Appeal No. UKEAT/0120/14/DM

EMPLOYMENT APPEAL TRIBUNAL

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

At the Tribunal
On 6 October 2014

Before

HER HONOUR JUDGE EADY QC

(SITTING ALONE)

MS J WESS — APPELLANT

SCIENCE MUSEUM GROUP — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MS JANE WESS (The Appellant in Person)
For the Respondent	MR STUART BRITTENDEN (of Counsel) Instructed by: Messrs Farrer & Co LLP 66 Lincoln's Inn Fields London WC2A 3LH

SUMMARY

CONTRACT OF EMPLOYMENT - Implied term/variation/construction of term

CONTRACT OF EMPLOYMENT - Wrongful dismissal

UNFAIR DISMISSAL - Reasonableness of dismissal

REDUNDANCY - Fairness

Wrongful Dismissal

Mere delay might be neutral in determining whether an employee can be said to have acquiesced in the case of an employer's breach of contract or in deciding whether or not an employee has accepted a change to a contractual term but this case involved more than simply a unilateral change of one term of the Claimant's contract. The Respondent did not purport to maintain the Claimant's former contract subject only to a unilateral variation of her notice entitlement. It departed from that former contract and introduced an entirely new package, which encompassed not just the terms and conditions but also the job description and the handbook. Some of that had impacted on the Claimant straightaway. Knowing of the change in question to her notice period (a term which could have an immediate impact in terms of job security), she continued to work to the new contract for some nine years without objection.

In considering that time period, the Employment Tribunal was entitled to have regard to the Claimant's position. She herself had held a trade union role. She was someone who could be expected to have regard to the detail of the terms and conditions and to raise queries if they arose.

Properly understood, the wrongful dismissal appeal was one of perversity. It did not meet the high test laid down so as to make good that challenge.

Unfair Dismissal

The sole point permitted to proceed to Full Hearing was concerned with the involvement of two particular individuals on a selection panel (for a potential alternative position in a redundancy exercise), against whom the Claimant had raised grievances.

The question of the composition of the panel was raised as an arguable point before the Employment Tribunal, which carefully scrutinised the evidence on that question. It was satisfied that the Claimant's concerns were unfounded: the composition of the selection panel was neither unreasonable, nor did it impact in any way on the fairness of the selection process. On those findings of fact, there was no proper point raised by this part of the appeal.

Appeal dismissed.

HER HONOUR JUDGE EADY QC

Introduction

1. I refer to the parties as the Claimant and the Respondent, as they were below. This is the Claimant's appeal against a Judgment of the London (Central) Employment Tribunal (Employment Judge Grewal sitting with members, over seven days in April 2013 with a further two days of discussion in chambers) - "the ET"; the Judgment being sent to the parties on 22 July 2013 along with some 26 pages of Written Reasons. The Claimant was represented by Ms Hart of Counsel before the ET but appears in person before me today. The Respondent was represented by Mr Brittenden of Counsel both before the ET and here.

2. The ET was charged with determining four separate claims brought by the Claimant against this Respondent, which had been combined for hearing. It dismissed the Claimant's complaints of unfair dismissal, wrongful dismissal, sex discrimination, age discrimination and victimisation. This appeal is solely concerned with the claims of unfair and wrongful dismissal.

The Background Facts

3. The Claimant was employed by the Respondent from 12 March 1979. At the material time, she was employed as a Senior Curator. Her employment terminated by reason of redundancy on 27 November 2012.

4. The Claimant was initially employed on Civil Service terms and conditions, until the time of a restructuring exercise in 2003 when she was offered a new, lower grade position as Curator of Science. When she accepted that position the provisions for pay protection had not been

finalised. She noted that fact and expressed her understanding that her terms would remain unaltered by the appointment. That was a standard form of wording advised by her trade union.

5. Subsequently, however, the Claimant was sent an entirely new contract, which - most relevantly for present purposes - contained a reduced notice entitlement the effect of which was to reduce her notice period entitlement from six months to 12 weeks.

