

Appeal No. UKEAT/0122/14/DXA

EMPLOYMENT APPEAL TRIBUNAL
FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 1 December 2014
Judgment handed down on 4 June 2015

Before

HIS HONOUR JUDGE SEROTA QC

(SITTING ALONE)

MS M SALTER

APPELLANT

IMPERIAL COLLEGE HEALTHCARE NHS TRUST

RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant

MR CYRIL ADJEI
(of Counsel)
Direct Public Access

For the Respondent

MS HILARY WINSTONE
(of Counsel)
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SUMMARY

RACE DISCRIMINATION

Direct

Other losses

This was essentially an appeal on the grounds of perversity which failed to cross the high threshold required for successful appeals on this ground.

The Claimant appealed against a Decision of the Employment Tribunal, that although she had suffered a single act of discrimination on the grounds of race (having rejected some 30 other allegations of discriminatory acts), she had not been dismissed unfairly by reason of her race.

This part of the appeal failed on the facts.

She also appealed on the ground that the single act of discrimination caused her to suffer personal injury, contrary to the finding of the Employment Tribunal. This ground of appeal also failed on the facts.

An appeal against an award of compensation for injury to feelings was dismissed as the award was within the **Vento** guidelines and was of an amount within the bounds of the level of award that the Employment Tribunal could properly make.

An appeal as to the level of the compensation for unfair dismissal was dismissed on the facts.

HIS HONOUR JUDGE SEROTA QC

Introduction

1. I shall refer to the parties as they were before the Employment Tribunal. Ms Salter will be referred to as “the Claimant” and the NHS Trust as “the Respondent”.

2. This is an appeal by the Claimant from a Decision of the Employment Tribunal at London (Central). Employment Judge Tayler sat with lay members Miss S K Sootarsing and Mr D Buckley. The Decision was a Remedy Decision, which followed an earlier Decision on liability of 27 May 2013 (Liability Reasons dated 14 August 2013). At the Liability Hearing, the Employment Tribunal found that the Claimant had been unfairly dismissed by reason of her race. There had been a breach of her contract of employment and she had been subject to discrimination on the grounds of her race on 28 October 2011.

3. At the Remedy Hearing, the Claimant was awarded a basic award of £4,300, a compensatory award of £66,124.72. She was awarded for injury to her feelings the sum of £6,000, together with interest of £100. Further, she was awarded damages for breach of contract in the sum of £4,632.

4. The appeal was referred to a Full Hearing by Lady Stacey. A cross-appeal by the Respondent was disposed of pursuant to Rule 3(7) of the **Employment Tribunal Rules of Procedure** by HHJ Richardson on 17 July 2014.

The Factual Background

5. I take this largely from the Decisions of the Employment Tribunal.

6. The Claimant is of mixed Irish/Afro-Caribbean heritage. The Respondent is a substantial NHS Trust operating research facilities at Imperial College and also at hospitals, St Mary's, Charing Cross and Hammersmith.

7. The Respondent was employed as Associate Director of Finance (Financial Services) on 31 July 2012. At the time of dismissal she was acting up in a Band 9 role, at which time she was at point 50 on the pay scale, which was at the top of Band 8D. This was the band appropriate for Associate Directors of larger Hospital Trusts such as the Respondent, whereas the appropriate band for Associate Director of smaller Trusts would be Band 8.

8. At the time of the matters complained of, the Claimant had been seconded to Mid-Essex Hospital Service NHS Trust but had been recalled to the Respondent four months early because of a severe financial crisis, which it is fair to say was of fairly epic proportions. The deficit as published had been in the region of £5 million, but estimates of the true deficit varied between £44 million to £100 million for the financial year to 20 November 2012. The cash balance was down to a sum of approximately £3 million, which equalled one day's operating costs. The situation was described by the Employment Tribunal at the Full Hearing as being "dire" and reflected very poorly on the Finance Director, Mr Morris and his team. In order to turn around the Finance Department the Respondent employed a Mr Shields, with a view to restructuring the Department, as Chief Financial Officer.

