IN THE LONDON SOUTH

EMPLOYMENT TRIBUNAL

CASE NUMBERS: 2318353/2010N

2330171/2010/N

2300254/2011B

BETWEEN:

Ms AA Vaughan

Claimant

-and-

London Borough of Lewisham, Babcock Education and Skills Limited and Others

Respondent

MAIN HEARING

SUPPORTING EVIDENCE SUBMISSIONS

SCHEDULE OF CLAIMS

1. In my schedule of claims for **case Number: 2300254/2011B**- '**Protected Disclosures' 1 – 4 and 'Complaints of discrimination' 6 – 9,** I allege that

there was a 'policy, rule, practice, scheme or regime' in place. This did not end until **February 2011**.

2. For the purposes of s 48(3), it is provided that'(a) where the act extends over a period, the 'date of the act' means the last day of that period **(i.e. in February 2010)**, and (b) a deliberate failure to act shall be treated as done when it was decided on' (s 48(4)).

3. The claims mentioned above may therefore be treated as forming part of a single timeous claim in one of two ways. First, if they all comprise an act extending over a period under s 48(4), or, second, if they are all part of a series of similar acts or failures under s 48(3)(a).

4. An act extending over a period has the same meaning as under the discrimination statutes, and so will exist, for example, where it is shown that there is in force a connecting rule, practice, scheme or policy' under which the claimant is subjected to continuing or repeated acts of detriment (see ***Arthur v London Eastern Railway Ltd [2006] EWCA Civ 1358, [2006] IRLR 58***, at **(para 31)**.

5. The **Court of Appeal** has cautioned tribunals against applying the concepts of 'policy, rule, practice, scheme or regime' too literally, particularly In the context of an alleged continuing act consisting of numerous incidents occurring over a lengthy period, ***Hendricks v Metropolitan Police Commissioner 120021 EWCA Civ 1686, [2003]*** IRLR 96 at **(paras1- 52)**. According to Mummery LJ, these terms were mentioned in the above authorities as examples of when an act extends over a period, and *'should not be treated as a complete and constricting statement of the indicia'* of such

an act **(para 52)**. In cases involving numerous allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish a continuing act, is that (a) the incidents are linked to each other, and (b) that they are evidence of a 'continuing discriminatory state of affairs'. This will constitute 'an act extending over a period'. This means that a claimant does not have to prove that the incidents indicate the existence of some sort of general policy or practice, but father that the incidents are inter-linking, are discriminatory, and that the employer is responsible for this continuing state of affairs.

6. The Respondents submissions are not in line with case law or legislation.

7. It is submitted that my supporting evidence (dated between January and February 2010) is materially relevant to the issues to be tried and reference to it is already in the public domain, having been made reference to in the mine and the Respondents pleading, my schedule of claims, the questionnaires and responses, and several of the Respondents witness statement, which are in the trial bundle.

8. For example, I have alleged the following:

   a) The respondents' failed to pay me properly from December 2010, (this remained a failure until I was paid at the end of February 2011; and
   b) A failure to permit me to return to work following my sickness absence which began in May 2010, (this remained a failure until I was permitted to return to work on 7 February 2011); and

c) My employer had no genuine interest in supporting me to return to work;

9. My line manager and Michelle Naylor (HR) made a joint decision regarding whether or not to approve my return to work in February 2011, following a meeting with them which took place on 4 February 2011- this directly relates to the claim pleaded in claim number **2300245/2011**, concerning the my claim that my employer prevented me from returning to work following my sickness absence which began in May 2010. This contradicts the assertion made in the Equality form response, - *points 8.2 (b) and (c)*, which the respondent goes on to say that the issue of how HR staff (Babcock Education and Skills LTD) are managed is not relevant to the appellants claim of disability discrimination. This is false, as the question will help determine how much or how little control my employer had over this third party- who is a respondent in this case which is denying liability.