6. The new contract ended with the following statement (underneath the line where the employee was asked to sign):

> **"I confirm my agreement that the above terms and conditions constitute my permanent contract of employment...I also accept the terms and conditions as described in the job description that accompanies this statement and in the relevant policies and sections of the staff handbook referred to in this statement."**

7. The Claimant did not sign the new contract (as she had been asked) but also did not say that she objected to the different terms in it. She did, however, appeal against the grading of her new position, which led to it being re-graded and the title changed to that of Senior Curator. As Senior Curator, she then reported to a Principal Curator.

8. The evidence before the ET was the Respondent's curators generally felt that there was little to distinguish between Curators and Senior Curators. On the other hand, it was recognised that there was a clear distinction between Senior Curators and Principal Curators.

9. In September 2010 a Mr Ellory-van Dekker was appointed as Acting Head of Curatorial Services. At that stage 40% of the Claimant's time was to working on a book, due to be completed in June 2012. She was also writing a proposal for an Alan Turing exhibition. In November 2010, Mr Ellory-van Dekker informed the Claimant that the work on the exhibition

would be completed by an external consultant. She was unhappy that this was being taken away from her, but recognised it would give her more time to complete the book project.

10. In December 2010 the Claimant e-mailed HR with various complaints of bullying by Ms Heather Mayfield, Acting Director. She said these had occurred between May 2004 and November 2010, the last incident being the removal of the Turing exhibition work. She said she did not want to raise it as a formal grievance but wanted to put down a marker.

11. In December 2010, Ms Mayfield was appointed Deputy Director of the Respondent.

12. Early in 2011, Mr Ellory-van Dekker met with the Claimant regarding her e-mail to HR. He asked whether she thought it was appropriate to raise serious allegations against a colleague but then prevent any meaningful investigation taking place.

13. In February 2011, meetings took place between the Claimant and Mr Ellory-van Dekker regarding the book deadline. He considered both the deadline and the allocation of the Claimant's time had been reasonable and was not prepared to extend the deadline or allocate the Claimant 80% of her time to complete it (she would then be on sabbatical working on the book because 20% of her time was spent on trade union activities). As she was not going to be able to complete the book in the allocated time, the decision was taken to discontinue it.

14. That fed into the Claimant's appraisal in April 2011, when she was given a Box 1 - unsatisfactory - marking. She was also put on to an informal performance improvement plan.

15. In or around March/April 2011, the Respondent launched a change programme. It was responding to a requirement that it deliver a 10% reduction in staff costs following the reduction of its grant in aid from the government. It sought to avoid compulsory redundancies, adopting other measures to achieve that end, including a recruitment freeze, voluntary redundancy, and redeployment opportunities. The redeployment programme included a policy for the slotting in of staff who had to be considered for new roles.

16. In July 2011, Mr Ellory-van Dekker was appointed as Head of Collections and was asked to consider how the Collections Department could make efficiency savings in the light of the reduction in the Respondent's grant in aid. A restructuring then took place in which the decision was taken to delete the five Senior Curator roles. They would be replaced by fewer and - as the ET found was shown in the job matching exercise - different roles.

17. In the job matching and slotting-in exercise that followed, a different approach was adopted in the case of Principal Curators, the more senior position, to that of Senior Curators. In the former case, the decision was based on Mr Ellory-van Dekker's assessment as to the ability of the individuals to do the new jobs in the light of what he knew about what they actually did in their existing roles as opposed to simply a comparison of two job descriptions. If the decision had been purely based on the job descriptions, the ET accepted that the conclusion would have been that the old and the new jobs were different. When it came to the Senior Curators the comparison was made on the basis of the job descriptions. Those showed that the old and the new jobs were different. The ET found, however, that had Mr Ellory-van Dekker relied on his own assessment of what the Senior Curators did in practice, the outcome would have been the same. He did not consider that they were performing at a higher level than their job descriptions and there was no evidence of their carrying out the kind of duties required

in the new roles. Five Senior Curator positions in the Collections Department would cease to exist. The post-holders would thus be at risk of redundancy. They would be offered the opportunity to apply for the alternative roles before those were advertised externally, but they would still need to meet the criteria of demonstrating that the abilities matched the new role by at least 75%.