9. As the Claimant was on secondment for the period immediately leading up to the crisis, she was recalled. She was led to believe by Mr Morris that her job was likely to be re-evaluated, which would enable her to achieve Band 9 status. It should be borne in mind that at the time of the Claimant's dismissal for capability (ill-health) on 31 July 2012, she had been

paid while on secondment at an annual salary of £127,500, which was £30,000 over the top of Band 9. Even before the matters to which I shall come, the Claimant was anxious to secure a permanent post on Band 9.

10. The Claimant had attended a NHS course, “Breaking Through Top Talent”. This was a course designed to train senior management for BME (“black, minority, ethnic”) candidates, as they were perceived to be under-represented in the senior management of the NHS. The Claimant confidently expected she would be appointed to a Finance Director on Band 9 or an Assistant Director post, also on Band 9, as would be paid by larger Trusts such as the Respondent.

11. In order to remedy the Respondent’s dire financial situation, the Employment Tribunal found that Mr Bill Shields was appointed as Chief Financial Officer to effect a “root and branches transformation of the Finance Department” and to establish proper financial controls. He had developed a concept of “World Class Financial Management”. He was described by the Employment Tribunal as having an abrupt manner and little time for those he believed were not going to engage with him on the project. It would appear that he had earned a reputation as a highly successful Chief Financial Officer.

12. Before taking up his appointment, Mr Shields visited the Respondent on 8 September 2011 to meet with senior staff and to familiarise himself with problems before taking up his post as Chief Financial Officer on 3 October 2011. At least as far as concerned the Claimant, the meeting was somewhat stressful. Mr Shields had been “shocked” to find how many staff (including the Claimant) were working under acting up arrangements, the lack of clearly defined job descriptions and the failure of Mr Morris to undertake appraisals from which he

could clearly identify the objectives that had been set for staff on the Finance team. He was highly critical of the Finance Directorate and said words to the effect that he did not know how it got so wrong or who was responsible. The focus of Mr Shields' criticisms was Mr Morris, but at least by implication he suggested the Claimant might be at fault as well. Mr Shields said he was going to make changes and he only wanted people with him who wished to deliver world class finance; those who did not would be assisted in moving on. Mr Shields said the Claimant could not expect him to be like Mr Morris. Mr Shields intended to reorganise the Department and create new posts; as I shall explain at paragraph 14.

13. On 28 October 2011, Mr Shields met with the Claimant and, in the words of the Employment Tribunal, was "extremely challenging". It is apparent that Mr Shields had learned that the Claimant had attended the Breaking Through Top Talent programme and appears to have expressed the view to Mr Morris (Merits Decision, paragraph 35) that he considered the programme had given the Claimant ideas above her station and that he thought she expected to become a Financial Director on the basis of her attendance at this programme alone. The Employment Tribunal (Merits Decision, paragraph 108) found that he had, in his conversation with Mr Morris, specifically referred to the Claimant as "black" and had concluded that the Claimant:

"... believed that she should be made a Director of Finance merely because she had taken part in that programme, and because she was Black. ..."

She was also told to look for work outside the Trust and she should consider what failure to be appointed to one of the new roles within the Trust would look like. The Employment Tribunal considered:

"... that there is an inference to be drawn that the treatment was to an extent because of her race. We consider that arose out of stereotypical assumptions that Mr Shields formed because of the Claimant's attendance on the Top Talent scheme. ..."

He inferred with no evidential basis that she had:

“... “Ideas above her station”. He had no proper basis to form that view and we consider that view was influenced by the Claimant’s race. ...”

The Employment Tribunal then concluded that the treatment of the Claimant at the meeting of 28 October 2011 by Mr Shields was in part because of her race. Although this particular claim of discrimination was brought out of time, the Employment Tribunal considered it appropriate on the just and equitable ground to permit it to be raised.

