoing between Mr and Mrs Bacon, Mr Ellis was clearly an active participant in this and the reason for that treatment was the claimant's marriage to Mr Bacon which was now in the process of being dissolved. Clearly the claimant was being treated less favourably on the grounds of her marital status.

Using the claimant's legal documents from divorce proceedings

78. In relation to using the claimant's legal documents for divorce proceedings, here it is not entirely clear whether Mr Ellis only saw redacted copies, certainly it would appear and the Tribunal is prepared to accept this, the first time he saw the unredacted copy was in the course of these proceedings, probably in the bundle.
79. Therefore, on the balance of probability the Tribunal is prepared to accept that Mr Ellis did not see the unredacted copy or use that and therefore that claim is not well founded.

Victimisation conclusions

80. It is clear that the reason Mr Ellis pursued the claimant to recover the family iPads was not as a result of genuine concern about company property but in retaliation for the claimant raising a grievance in March, and that the whole process of pursuing the claimant for the items including iPads was vindictive because of the underlying dispute between Mr and Mrs Bacon of which no doubt Mr Bacon was pulling Mr Ellis' strings in the process. That claim is well founded.
81. In relation to the financial hardship allegation, it is difficult to pin this entirely to Mr Ellis and could be seen more as a company matter rather than just individually Mr Ellis and therefore the Tribunal do not find this claim well founded.

Direct Discrimination

82. In relation to the claims alleged under this head, the Tribunal concluded using a hypothetical comparator whose circumstances were not materially different from that of the claimant, that the treatment would have been exactly the same regardless of sex and therefore the claims under this heading were not well founded.

Employment Judge Postle

Date: ...26 May 2020.....

Sent to the parties on: ..2 June 2020....

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For the Tribunal Office