18. In November 2011, the Claimant heard that Mr Ellory-van Dekker was critical of the time she had taken to prepare for a Royal Society lunchtime lecture. She complained about this to Ms Hall (from HR). She was thinking of raising a grievance but did not formally do so.

19. In respect of the Claimant's complaint about Mr Ellory-van Dekker, Ms Hall felt informal meetings were not progressing things for the Claimant and it would be beneficial to put things on a more formal footing. On 16 December 2011, the Claimant - following Ms Hall's advice, as she saw it - submitted a formal grievance against Mr Ellory-van Dekker, complaining of his negative criticism of her, that there appeared to be some sex and age discrimination in the way she had been treated, and she was concerned he would have considerable influence over whether she retained her position and his views might influence others.

20. The ET found that Mr Ellory-van Dekker felt the grievance was upsetting and offensive. He had read into the complaint of sex discrimination that the Claimant felt that, as a gay man, he favoured male members of staff. She had not, in fact, made that suggestion.

21. HR arranged for the Claimant's grievance to be investigated by an external HR consultant and informed her of that; stating that Ms Mayfield and another would be responsible for communicating the outcome of the grievance to the Claimant.

22. There then followed a further discussion and clarification as to the position in this regard and it was clarified that Ms Mayfield would actually be the decision-taker on the complaint, presumably basing her decision on the report of the external consultant. On 6 February 2012, on the advice of her trade union, the Claimant lodged a grievance against Ms Mayfield, complaining of 16 instances of bullying between 2004 and 2011.

23. Meanwhile, the Claimant was invited to attend a redeployment interview and selection panel exercise for a Deputy Keeper role, in which she had expressed an interest. The selection panel was to include Mr Ellory-van Dekker and Ms Mayfield. The Claimant and her trade union representative objected that it was not appropriate for the panel to include two members against whom she had brought grievances. The Respondent responded by bringing in another, newly appointed, director onto the panel, which would now comprise an HR representative, two other relatively new appointees at the Respondent, and Mr Ellory-van Dekker and Ms Mayfield acting as one, merged panel member.

24. There were two internal candidates in this selection process for the Deputy Keeper role: the Claimant and a Mr Millard. The ET dealt with the process followed in detail (see paragraphs 71 to 75 of the Reasons). Mr Millard achieved a score of 200 (over the 75% necessary). The Claimant scored 134.5 (less than 75%). Mr Millard had previously unsuccessfully applied for the Keeper role and so had recent experience of a not dissimilar presentation and role-play exercise, and the ET considered this might have benefited him.

25. On 1 March 2012, the Claimant was informed she had been unsuccessful in this exercise. She appealed against that decision but was without success (although that statement does not do justice to the extremely thorough appeal process, as detailed in the ET's findings of fact).

26. On 5 March 2012 the external consultant produced her report into the Claimant's grievance against Mr Ellory-van Dekker. She did not uphold the Claimant's complaints. Towards the end of that month she produced her report into the grievance against Ms Mayfield. Again, she did not find the Claimant's complaints to have substance.

The Employment Tribunal's Decision and Reasoning

27. On the unfair dismissal claim, the ET concluded that the reason for the Claimant's dismissal was redundancy. The requirements of the Respondent for employees to carry out the work of Senior Curators had ceased, and the Claimant's dismissal was wholly attributable to that. Specifically the ET rejected the Claimant's case that the Deputy Keeper role was no different to her former Senior Curator role and that she should therefore have been slotted into that. The ET also rejected her case that her dismissal had been unfair. It had been reasonable to expect candidates to demonstrate their suitability for the new roles by going through a selection process. It also found that there had been meaningful and adequate consultation with the Claimant and her trade union. As for the composition of the selection panel - specifically, the inclusion of Mr Ellory-van Dekker and Ms Mayfield - that was neither unreasonable nor had it impacted on the fairness of the process. It noted that the Claimant had not wanted those individuals on the interview panel because she thought that they might not be favourably disposed to her and that might have led her to raise grievances against them when she did.