14. The Claimant raised a grievance on 5 January 2012, making a number of allegations against Mr Shields and complaints about a failure to make her substantive Band 9. Issues arose from Mr Shields’ proposal of a new structure for the Respondent’s Finance Department with a Director of Operational Finance with three Deputy Directors, all on Band 9, reporting to him. The Claimant took the view that she should be slotted into one of those posts without having a competitive assessment. The Respondent and Mr Shields considered, however, that the best candidate should be slotted in based on competitive assessment. The Claimant was informed of this and told that, if she was unsuccessful in her application for the new posts, she would revert to her substantive Band 8 post.

15. This led to the Claimant issuing three grievances on 13 January against the Respondent, alleging discrimination on the part of Mr Shields in that he treated her peers differently in relation to banding. Dr Katherine Jones, Deputy Head of Nursing, was appointed to investigate the Claimant’s grievance. The Employment Tribunal record that, in the middle of January 2012, the Claimant was feeling increasingly stressed, reluctant to take time off for ill-health and had previously had a very good absence record.

16. On 20 January 2012, the Claimant attended a Personal Development Session on Managing Change. The Employment Tribunal record that she found the thought of it extremely upsetting and broke down on the journey to and during the training session. She then attended her GP on 24 January 2012 and was signed off for one week with work-related stress. She did not return to work before her dismissal.

17. On 25 January 2012, Dr Jones produced her report into the grievance. The report focussed on the slotting in issue and banding. She found that the Claimant had not established any evidence to support a claim of discrimination on the grounds of age, gender or ethnic background.

18. A further grievance hearing took place on 31 January 2012, again focusing on grading and slotting in. The report in relation to this grievance, prepared by Catherine McCloughlin, a Board Associate Director, was described as being:

“... carefully constructed and was a genuine attempt to understand the Claimant’s grievances and to deal with them in a thorough and logical manner. ...” (Merits Decision, paragraph 60)

However, the report concluded that it was not appropriate to require that the Claimant be slotted in one of the two new roles, although she was justified in complaining about the way the banding issue had been progressed prior to October 2011. A number of recommendations were made, which the Employment Tribunal noted were not fully progressed.

19. The Claimant was invited on that date to an assessment at an assessment centre to take place on 13 February 2012. However, she did not attend as she felt too unwell to take part in the process. Mr Mark Collis, the Deputy Director of Finance (Financial Service), did attend.

20. On 17 February 2012, the Respondent placed an advertisement for the two remaining Deputy Director of Finance roles. Mr Collis indicated a preference for the Deputy Director of Finance Planning role, but at the interview it was decided his skills were more directly related to the Financial Services role, which he was given on an acting basis; it had not been felt that he had not demonstrated to a satisfactory standard the full range of skills required to be appointed to the post permanently.

21. On 21 February 2012, the Claimant was triaged for counselling to assist her with her medical condition (I assume stress).

22. On 8 March 2012, the Claimant submitted an application for the remaining Deputy Director of Finance post, but was not appointed and was notified that as from 1 July 2012 she was to resume the duties of the post of Associate Director of Finance (Financial Services) and would be placed on the top increment of Band 8D pay scale. The Claimant was given a priority interview for the new Deputy Director posts of Financial Planning and Business Partnership. The Claimant, as I have said, was offered a priority interview for those posts were she to submit an application and was told that if she met the minimum requirements of the interview process she would be appointed irrespective of how well any other candidates performed. The Claimant disengaged from participation in the reorganisation process.

23. On 17 April 2012, the Claimant was referred to Occupational Health. Mr Loveridge, the Associate Director of Human Resources, informed Occupational Health that he could not think of any adjustments that might facilitate the Claimant's return to work, but asked that if there were adjustments Occupational Health thought he should consider, he should be advised.