Rule 3(10) HEARING ON 5 JANUARY 2012

10. I attended the EAT on 5 January 2012 for a Rule 3(10) hearing. Judge Serota warned Mr Dobbin, (the respondents representative), that he believes that I have an arguable point with regards to this issue and that he was inclined to order an appeal hearing if Mr Dobbin did not agree to put the evidence back in the trial bundle. Mr Dobbin then stated that he was happy for the evidence to go back in. Judge Serota clearly stated that '*once the evidence is in the bundle, its in the bundle*' and that I could refer to it during the hearing. He went on to state that the respondent would be free to argue the relevance of the evidence during the course of the substantive hearing and not on 9 Monday January 2012. I was accompanied to the appeal hearing by Tanya Davis, Ibi Vaughan and Wayne Davis, they witnessed the proceedings. All

these individuals are happy to provide oral evidence to corroborate my version of events at the CMD on 9 January 2012; if necessary and the Tribunal requires them to do so.

11. It is important to note that Judge Baron had also previously made it clear to parties in his letter dated 4 January 2012, that the CMD on 9 January 2012 is not supposed to be 'contentious', i.e. *'The judge also comments that the Hearing must be kept in proportion and that the legal principles to be applied are unlikely themselves to be contentious'*.

12. I would like to be allowed to submit a supplementary witness statement in relation to the supporting evidence. Please note that this request is also in line with the content of the Respondents' e-mail dated Monday, 21 November 2011, 11:01, which I sent to the tribunal on 6 January 2012.

13. Several of the Respondents (in their witness statements), also make reference to matters relating to January - February 2011, therefore, in my view; I should also be allowed to do so. Every effort should be made to ensure that I am on an equal footing with the respondents'. My supplementary witness statement is not lengthy (please refer to the attached document).

14. My claims should be regarded as extending over a period, (post-December 2010), and so treated as done at the end of that period, because Respondents maintained and kept in force a discriminatory regime, rule, practice or principle which had a clear and adverse effect on me. I will need to rely on the supporting evidence to demonstrate/prove these claims. The

unlawful discrimination that I was subjected to amounted to 'conduct extending over a period'.

15. The supporting evidence of similar facts, are proven facts/ reasonably conclusive and not unsubstantiated allegations. The supporting evidence is relevant and particularly of assistance to me in the case that I am putting, that the respondents have a tendency to discriminate. It also demonstrates motivation.

16. The supporting evidence will advance my claim. The issues are in dispute and therefore if the evidence assists the Tribunal in the difficult task of determining such issues of fact, it is not in my view just or equitable or consistent with case law, to refuse to add weight to it.

CONCLUSION

17. I had to fight for two months to get the removed evidence placed back into the trial bundle. This was an extremely traumatic experience for me.

18. All of my supporting evidence has a potential to shed some light upon the culture that I suggest. I therefore believe that it is just and equitable for the ET to grant my request to submit a supplementary witness statement and attach weight to the supporting evidence. I also believe that this approach will assist the tribunal in dealing with this case. It will also enable the parties to deal with the case in ways which are proportionate to the complexity of issues, (on which the case will be decided) and further the overriding objective of the procedural rules to enable the tribunal to deal with cases justly.

19. Further, I submit that Article 6 of the European Convention on Human Rights, providing my right to a fair trial and embracing the principles of equality of arms and the right to adversarial proceedings, requires that I should be permitted to rely on supporting evidence to enable me to prove my case.

20. The prejudice from a refusal to allow me to rely on supporting evidence would be greater than any prejudice to the respondents' flowing from permitting this. I would not get a fair hearing because in effect I will have been prevented from being able to adequately present my claims and this would amount to a handicap to the attainment of justice. It's clear that natural justice does require that the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 is adhered to.

21. It would reassure me to know that the ET is committed to equal treatment and ensuring just outcomes. As such, the ET should take utmost care in making sure that its overriding objective is achieved: (1) The overriding objective of these Rules is to enable the ET to deal with cases justly. (2) Dealing with a case justly includes, so far as practicable– (a) ensuring that the parties are on an equal footing; (b) dealing with the case in ways which are proportionate to the importance and complexity of the issues; (c) ensuring that it is dealt with expeditiously and fairly; and (d) saving expense. (3) The parties shall assist the ET to further the overriding objective is achieved.