28. Notwithstanding that, the ET concluded that the Respondent had been entitled to take into account the circumstances in which the grievances had been raised and the timing of them. Ultimately it found that the Respondent had, in any event, taken steps to ensure that the Claimant's concerns were addressed. Mr Ellory-van Dekker and Ms Mayfield only had one vote between them, and there were three other members of the panel, two of whom were relatively new to the organisation and were totally independent. The ET found that there had been no collusion in the scoring of the Claimant. In the circumstances of this case, the ET was satisfied that the dismissal of the Claimant for redundancy was fair.

29. As for wrongful dismissal, the ET noted that, under the Claimant's original Civil Service contract, she had been entitled to six months' notice. Upon being appointed Curator of Science in March 2003, she had been given a contract entitling her to three months' notice. Allowing that the Claimant had not signed that contract, the ET observed that, equally, she at no time indicated that she did not accept its terms and thereafter worked to it until her dismissal.

30. The ET identified the point at issue on this part of the case as being whether the Claimant had accepted the variation of her contract. In determining that question the ET had regard to the fact that the Claimant was intelligent and well-educated, and had been actively involved in her trade union for a number of years. The changes in the new terms and conditions would have been apparent to her and, if she had not accepted them, she would have made that clear. That she did not was indicative of the fact that she accepted and agreed to the variation.

The Appeal

31. After initially being considered on the papers (by Langstaff P) to disclose no reasonable ground, the Notice of Appeal was permitted to proceed to a Full Hearing by Lewis J on the

following two bases: (1) the ET erred in concluding that it was not unfair for the selection panel to have included two persons who were the subject of outstanding grievances, one of whom had given evidence that he felt affronted by the grievance; (2) the ET had erred in its conclusion on wrongful dismissal, as the Claimant had not accepted the change of terms reducing the notice period and had no reason to challenge that change until termination of her employment.

The Relevant Legal Principles

32. When considering whether the conduct of an employee amounts to acceptance of a variation in terms and conditions, ETs should treat with caution the argument that the employee has impliedly accepted a unilaterally imposed new term; at least, where the effect of that new term is not immediate (**Jones v Associated Tunnelling Co Ltd** [1981] IRLR 477 EAT). Having regard to the imbalance of bargaining power in the employment relationship, it may well be asking too much of an employee to object to an erroneous statement of terms and conditions which has no immediate practical impact. On the other hand, where the employer makes it plain that future employment is offered on the basis of new terms, and the employee accepts that employment and continues to work for the employer over a significant period of time, the question arises as to whether that does not represent assent on the employee's part.

33. A sensible starting point is that laid down by Elias P (as he then was) in **Solectron Scotland Ltd v Roper** [2004] IRLR 4 EAT at paragraphs 30 and 31.

> **"30. The fundamental question is this: is the employee's conduct, by continuing to work, *only* referable to his having accepted the new terms imposed by the employer? That may sometimes be the case. For example, if an employer varies the contractual terms by, for example, changing the wage or perhaps altering job duties and the employees go along with that without protest, then in those circumstances it may be possible to infer that they have by their conduct after a period of time accepted the change in terms and conditions. If they reject the change they must either refuse to implement it or make it plain that by acceding to it, they are doing so without prejudice to their contractual rights. But sometimes the alleged variation does not require any response from the employee at all. In such a case if the employee does nothing, his conduct is entirely consistent with the original contract containing; it is not only referable to his having accepted the new terms. Accordingly, he cannot be taken to have accepted the variation by conduct.**

> **31. So, where the employer purports unilaterally to change terms of the contract which do not immediately impinge on the employee at all - and changes in redundancy terms will be an example because they do not impinge until an employee is in fact made redundant - then the fact that the employee continues to work knowing that the employer is asserting that that is the term for compensation on redundancies, does not mean that the employee can be taken to have accepted that variation in the contract."**

See also the Decision of McCombe J, sitting in the Queen's Bench Division, in **Harlow v Artemis International Corporation Ltd** [2008] IRLR 629.

34. In **W E Cox Toner (International) Ltd v Crook** [1981] ICR 823, it was stated that mere delay will not be sufficient. That was an affirmation case and it was considered that what was required would be some form of express or implied event indicating affirmation, although it was allowed that protracted delay might itself amount to implied affirmation.