24. Occupational Health considered that the Claimant was suffering from a medical illness that would render her as unfit to return to work. The attendance management process continued, until ultimately on 25 May 2012 a Stage 3 meeting took place. The Claimant remained absent from work by reason of stress and continued to receive counselling.

25. On 25 July 2012, the Stage 3 attendance management meeting decision was reached, and a decision to dismiss the Claimant was by reason of capability. Her appeal against the dismissal was itself dismissed.

26. On 5 November 2012, the Claimant commenced employment with Lincolnshire Community Healthcare Trust for six months.

27. The Merits Judgment, as I have noted, is dated 25 July 2013. The Reasons being delivered separately in August.

The Decision of the Employment Tribunal on the Merits

28. This appeal does not really concern the Merits Hearing, which is relevant only in relation to the facts that were found relevant to remedy. I note, however, that the Employment Tribunal only made one finding of discrimination (relating to the conduct of Mr Shields at the meeting of 28 October 2011; list of issues 17e). At least 29 other allegations were rejected; a few were withdrawn or not proceeded with.

29. The Employment Tribunal accepted that the Claimant had indeed been dismissed by reason of capability by reason of long health-related absence, nevertheless the dismissal was

unfair because of the conduct of the Respondent and the dismissal was outside the range of reasonable responses.

The Remedy Judgment

30. It is noticeable that the events of 28 October 2011 (which led to the only finding of discrimination in the Claimant's favour) took on a much higher profile in the Remedy Hearing than it had in the Merits Hearing.

31. I refer to paragraphs 12 and 13 of the Remedy Decision:

"12. Firstly, we considered the comments made by Mr Shields on 28 October 2011. We accept that the Claimant was extremely upset at the time, as it was suggested that she should look for a role outside of the Respondent organisation at a stage when [Mr Shields] knew very little about her and about her skills. It affected her confidence severely. We consider that it was essentially a one off incident, although it is one that caused considerable upset to the Claimant during the remaining period of her employment with the Respondent. We considered that it is correctly assessed as being at the top of the bottom band of Vento. We award £6,000 for injury to feelings.

13. We have next considered whether the events that occurred thereafter resulted from that comment so that it can be seen as being causally connected to the eventual dismissal of the Claimant. We do not accept that it was. Although the Claimant was upset by [Mr Shields'] comments, there was bound to be a degree of conflict between him and the Claimant, as was the case with Mr Morris, because they did not accept that the finance department was in crisis and that they had to accept at least some responsibility for the situation. The Claimant had to demonstrate to Mr Shields that she wished [to] be a part of his vision of world class finance designed to see the finance department turned around. The Claimant did not become ill due to stress until some four months after Mr Shields' comment [it is accepted that this is an error, and the period was three months]. We do not think that his comments were causative of the disputes that occurred with the Claimant during the course of the reorganisation process and of her decision not to be more engaged in it leading up to her eventual dismissal."

32. The Employment Tribunal noted significant failures by the Respondent in the dismissal process, including in particular the ignoring of the recommendations made in the outcome of the grievance proceedings and the way in which it considered how to assess the Claimant for one of the new roles in her absence. The Respondent accepted the Claimant would have been appointed to one of the roles provided she established the minimum competencies but failed to assess her in her absence. There was to be no contribution for blameworthy conduct. The Employment Tribunal found that had the Respondent made appropriate arrangements for

assessment of the Claimant in her absence, she would have been appointed to a Band 9 Deputy Director role and remained in the Respondent's employment. The Claimant had not failed to mitigate her damages and should have been able to find a post of an equivalent band/increment by the end of December 2013.

Notice of Appeal and Submissions in Support

Ground 1

33. It is said the Employment Tribunal erred in finding that the act of race discrimination relating to Mr Shields' conduct at the meeting of 28 October 2011 was not connected with the Claimant's eventual dismissal. This particular theme runs through the entire Notice of Appeal. It is said that the Employment Tribunal made a number of factual findings "for which there was no evidential basis and/or were irrelevant".