35. As for the unfair dismissal case, the ET was here concerned with the question of the fairness of a redundancy dismissal. I have been reminded of the guidelines laid down by the EAT in **Williams and Others v Compare Maxam Ltd** [1982] IRLR 83. I particularly note the observation that an employer will seek to ensure that a selection exercise is carried out fairly, in accordance with the criteria set down, and having considered any representations made by the trade unions. I also accept the Claimant's observation - derived from the EAT's Judgment in **Payne v Spook Erection Ltd** [1984] IRLR 219 - that a selection process should be tested as a matter of law and good industrial practice. That seems to me to be a way of saying that the ET must test the process adopted by the employer against the range of reasonable responses open to the reasonable employer in the particular circumstances of the case.

Submissions

The Claimant's Case

36. The Claimant clarified that she was not seeking to argue perversity.

37. On the wrongful dismissal claim, the case of **Harlow v Artemis International Corporation Ltd** supported her. She had never signed the contract. She had originally written to accept the new position on the understanding that her terms and conditions would remain the same. Further, the Civil Service Code, which had applied to her under the original contract, was clear: a change in terms and conditions required consultation. On clarifying this point in oral argument, it was explained to me that the Code was not itself before the ET but had been referenced in e-mails between the Claimant and her trade union advisor, which were. The e-mails make the point that the Code stated, "Employers have no discretion to vary compulsory redundancy terms". I have not seen, however, the context of that statement and do not know what, if anything, was said about notice period or, perhaps more relevantly, as to the possible introduction of new terms and conditions, specifically as to the introduction of a new contract.

38. In any event, it was the Claimant's case before me - from evidence that was before the ET - and, applying **Harlow** and **Solectron**, it could not have concluded that her conduct in working, after the new contract had been sent to her, was referable to her acceptance of it. The relevant context had to be taken into account. That was, her right to six months' notice under the Civil Service Code; her initial letter saying that she did not understand her terms and conditions to have changed; the fact that she had never signed the new contract; and the fact that the notice period provision did not have an immediate practical impact upon her.

39. On the unfair dismissal appeal, the Claimant first reminded me of the ET's finding, at paragraph 114, that Mr Ellory-van Dekker had felt affronted by her grievance. She further pointed to evidence of his animus towards her in his dealings with her about the length of time it took her to prepare the lecture for the Royal Society and with his input into a referral to Occupational Health. The recommendations from Occupational Health had not been followed, in particular the recommendation that there should be an investigation as to whether her perceptions were accurate. She also observed that looking at her performance plan for 2011/12 gave a very different impression to the picture of her presented by Mr Ellory-van Dekker. The evidence was clear that she had genuine grounds for her grievance against Mr Ellory-van Dekker, which had been generated by the e-mail of 2 December 2011, from Ms Hall in HR who stated it would be beneficial if the complaints were put on a more formal footing.

40. As for the grievance against Ms Mayfield, the timing of that was due to the fact that it was only when she learned that Ms Mayfield might be determining her grievance that she realised she needed to take that step. Neither grievance was in response to those individuals being on the selection panel.

41. As for the changes made by the Respondent to the selection panel, they had been cosmetic. Given Ms Hall's evidence at the ET, she was not going to be an independent member. Ms Mayfield, as Deputy Director, was the most senior panel member and Mr Ellory-van Dekker, as Head of Collections, would plainly be influential. As for the two new members of staff, they were only recent appointees, would not have known of the situation and would not have had sufficient experience to stand up to other members of the panel. There was other evidence before the ET which showed the selection process was not unfair, but that went beyond the basis on which this matter had been permitted to proceed to a Full Hearing.

The Respondent's Case

42. On the wrongful dismissal appeal, it was the Respondent's position that the conclusion reached had been one properly open to the ET on the evidence before it; this was really a perversity challenge. On 17 March 2003, the Claimant had been issued with a new contract, which replaced the old contract she had been given 24 years previously. She had been asked to return a signed copy of the contract, and a number had been given for her to contact if she had any queries. She did not do so. The covering note asked her to read the content of the new contract carefully. The last page made plain that the new job description formed part of the new contract of employment. The ET had made a finding of fact that the Claimant had not objected to the new terms and conditions. There was no appeal from that finding.

43. The ET further addressed the fact that the Claimant had appealed the grading of her new position. She had been successful in that, and there had been an upgrade and a change in title to Senior Curator. The upshot of this, the Respondent urged, was that a brand new contract had been offered to the Claimant and she had agreed to the job description which was part of that contract. It had not been open to her to accept one part but object to others or to remain silent on yet other aspects for nine years before raising any objection.

44. The cases relied on by the Claimant - **Harlow**, **Solectron** and **Jones** - all concerned single isolated changes to particular terms. This was the introduction of an entirely new contract. In particular, in **Jones v Associated Tunnelling** the primary basis for the decision had been the implication of a term. The obiter part of the Judgment - on the consensual variation of terms - related to very different factual context to the present. As for the reference to the Civil Service Code, that had not actually been before the ET, save for extracts referenced

in e-mail communications. In any event, the issue could only be whether that had been incorporated into the new contract, which it was not.

45. On the unfair dismissal appeal, Mr Brittenden reminded me that the Claimant's arguments on collusion had been squarely before the ET. It had five full lever arch files of documentary evidence. All members of the panel had been called and cross-examined; each asserted that they had made their own independent assessment at the selection stage. Over seven days of evidence the ET had scrutinised the material before it - both witness testimony and documentary evidence - on this point and had reached conclusions of fact open to it.

46. Descending into some of the detail, on 17 February 2012 the Claimant had been told of the identity of those making up the selection panel. The next day, her trade union representative had objected, and the Respondent had taken steps to respond to the concerns raised. There had been no further objection raised by the Claimant or her trade union representative thereafter. Indeed the Claimant responded that she appreciated the Respondent's response, "I really appreciate you taking [my trade union representative's] suggestion seriously." That could fairly be taken to amount to agreement to the composition of the selection panel.

47. As for the scoring, the ET dealt with that in detail in its findings of fact (paragraphs 71 to 74). It was alive to the issue whether there had been improper influence by any members of the panel (see paragraph 72, which related how the two independent members gave their views first and all the scores by each member of the panel were recorded at the first discussion stage, not simply at the wash-up stage at the end). The ET had found (paragraph 73) that the consistency in the scoring reflected the genuine views of the members of the panel. There was no collusion.

48. As for paragraph 108, setting out the ET's conclusions on this point, the first sentence properly read demonstrated two alternative findings. The ET went on to address the timing of the grievances issue but then dealt with each point in the alternative in its reasoning. The finding that the two new members of the panel were totally independent was a conclusion reached by the ET having heard evidence from all the members of that panel, tested under cross-examination. The Claimant had not challenged the scoring on this appeal.

The Claimant in Reply

49. The Claimant told me that there had been evidence before the ET that the scoring - at least that of one member of the panel - of the alternative candidate had changed. Whilst that might not have impacted upon her scores, it showed there had been changes to the scoring process during the discussions. Further, the scores might have been affected by her performance at the time; the situation she was in; what she felt was an unfair role-play and the difficulty she found herself in faced with two people against whom she had raised grievances. She stressed again that her grievances had not been cynical, either in their content or timing.

Discussion and Conclusions

Wrongful dismissal

50. I accept that mere delay might, of itself, be neutral in determining whether an employee can be said to have acquiesced in the case of an employer's breach of contract or in deciding whether or not an employee has accepted a change to a contractual term. If it does not have any immediate, practical impact upon the employee, why should they raise the challenge?

51. This case is, however, about more than simply a unilateral change of one term of the Claimant's contract. It involved the introduction of an entirely new contract. The Respondent

did not purport to maintain the Claimant's former contract subject only to a unilateral variation of her notice entitlement. It departed from that former contract and introduced an entirely new package, which encompassed not just the terms and conditions but also the job description and the handbook. Plainly some of that impacted on the Claimant straightaway: she was working to a new job and pay protection arrangements were introduced. Indeed, the Claimant expressly raised an objection to part of the new package, by appealing against the grading of her new position. Whilst doing so, however, she did not seek to make any express objection to the changes in the terms and conditions. Indeed, knowing of the change in question to her notice period - as the ET found - she continued to work to the new contract without objection.