Ground 1(1)

34. The finding that there was bound to be a degree of conflict between the Claimant and Mr Shields was said to be without factual basis. It is said this was not asserted in evidence by the Respondent, nor that this was an explanation for how Mr Shields treated the Claimant, or even considered that she was partly responsible for the situation in the Finance Department, however the Claimant had refused to accept partial responsibility. The finding, it is said, was undermined by the fact that the Claimant was persuaded to return early from her secondment in the Essex NHS Trust and that financial problems existed prior to the Claimant's return.

Ground 1(2)

35. Challenges made to the finding that the Claimant did not become ill due to stress until four months after Mr Shields' comments; I have already noted that the four month period is

incorrect, and it should have read “three months”. The Claimant attended counselling for stress until December 2011; that is 38 days only after the 28 October 2011, and signed off for work-related stress on 24 January 2012.

Ground 1(3)

36. The Employment Tribunal was wrong to find that the events of 28 October 2011 were not causative of the Claimant’s decision not to be more engaged in the reorganisation process leading up to her eventual dismissal. It is said that the Employment Tribunal should have linked the Claimant’s ill-health to the discriminatory comments that led to her inability to attend assessments and interviews by reason of ill-health, and should have concluded, if she had not been unwell, she would have been appointed to one of the Deputy Director posts, supported by the finding in relation to the unfair dismissal claim.

37. It is said that there was no evidence placed before the Employment Tribunal of vacancies of Deputy Director of Finance roles above Band 8 and 9. Therefore, the Claimant should have been appointed to the Deputy Director of Finance role with the Respondent on Band 9. She suffered a difference in salary and pension between that role and any Band 8 role; the Claimant had not been compensated for this loss.

38. Grounds 2 and 3 rely on the factual matters relied upon in support of ground 1.

Ground 2

39. The Employment Tribunal erred in not awarding the Claimant compensation for the ill-health caused by the discriminatory act and not awarding her a greater sum in relation to injury to feelings because of this ill-health.

Ground 3

40. The Employment Tribunal should have awarded the Claimant a greater sum in respect of injury to feelings to reflect the fact that the discriminatory act led to her inability to participate fully in the reorganisation process and her dismissal.

The Respondent's Submissions

41. Ms Winstone, as a general point, submitted that the Notice of Appeal was, in effect, a perversity appeal and it was accordingly necessary for the Claimant to surmount the high threshold of an overwhelming case (Yeboah v Crofton [2002] IRLR 634).

Ground 1

42. Ms Winstone submitted that all the findings made by the Employment Tribunal were open to the Employment Tribunal on the evidence. In relation to ground 1(1), conflict between Mr Shields and the Claimant, Ms Winstone pointed out that the Claimant had complained bitterly about her encounters with Mr Shields and his actions to turn around the Finance Department. Until the appeal, the Claimant had complained of a number of acts on the part of Mr Shields said to have been discriminatory and it was “bizarre” that she now asserted there was no conflict between them at the meeting of 28 October 2011 (I am not sure that this is how the Claimant puts her appeal).

43. There is more force, however, in Ms Winstone's point that both the Claimant and Mr Morris asserted that the critical deficit in the Trust's finances were not their responsibility. The Claimant had maintained it was the responsibility of other departments to manage their finances. The situation in the Finance Department was clearly not something that occurred overnight and cannot have been satisfactory at the point in time the Claimant left on

secondment. It was reasonable to assume that Mr Shields could conclude she was at least partly responsible for the chaotic position of the Department and the Respondent's finances. The Employment Tribunal found that, although Mr Shields reserved the bulk of his criticism for Mr Morris, "at least by implication, he suggested that the Claimant might be at fault as well" (Liability Judgment, paragraph 28). In the Claimant's notes of meetings with Mr Shields (page 128), she expressed the view that in her belief Mr Shields had taken an extremely negative view of her and that she did not add any reasonable value to the senior management team and was an unnecessary expense to the establishment:

"... he clearly perceived me as part of the old regime and shared the blame for why the directorate was not fit for purpose in his opinion."

44. She claimed she could not sleep that night because she was so anxious that Mr Shields had formed a negative opinion of her and that her position and status was threatened. She was reduced to tears the following day and left early. In those circumstances the Employment Tribunal was justified in coming to the conclusion that there was bound to be conflict between the Claimant and Mr Shields.

Ground 1(2)

45. It was accepted that the Employment Tribunal had wrongly calculated the period from 28 October until the advent of her sickness as being four months rather than three. However, the point made by the Employment Tribunal was that there was a significant gap between the October meeting and the Claimant's great distress and the date she went off sick. The assertion that the meeting of 28 October 2011 was the trigger for her illness leading to her dismissal was not the way she had put the case in the Employment Tribunal where, as has already been pointed out, she relied on over 30 separate incidents of alleged discriminatory conduct. The Employment Tribunal made no findings that the Claimant's visits to the in-house counsellor

after the October meeting meant that she was “ill” over the months prior to the commencement of her sick leave on 24 January 2012. This was a matter considered by the Employment Tribunal, which had documented the visits as well as subsequent counselling sessions.

46. Ms Winstone then submitted that the Employment Tribunal had found that the Claimant’s illness was the result of the Managing Change process and her entrenched view that her banding should be confirmed at Band 9 and thus be slotted into a new post without a competitive assessment. My attention was drawn to paragraphs 51, 59 and 60 of the Liability Decision. The Claimant’s focus on slotting in and achieving permanent Band 9 status is apparent from the terms of the outcome letter of 3 February 2012 in relation to the Stage 3 grievance meeting of 31 January. There is no suggestion that at the grievance meeting the Claimant complained about the 28 October meeting, and she does not seek to link Mr Shields’ conduct at the meeting as being causative either of her failure to engage in the reorganisation process or her dismissal.

Ground 1(3)

47. The conclusion reached by the Employment Tribunal was one it was entitled to reach, having regard to the Claimant’s case that her problems related to failure to slot her in and the requirement she should participate in a competitive application. The Claimant had sought to rely upon over 30 other matters, all of which were rejected by the Employment Tribunal. The Employment Tribunal was accordingly, on the facts that it found, entitled to conclude as it did in relation to the discriminatory comment not being causative of the Claimant’s decision not to be more engaged in the reorganisation process. The Employment Tribunal was entitled to conclude as it did (Remedy Judgment, paragraph 13):

“... We do not think that [Mr Shields’] comments were causative of the disputes that occurred with the Claimant during the course of the reorganisation process and of her decision not to be more engaged in it leading up to her eventual dismissal.”

It was submitted that this was a decision on a matter of fact to which the Employment Tribunal was entitled to come on the evidence. Further, there was no medical evidence to support the Claimant's contention, which was made for the first time at the Remedy Hearing.

Ground 1.3.8.9/10 - Difference in Pay and Pension Achievable at Band 8 rather than Band 9

48. The Respondent submitted it was reasonable for the Employment Tribunal to find that the Claimant should have been applying for roles at an equivalent level to that which she would have been appointed had she remained at the Respondent, rather than continuing to apply for posts at Director level, which it is said were "few and far between". It was reasonable for the Tribunal to find that she might well obtain a lesser role at the banding and increment which she would have had had she not been unfairly dismissed by the Respondent, given that the Deputy Director role there was at Band 9 and she was on the highest increment.

Ground 3 - Compensation for Injury to Feelings

49. So far as injury to feelings is concerned, the Employment Tribunal was justified in assessing compensation at the top end of the lower band of the "**Vento**" guidelines. The Employment Tribunal did not find that the discriminatory act caused the Claimant's illness and it was a "one-off". The award of £6,000 is not outside the bounds of an award that the Employment Tribunal might reasonably make.