52. I do not consider the force of this point undermined by such references as I have seen to the Civil Service Code. That was not part of the new contract to which the Claimant worked for some nine years without objection.

53. In considering that time period, it seems to me that the ET was entitled to have regard to the Claimant's position. She herself had held a trade union role. She was someone who could be expected to have regard to the detail of the terms and conditions and to raise queries if they arose. On the facts, her position was very different to the worker being considered in **Jones**.

54. Moreover a notice period can have an immediate impact, even if not in quite the same way as the weekly wage. It impacts upon job security, which can, in turn, have a real and practical importance for the employee (for example, in terms of a mortgage application etc). Here it was part of a package. It was not left that the Claimant could cherry-pick as between the old and new contracts. She was offered a new job on a new contract. She accepted the

former and worked to the latter. On the particular evidence and facts in this case, the ET was entitled to find that that amounted to acceptance.

55. Properly understood, the wrongful dismissal appeal is one of perversity. In my judgment, it does not meet the high test laid down so as to make good that challenge.

Unfair dismissal

56. The sole point permitted to proceed to Full Hearing is concerned with the involvement of two particular individuals on the selection panel, against whom the Claimant had raised grievances. Putting the point that way inevitably puts the spotlight on the ET's finding that the Respondent was entitled to have regard to the timing of the grievances. Of itself, however, that would be an unfair characterisation of the ET's Reasons for finding that the selection process in this case had been fair.

57. One can see why the Claimant might initially have been concerned as to the composition of the selection panel. That, however, was the subject of reassurance at the time, with changes made to the panel which seemed to be accepted by the Claimant at that stage: there was no further objection by her or her trade union representative. More importantly for my purposes, such concerns as the Claimant had - and as were raised in her ET claims - were scrutinised in detail by the ET. It was alive to the question whether there had been any improper influence by any members of the panel. In its detailed findings of fact (paragraphs 71 to 74), it carefully examined the Respondent's evidence on this point (which was, no doubt, tested in full in cross-examination). Each member of the selection panel gave evidence. It found as a fact that, when it came to the assessment of the two individuals concerned, it was not Mr Ellory-van Dekker or

Ms Mayfield who expressed any view at the outset; the discussions were commenced by the two newer appointees to the Respondent, whom, the ET found, were totally independent.

58. Moreover, the scores themselves were not just a matter of record after the discussion had taken place as part of the wash-up process. They were noted down at the outset of the discussion. Although the Claimant might have been able to point to a change in one of the scores in relation to the other candidate, there was no evidence of such a change of scoring occurring during the discussion in the Claimant's case.

59. The ET further considered the possibility that the consistency in the scoring itself reflected collusion. At paragraph 73, however, it found as a fact that it did not. It simply reflected the genuine views of the members of the selection panel. That is a finding of fact not open to challenge on appeal.

60. The first sentence of paragraph 108 - in the conclusions section relevant to this part of the case - sets out two alternative conclusions. First, the ET did not accept that the composition of the selection panel was unreasonable. Second, alternatively, it did not accept that composition impacted on the fairness of the process. The ET then addressed the Claimant's raising of the grievances, their timing, and how the Respondent might have seen that. It did not, however, stop there. It continues "In any event", and refers back to its earlier detailed findings of fact. On that basis the ET concluded that there had been no collusion but an independent assessment by all those involved, who were not outnumbered by the one vote shared by Mr Ellory-van Dekker and Ms Mayfield. Given those findings of fact the Claimant cannot (and does not) say the conclusion reached is perverse. But, equally, there is no other error of approach.

61. The question of the composition of the panel was raised as an arguable point before the ET, and the ET carefully scrutinised the evidence on that question and considered that issue. It was satisfied that the Claimant's concerns were unfounded: the composition of the selection panel was neither unreasonable, nor did it impact in any way on the fairness of the selection process. On those findings of fact, there is no proper point raised by this part of the appeal.

62. For those reasons I dismiss this appeal.