50. So far as personal injury is concerned, it is submitted there was no medical evidence presented to the Tribunal that gave grounds for a personal injury award other than the fact that the Claimant had time off work with medical certificates stating "stress" and with evidence of counselling attended. Ms Winstone submitted that, in an updated Schedule of Loss, the Claimant contended that an award of some £8,000 should have been made for personal injury

but Ms Winstone maintained this was not “seriously argued for at Tribunal and no supporting evidence produced as to why it should have been at this level”.

Conclusions

Ground 1

51. I propose to deal with this ground fairly briefly. I agree with the submission that it is, in essence, a perversity challenge. It is not for the Employment Appeal Tribunal to revisit factual findings of the Employment Tribunal in the absence of perversity or in the absence of the Employment Tribunal having gone outside what might be regarded as **Wednesbury** principles. There is no misdirection in law and there was available for the Employment Tribunal evidence that might justify all its findings. I simply cannot accept in this case that the Claimant has surmounted the high threshold of a perversity challenge. I bear in mind an Employment Tribunal is not bound to refer to all the evidence it has heard, only such as is necessary for its decision. Further, a Tribunal does not go wrong simply because it does not address every argument put to it even if those putting the arguments think they are important.

52. It is clear that the main thrust of the Claimant’s original complaints, in relation to her unfair dismissal and health, related to the Respondent’s refusal to slot her into a Band 9 post and to insist that she should not be exempted from competitive assessment for any post into which she might be transferred. She relied on over 30 issues, apart from the distress she asserts she suffered as a result of the meeting with Mr Shields on 28 October. The Employment Tribunal found this was the only act of discrimination of which it was satisfied and rejected some 30 others. Consequently, subsequent to the Decision of the Employment Tribunal on the merits, the meeting with Mr Shields has taken a very much higher profile than it originally had

and it is now being portrayed as the principal cause of the Claimant's dismissal and subsequent ill-health.

53. In my opinion the Employment Tribunal was entitled to conclude there was bound to be a degree of conflict between the Claimant and Mr Shields because the evidence suggested a strong antipathy of the Claimant towards Mr Shields (whether this was justified or not, it is unnecessary to decide). The Claimant resented the suggestion she was at least partly to blame for the parlous condition of her Department. She disagreed with Mr Shields' plans for reforming the Department, and there was ample material upon which the Employment Tribunal was entitled to conclude there would have been a degree of conflict between the two. There already was a degree of conflict as at the date of the Claimant's dismissal.

54. It is impossible, as it seems to me, to look at extracts from the Claimant's case and be able to find a causal link between the single finding of discrimination and the Claimant's dismissal or linking her illness to behaviour at meetings. I accept the submission that the Claimant's grievance did not seek to blame Mr Shields for her dismissal or subsequent illness, which supports the suggestion that prior to the appeal she did not suggest there was a particularly strong link between Mr Shields and the matters of which she complained.

Ground 2

55. So far as ground 2 is concerned, the Claimant's complaint of ill-health, I again accept the submission that there is no medical evidence relied on to support this, which was raised for the first time at the Remedies Hearing. There was no finding of any act of discrimination that was causative of her inability to participate in the reorganisation process and her dismissal, and those alleged were among the 30 or so allegations rejected by the Employment Tribunal.

Compensation

56. The Claimant's claim seeks to rely upon the effect of Mr Shields' conduct on 28 October, which was not accepted by the Employment Tribunal nor by me on appeal. On the findings made by the Employment Tribunal the award made, at the upper end of the lower **Vento** bracket, was well within the ambit of a decision that could properly and reasonably be taken on the facts before the Employment Tribunal.

57. In all the circumstances none of the grounds of appeal succeed and the appeal must be dismissed.